



NEW JERSEY LAW REVISION COMMISSION

Final Report Regarding Proposed Changes to the Mistaken Imprisonment Act, N.J.S. 52:4C-1 to 7

November 18, 2021

The work of the New Jersey Law Revision Commission is only a recommendation until enacted.

Please consult the New Jersey statutes in order to determine the law of the State.

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Project Summary¹

This project was begun in response to *Kamienski v. State Department of Treasury*,² in which the Appellate Division considered the interpretations of the Mistaken Imprisonment Act, N.J.S. 52:4C-1 to -7, relating to eligibility, the burden of proof, damages, and reasonable attorney fees recoverable under the Act.

Research during the course of Commission work in this area identified other issues in N.J.S. 52:4C-6 that were not decided by the Court in *Kamienski* given the facts of the case. This Report recommends amendments to the statute to address all of the issues that the Commission identified.

Background

The Mistaken Imprisonment Act, N.J.S. 52:4C-1 to -7, allows a claimant to recover money for time spent mistakenly incarcerated if that claimant meets a number of requirements, including that the claimant was convicted and sentenced; claimant did not commit the crime; claimant's conduct did not bring about the conviction; and that the claimant did not plead guilty to the crime in question.³

The Plaintiff in *Kamienski* was charged in a single indictment and convicted of two counts of purposeful murder, felony murder, conspiracy to possess cocaine with intent to distribute, and related offenses.⁴ The trial judge entered a judgment of acquittal (notwithstanding the jury's verdict) but his murder convictions were reinstated on appeal.⁵ He was resentenced to two life sentences⁶ with a "consecutive flat twelve-year term on the drug conspiracy conviction."⁷

Plaintiff's convictions for murder and felony murder were set aside after his petition for habeas corpus was granted, which challenged only his murder convictions.⁸ The Court of Appeals for the Third Circuit ordered his petition granted, stating that "no reasonable juror could conclude that the evidence admitted against [plaintiff] at his trial established that he was guilty of murder or felony murder beyond a reasonable doubt."⁹ The trial court subsequently granted his summary judgment motion and awarded him \$343,000.¹⁰

¹ Legal research and preliminary work on this project were performed by Rachael Segal during her time as a Legislative Law Clerk with the New Jersey Law Revision Commission.

² *Kamienski v. State Department of Treasury*, 451 N.J. Super. 499 (App. Div. 2017).

³ *See id.* at 503-504 (citing N.J.S. 52:4C-3).

⁴ *Id.* at 503; *see id.* (noting events were from November 1988).

⁵ *Id.* at 504 (citing *State v. Kamienski*, 254 N.J. Super. 75 (App. Div.), *certif. denied*, 130 N.J. 18 (1992)).

⁶ With thirty years of parole ineligibility.

⁷ *Kamienski*, 451 N.J. Super. at 504.

⁸ *Kamienski*, 451 N.J. Super. at 505 (noting that the trial judge "entered a judgment of acquittal, notwithstanding the verdict, in favor of plaintiff on the murder and felony murder counts," that his drug conspiracy conviction remained undisturbed, and that he was "released from prison in June 2009, after serving more than twenty years").

⁹ *Id.* (citing *Kamienski v. Hendricks*, 332 Fed. Appx. 740, 740-41 (3rd Cir. 2009)).

¹⁰ *Id.* at 506 ("Plaintiff's request for reasonable attorney fees, initially denied without prejudice, was later granted after a certification of services was submitted, resulting in an award of \$90,230").

Plaintiff, unhappy with the amount of the judgment in his favor, brought action against the State of New Jersey, Department of the Treasury, seeking \$5,913,671.30 in damages and \$1,000,000 in attorney fees and costs incurred in his initial defense and in all subsequent proceedings.¹¹ Plaintiff argued that “the trial court erred in interpreting how damages are to be calculated and the scope of reasonable attorney fees under the Act, N.J.S.A. 52:4C–5(a)-(b).”¹² On cross-appeal, the state argued that “the trial court erred in interpreting N.J.S.A. 52:4C–6(a), finding plaintiff was not barred from recovery” and that “the trial court erred in granting summary judgment to plaintiff, based upon a misinterpretation of N.J.S.A. 52:4C–3(b).”¹³

Analysis

In *Kamienski v. State Department of Treasury*, the Appellate Division Court first considered whether plaintiff was eligible to recover under the Act.¹⁴ The Court found that “the absence of any disqualifier in the Act based on defendant’s guilt on another charged offense or the consecutive sentence imposed supports the conclusion we reach that N.J.S.A. 52:4C–6 does not bar him from seeking compensation under the Act.”¹⁵

