STATE OF NEW YORK

6860

2023-2024 Regular Sessions

IN ASSEMBLY

May 8, 2023

Introduced by M. of A. AUBRY -- read once and referred to the Committee on Judiciary

AN ACT to amend the court of claims act, in relation to claims for unjust conviction and imprisonment

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section 8-b of the court of claims act, as added by chapter 1009 of the laws of 1984, subdivision 2 as amended by chapter 210 of the laws of 2007, is amended to read as follows:

§ 8-b. Claims for unjust conviction and imprisonment. 1. The legislature finds and declares that innocent persons who have been wrongly convicted of crimes and subsequently imprisoned have been frustrated in seeking legal redress due to a variety of substantive and technical obstacles in the law and that such persons should have an available avenue of redress over and above the existing tort remedies to seek compensation for damages. The legislature intends by enactment of the provisions of this section that those innocent persons who can demonstrate by clear and convincing evidence that they were unjustly convicted and imprisoned be able to recover damages against the state. In light of the substantial burden of proof that must be carried by such persons, it is the intent of the legislature that the court, in exercising its discretion as permitted by law regarding the weight and admissibility of evidence submitted pursuant to this section, shall, in the interest of justice, give due consideration to difficulties of proof caused by the passage of time, the death or unavailability of witnesses, the destruction of evidence or other factors not caused by such persons or those acting on their behalf.

2. Any person convicted and subsequently imprisoned for one or more felonies or misdemeanors against the state which he **or she** did not commit may, under the conditions hereinafter provided, present a claim for damages against the state. In scheduling court appearances and

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

LBD09234-02-3

filing deadlines, the court shall give docket priority at each stage of the proceeding to such claims for damages under this subdivision where the claimant asserts proof of innocence through DNA evidence. Any adjournments granted in the course of such a proceeding should be for as short a time as is practicable.

3. In order to present the claim for unjust conviction and imprisonment, claimant must establish by documentary evidence that:

(a) he **or she** has been convicted of one or more felonies or misdemeanors against the state and subsequently sentenced to a term of imprisonment, and has served all or any part of the sentence; and

(b) [~~(i)~~] he [~~has been pardoned upon the ground of innocence of the crime or crimes for which he was sentenced and which are the grounds for the complaint; or (ii) his judgment of conviction was reversed or vacated, and the accusatory instrument dismissed or, if a new trial was ordered, either he was found not guilty at the new trial or he was not retried and the accusatory instrument dismissed; provided that the judgement of conviction was reversed or vacated, and the accusatory instrument was dismissed, on any of the following grounds: (A) paragraph (a), (b), (c), (e) or (g) of subdivision one of section 440.10 of the criminal procedure law; or (B) subdivision one (where based upon grounds set forth in item (A) hereof), two, three (where the count dismissed was the sole basis for the imprisonment complained of) or five of section 470.20 of the criminal procedure law; or (C) comparable provisions of the former code of criminal procedure or subsequent law; or (D) the statute, or application thereof, on which the accusatory instrument was based violated the constitution of the United States or the state of New York~~] **or she has had one or more felonies and misdemeanors dismissed with prejudice following serving all or part of the sentence**; and

(c) his **or her** claim is not time-barred by the provisions of subdivision seven of this section.

4. The claim shall state facts in sufficient detail to permit the court to find that claimant is likely to succeed at trial in proving that (a) he **or she** did not commit any of the acts charged in the accusatory instrument **or conviction** or his **or her** acts or omissions charged in the accusatory instrument **or conviction** did not constitute a felony or misdemeanor against the state, and (b) he **or she** did not by his **or her** own conduct cause or bring about his **or her** conviction. The claim shall be verified by the claimant. If the court finds after reading the claim that claimant is not likely to succeed at trial, it shall dismiss the claim, either on its own motion or on the motion of the state.

5. In order to obtain a judgment in his **or her** favor, claimant must prove by clear and convincing evidence that:

(a) he **or she** has been convicted of one or more felonies or misdemeanors against the state and subsequently sentenced to a term of imprisonment, and has served all or any part of the sentence; and

(b) [~~(i)~~] he [~~has been pardoned upon the ground of innocence of the crime or crimes for which he was sentenced and which are the grounds for the complaint; or (ii) his judgment of conviction was reversed or vacated, and the accusatory instrument dismissed or, if a new trial was ordered, either he was found not guilty at the new trial or he was not retried and the accusatory instrument dismissed; provided that the judgement of conviction was reversed or vacated, and the accusatory instrument was dismissed, on any of the following grounds: (A) paragraph (a), (b), (c), (e) or (g) of subdivision one of section 440.10 of the criminal procedure law; or (B) subdivision one (where based upon grounds set forth in item (A) hereof), two, three (where the count dismissed was~~

~~the sole basis for the imprisonment complained of) or five of section 470.20 of the criminal procedure law; or (C) comparable provisions of the former code of criminal procedure or subsequent law; or (D) the statute, or application thereof, on which the accusatory instrument was based violated the constitution of the United States or the state of New York~~] **or she has had one or more felonies and misdemeanors dismissed with prejudice following serving all or part of the sentence**; and

(c) he **or she** did not commit any of the acts charged in the accusatory instrument **or conviction** or his **or her** acts or omissions charged in the accusatory instrument **or conviction** did not constitute a felony or misdemeanor against the state; and

(d) he **or she** did not by his **or her** own conduct cause or bring about his **or her** conviction.

6. If the court finds that the claimant is entitled to a judgment, it shall award damages in such sum of money as the court determines will fairly and reasonably compensate him **or her**.

7. Any person claiming compensation under this section based on a pardon that was granted before the effective date of this section or the dismissal of an accusatory instrument **or conviction** that occurred before the effective date of this section shall file his **or her** claim within [~~two~~] **five** years after the effective date of this section. Any person claiming compensation under this section based on a pardon that was granted on or after the effective date of this section or the dismissal of an accusatory instrument **or conviction** that occurred on or after the effective date of this section shall file his **or her** claim within [~~two~~] **five** years after the pardon or dismissal.

§ 2. This act shall take effect immediately.