To recover, a plaintiff must establish by clear and convincing evidence that he did not commit the crime for which he was convicted.¹⁶ The Court agreed with the State that the record lacked “support for a finding that plaintiff proved subsection (b) by clear and convincing evidence, and the trial court’s conclusion to the contrary rested upon a misinterpretation of N.J.S.A. 52:4C–3.”¹⁷ It was plaintiff’s burden to show by clear and convincing evidence that he did not commit the crimes charged,¹⁸ and plaintiff failed to show that he was entitled to summary judgment by not proving¹⁹ through evidence that he was mistakenly convicted and imprisoned.²⁰

Knowing that damages would be calculated if plaintiff proved the elements of his claim on

¹¹ *Id.* at 503-05; *see id.* at 505 (“The damages sought represented the amount of the adjusted gross income plaintiff earned in the year prior to his incarceration (\$143,307) multiplied by the number of years he was incarcerated”).

¹² *Id.* at 506.

¹³ *Id.*

¹⁴ *Id.* at 509; *Id.* (citing (N.J.S. 52:4C–6(a)) (“The State moved to dismiss plaintiff’s complaint on the ground that he was ineligible to pursue his claim pursuant to N.J.S.A. 52:4C–6(a), which states, ‘A person serving a term of imprisonment for a crime other than a crime of which the person was mistakenly convicted shall not be eligible to file a claim for damages pursuant to the provisions of this act’”).

¹⁵ *Id.* at 512.

¹⁶ N.J.S. 52:4C–3(b).

¹⁷ *Kamienski*, 451 N.J. Super. at 512.

¹⁸ *Id.*

¹⁹ *Id.* at 513-14 (“From its first iteration, the Act has required a claimant to establish ‘by clear and convincing evidence’ that ‘[h]e did not commit the crime for which he was convicted.’ L. 1997, c. 227, § 3(b). The Legislature described the burden of proof the claimant must satisfy as ‘substantial,’ and urged courts ‘in the interest of justice’ to consider the ‘difficulties of proof’ in exercising discretion ‘regarding the weight and admissibility of evidence submitted’ by the claimant. L. 1997, c. 227, § 1. The plain language of the Act and its legislative history thus both evince the Legislature’s intent that a claimant ‘prove’ he did not commit the crime”).

²⁰ *Id.* at 513 (citing N.J.S. 52:4C–1).

remand, the Appellate Division offered guidance for calculation of damages.²¹ The applicable provision in the 1997 version of the Act was: “Damages awarded under this act shall not exceed twice the amount of the claimant’s income in the year prior to his incarceration or \$20,000.00 for each year of incarceration, whichever is greater.”²² The 2013 amendment to the statute, however, clarifies that the plaintiff may choose between \$50,000 for each year of incarceration and twice his earnings during his last year before incarceration. No change to the current statute is necessary.

A second issue addressed by the *Kamienski* Court relates to the attorney fees that a claimant may recover. The statutory provision, N.J.S. 52:4C-5 subsection b., says that “[i]n addition to the damages awarded pursuant to subsection a., the claimant shall be entitled to receive reasonable attorney fees and costs related to the litigation.”²³

The Court held the fees in question were those related to the litigation with the State Department of Treasury to recover damages for incarceration for a crime he did not commit, and that fees related to overturning the conviction were not included.²⁴ While the current statutory language is relatively clear on this issue, it can be made clearer, and a modification to the statutory language is proposed in the Appendix to this Report.

The final issue presented by *Kamienski* is a challenging one. In *Kamienski*, the claimant served a sentence for murder and a consecutive 12-year term for a drug charge. The Court said that “[p]ursuant to the plain language of N.J.S.A. 52:4C–6, eligibility does not turn on proof of innocence on any charge other than the one or ones for which a claimant has been wrongfully convicted.”²⁵ The Court relied on the language of N.J.S. 52:4C-6 subsection b., which states “[a] person shall not be eligible to file a claim for damages pursuant to the provisions of this act if the sentence for the crime of which the person was mistakenly convicted was served concurrently with the sentence for the conviction of another crime.”²⁶

The Court reasoned that since *Kamienski* served consecutive sentences, he was eligible to recover under the Act, noting that such a result “may seem counterintuitive” since the “imposition of a consecutive sentence inures to plaintiff’s benefit” while the imposition of concurrent sentences bars recovery according to the Court’s reading of the statute.²⁷

The purpose of the Act is to allow recovery for incarceration that is the result of an erroneous conviction. N.J.S. 52:4C-1 states that the “Legislature intends by enactment of the

²¹ *Kamienski*, 451 N.J. Super. at 517.

²² *Id.* (citing L.1997, c.227, § 5(a)). This case relies on the 1997 version of the statute.

²³ N.J.S. 52:4C-5(b).

²⁴ *Kamienski*, 451 N.J. Super. at 522-523 (stating that “if the Legislature intended to compensate a successful complainant for fees related to the underlying criminal prosecution, it would have stated so as a component of recoverable damages in subsection (a) or stated explicitly that “reasonable attorney fees” had a different meaning than it has historically employed in other statutes with fee-shifting provisions”).

²⁵ *Id.* at 511.

²⁶ N.J.S. 52:4C-6(b).

²⁷ *Kamienski*, 451 N.J. Super. at 511-512.

provisions of this act that those innocent persons who can demonstrate by clear and convincing evidence that they were **mistakenly convicted and imprisoned** be able to recover damages against the State [emphasis added].”²⁸ N.J.S. 52:4C-6 states, in subsection a., that a “person serving a term of imprisonment for a crime other than a crime of which the person was mistakenly convicted shall not be eligible to file a claim for damages pursuant to the provisions of this act.”²⁹

The issue is determining when a claimant has spent time incarcerated for the crime of which he was not guilty, and not for some *other* crime the conviction of which stands.

N.J.S. 52:4C-6 subsection a. states the basic principle that payment is available only for time spent incarcerated as a result of the crime for which a claimant was mistakenly convicted, not for other crimes. Subsection b. states that a “person shall not be eligible to file a claim for damages pursuant to the provisions of this act if the sentence for the crime of which the person was mistakenly convicted was served concurrently with the sentence for the conviction of another crime.”³⁰

While principle is clear, the calculation of what time is attributable to which crime may, in particular circumstances, raise difficulties. When there are multiple convictions, it may not be obvious what time incarcerated was solely attributable to the mistaken conviction.

N.J.S. 2C:44-5(e) calls for the aggregation of multiple sentences into a single sentence. For purposes of this statute, however, they must be considered individually. The simplest case is the imposition of concurrent sentences of relatively equal length. Under that circumstance, the claimant is or was serving a sentence that has not been challenged, as well as one that has been set aside. Nothing caused the claimant to serve any time that would not have been served if the erroneous conviction had not happened. Subsection b. of N.J.S. 52:4C-6 deals with that situation.

There are, however, some situations in which a claimant is arguably entitled to recovery in a case involving concurrent terms. One example is a situation in which the unchallenged term is much shorter than the challenged term and has been fully served. In that case, the applicant has been incarcerated for the crime of which he is not guilty. N.J.S. 52:4C-6 subsection b. does not provide an exception for that situation, but such an exception is arguably consistent with the purpose of the legislation.

In addition to issues raised by concurrent sentences, the statute gives no explicit guidance concerning consecutive sentences. Consistent with the purpose of the Act, the result of a claim under the Act should turn on whether the claimant was incarcerated for a crime that the claimant did not commit. If a consecutive sentence would have resulted in incarceration for the time actually served *without* the sentence that was set aside, there was no incarceration due to the erroneous conviction and no basis for damages. There are circumstances, however, in which consecutive

²⁸ N.J.S. 52:4C-1.

²⁹ N.J.S. 52:4C-6(a).

³⁰ N.J.S. 52:4C-6(b).

sentences do result in incarceration attributable to an erroneous sentence.

Outreach

Copies of the Tentative Report were distributed to interested parties in May of 2021, including the: New Jersey Office of the Attorney General; New Jersey Department of the Treasury; New Jersey Administrative Office of the Courts; New Jersey State Municipal Prosecutor's Ass'n; New Jersey State Bar Association; New Jersey Office of the Public Defender; Legal Services of New Jersey; Hudson County Prosecutor's Office; New Jersey State Association of Chiefs of Police; New Jersey Police Traffic Officers Association; and several private practitioners.

A response was received from Assistant Prosecutor Barbara Drasheff, commenting for the Hudson County Prosecutor's Office. Her Memorandum included three recommendations. First, in N.J.S. 52:4C-5 subsection b., A.P. Drasheff recommended modifications to the Commission's language and the addition of supplemental language in the interest of eliminating any ambiguity regarding the attorney fees and costs that may be awarded, clarifying that they may not include any attorney fees or costs incurred in overturning the underlying criminal conviction.³¹ The recommended language has been incorporated into the draft statutory language and is shown in the Appendix.

In N.J.S. 52:4C-6, A.P. Drasheff recommended the addition of a new subsection a. stating that a claimant may only recover damages for imprisonment "solely attributable to the crime for which the claimant was mistakenly convicted." She recommended an additional modification of what is now subsection b.(2) to refer to the "entirety of the" period of imprisonment. These recommendations are reflected in the draft statutory language. She also recommended that what is now subsection c. be moved to N.J.S. 52:4C-5. Subsection c. remains in N.J.S. 52:4C-5 so that the provisions pertaining to concurrent and consecutive sentences are contained in the same section. The last recommendation pertaining to this section of the statute is that the current title be retained, rather than changed.³²

In addition to the recommendations referred to above, A.P. Drasheff also recommended changes to N.H.S. 52:4C-3(c). She explained that this subsection concerns "a claimant not having caused his own conviction" but notes that it does not mention legal counsel, suggesting that omission might "cause confusion." She said that "convictions caused by legal counsel decisions/conduct should likewise be disallowed under the Act" and recommended as a possible amendment: "He did not commit or suborn perjury, fabricate evidence, or by his own conduct or bring about his conviction. For purposes of this Act, conduct by the claimant's legal counsel in the underlying criminal case shall be attributed to the claimant." In addition, A.P. Drasheff recommended that the phrase "cause or bring about" in this subsection be modified to clarify the causation standard and eliminate any uncertainty about whether "the claimant's actions must be

³¹ Memorandum from Assistant Prosecutor Barbara Drasheff, commenting for the Hudson County Prosecutor's Office, to the Commission, (July 23, 2021), pp 1-2 (on file with the NJLRC).

³² *Id.* at p. 2.

the sole, predominating, or a mere contributing cause of the underlying conviction.”³³

The recommended changes to N.J.S. 52:4C-3(c) were not included in this Report as a result of a concern that they would add an additional layer of difficult considerations to an already complicated proceeding. The requested changes may require an examination of trial strategy that was beyond the control of the claimant. While the actions of defense counsel may be part of the cause of conviction, they may not rise to the level of malpractice, but may instead be decisions that turned out to be mistakes.

Conclusion

Modifying the language of N.J.S. 52:4C-5 and 52:4C-6 could clarify the basis for determining whether recovery is appropriate in cases involving multiple sentences, not all of which are set aside. The Appendix contains draft language to address these issues.

³³ *Id.* at p. 3.

Appendix I – Recommended Amendments

Proposed changes to the statutes are shown with strikeout for deletions and underlining for inserted language. Italicized underlining and strikeout show changes made since the release of the Tentative Report, some of which were made in response to comments submitted.

52:4C-5. Damages, attorney fees.

a. (1) Damages awarded under this act shall not exceed the greater of:

(a) twice the amount of the claimant's income in the year prior to his incarceration; or

(b) \$50,000 for each year of incarceration.

(2) In the event that damages exceed \$1 million, the court may order that the award be paid as an annuity with a payout over a maximum period of 20 years. The court shall consider the best interests of the claimant in making such determination.

b. In addition to the damages awarded pursuant to subsection a., the claimant shall be entitled to receive reasonable attorney fees and costs ~~related to~~ incurred in the litigation ~~with~~ against the Department of Treasury as authorized by this act. Attorney fees and costs awarded pursuant to this subsection shall not include those incurred overturning any underlying criminal conviction. A claimant may also be awarded other non-monetary relief as sought in the complaint including, but not limited to vocational training, tuition assistance, counseling, housing assistance, and health insurance coverage as appropriate.

c. Damages awarded under this act shall not be subject to treatment as gross income to the claimant under the provisions of the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq.

COMMENT

The proposed amendment to subsection b. is consistent with the Court's determination in *Kamienski v. State Department of Treasury*, 451 N.J. Super. 499 (App. Div. 2017) that the 'reasonable attorney fees' recoverable under the Act are limited to those incurred in the successful pursuit of the civil claim, and not all fees related to the underlying criminal prosecution.

Additional changes to the proposed language were made at the suggestion of Assistant Prosecutor Barbara Drasheff commenting for the Hudson County Prosecutor's Office. In N.J.S. 52:4C-5 subsection b., she recommended modifications to the Commission's language and the addition of supplemental language, in the interest of eliminating any ambiguity regarding the attorney fees and costs that may be awarded, and clarifying that they may not include any attorney fees or costs incurred in overturning the underlying criminal conviction. The recommended language has been incorporated into the draft as shown in italics above.

52:4C-6. Noneligibility. Eligibility – Multiple Sentences.

a. A claimant may only recover damages under this Act for a period of imprisonment which is solely attributable to the crime for which the claimant was mistakenly convicted.

b. A person shall not be eligible to file a claim for damages pursuant to the provisions of this act if:

~~(1) a. A person serving a the term of imprisonment for which damages are sought, is solely attributable to ~~for~~ a crime other than a crime of which the claimant was mistakenly convicted shall not be eligible to file a claim for damages pursuant to the provisions of this act.; or~~

~~(2) b. A person shall not be eligible to file a claim for damages pursuant to the provisions of this act if the sentence for the crime of which the person was mistakenly convicted the entirety of the period of imprisonment for which damages are sought, was served concurrently with the sentence for the conviction of another crime not set aside as mistaken.~~

c. When the claimant is serving consecutive sentences:

(1) If the sentencing court specified the order in which the sentences are to be served, the claimant shall be eligible for damages pursuant to this act only for time served on the sentence for which the claimant was mistakenly convicted; and

(2). If the sentencing court did not specify the order in which the sentences are to be served, the claimant shall be eligible for damages pursuant to this act only for the period of time beginning with parole eligibility for a crime other than the crime for which the claimant was mistakenly convicted.

COMMENT

The proposed amendments are designed to permit a claimant to receive compensation for any time served as the result of a mistaken conviction but not for time that was due to other convictions. That principle is stated specifically in subsection a, which was added on the recommendation of Assistant Prosecutor Barbara Drasheff commenting for the Hudson County Prosecutor's Office.

Subsection b.(1) deals with the simple case in which the time served was attributable to a conviction other than the mistaken conviction. Subsection b.(2) deals with concurrent sentences. It disallows compensation for any period served both for the mistaken conviction and for another conviction that has not been set aside. Any additional time served as a result of the mistaken conviction is still compensable. That situation will occur when the mistaken conviction and another are served concurrently, but the mistaken conviction's term is longer than the term imposed for the other crime. It could also occur when the terms do not start at the same time. Additional language was added to subsection b.(2) on the recommendation of A.P. Drasheff to clarify that the statute contemplates the "entirety of the period of imprisonment."

Subsection c. deals with consecutive sentences. It is complicated by the fact that, in most cases, sentences are aggregated as provided by N.J.S. 2C:44-5 subsection e. Occasionally, however, a court may direct the order that consecutive sentences be served. Where the sentencing court has determined the order in which sentences are to be served, compensation is available only for the sentence attributable to the mistaken conviction. Where sentences are

aggregated (the more common practice), compensation is available only for time served after parole eligibility for the crime other than the mistaken conviction, since that is the only time that resulted from the mistaken conviction.

The proposed changes to this section, by changing the language of the former subsection a., eliminate an ambiguous provision that could be interpreted as a statutory bar to filing suit for damages pursuant to the Act until after a claimant is no longer incarcerated. The Court referred to the September 1996 Statement of the Senate Judiciary Committee, as follows:

In its September 1996 Statement, the Senate Judiciary Committee noted amendments were adopted to “clarify[] that the bill is intended to cover only persons mistakenly convicted.” S. Judiciary Comm., Statement to S. 1036 (Sept. 19, 1996). The Statement described the ineligibility provision, codified in N.J.S.A. 52:4C–6, stating:

[A] person is not eligible to file a claim for damages under the act if he either: (1) **is serving** a term of imprisonment for a crime other than the crime of which he was mistakenly convicted; or (2) **served** a sentence for another crime **concurrently** with the sentence for the crime of which he was mistakenly convicted.

[S. Judiciary Comm., Statement to S. 1036 (Sept. 19, 1996) (emphasis added).]

Kamienski v. State Department of Treasury, 451 N.J. Super. 499, 510 (App. Div. 2017). The argument that the statute bars the filing of a claim under the Act while incarcerated is supported by the used of the word “serving” rather than “served” in the Committee Statement. That interpretation appears to be contrary to the general purpose of the Act.