

To: New Jersey Law Revision Commission
From: John Cannel
Re: The Mistaken Imprisonment Act, N.J.S. 52:4C–1 to –7
***Kamienski v. State Department of Treasury*, 451 N.J. Super. 499 (App. Div. 2017)**
Date: January 11, 2021

MEMORANDUM

Executive Summary¹

In *Kamienski v. State Department of Treasury*,² the Appellate Division considered the provisions of the Mistaken Imprisonment Act, N.J.S. 52:4C–1 to –7, and what it described as “questions of first impression” concerning eligibility, the burden of proof, damages, and reasonable attorney fees recoverable under the Act.

The Appellate Division determined that certain language in the statute was susceptible to more than one interpretation, and noted that the Act is both “remedial legislation and, in part, a waiver of sovereign immunity,” a point that brings conflicting standards of construction into play.³

Although modifications to the statutory language concerning damages addressed certain issues raised by the plaintiff, it appears that additional clarification of the statutory language may be of assistance in interpreting the provisions concerning an attorney fee award, and whether an individual may bring suit under the act while incarcerated.

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. Those requirements include that the claimant: was convicted and sentenced; they did not commit the crime; their conduct did not bring about the conviction; and they did not plead guilty to the crime in question.⁴

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.⁵ He was convicted⁶ and subsequently resentenced to two life sentences⁷ with a

¹ The 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 *Id.* At 507.

⁴ *See Id.* at 503; *Id.* at 504 (citing N.J.S. 52:4C–3).

⁵ *Id.* at 503; *see id.* (noting events were from November 1988).

⁶ *Id.* at 504 (citing *State v. Kamienski*, 254 N.J. Super. 75 (App. Div.), *certif. denied*, 130 N.J. 18 (1992)).

⁷ With thirty years of parole ineligibility.

“consecutive flat twelve-year term on the drug conspiracy conviction.”⁸ His convictions for murder and felony murder were set aside after his petition for *habeas corpus* was granted, which challenged only his murder convictions.⁹ After the Court of Appeals for the Third Circuit ordered the 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,”¹⁰ the trial court granted his summary judgment motion and awarded him \$343,000.¹¹

Unhappy with the amount of the judgment in his favor, the plaintiff brought an action against the State of New Jersey, Department of the Treasury, seeking \$5,913,671.30 in damages¹² and \$1,000,000 in attorney fees and costs incurred in his initial defense and in subsequent proceedings.¹³

The Appellate Division first considered whether plaintiff was eligible to recover under the Act.¹⁴ The State argued that the plaintiff was not eligible to recover as a result of the language in N.J.S. 52:4C–6(a), which states, 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.”¹⁵ The State argued that the Legislature intended to limit the availability of recovery to “truly faultless persons.”¹⁶

In response, the Court stated that no provision of the Act limited “eligibility to ‘truly faultless persons’ whose only conviction is the one of which they are innocent.”¹⁷ The Court added that the “plain language bars persons who are currently **serv**ing a term of imprisonment for another crime during that two-year period and persons who **serv**ed a term **concurrently** with the wrongful conviction. [emphasis in original]”¹⁸

The Court found that the “Act is silent regarding the specific circumstances here, where a claimant was charged in a single indictment with multiple crimes, convicted of multiple crimes, sentenced to **consecutive** terms and later had one of those convictions remain intact after others

⁸ *Kamienski*, 451 N.J. Super. at 504.

⁹ *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”).

¹⁰ *Id.* (citing *Kamienski v. Hendricks*, 332 Fed. Appx. 740, 740–41 (3rd Cir. 2009)).

¹¹ *Id.* at 506; *see id.* (“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”).

¹² *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”).

¹³ *Id.*

¹⁴ *Id.* at 509; (citing N.J.S. 52:4C–6(a)).

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Kamienski*, 451 N.J. Super. at 510.

¹⁸ *Id.*

were set aside.”¹⁹ The Appellate Division explained that if New Jersey’s statute “limited eligibility to persons who were exonerated on all charges in the indictment” as some other states do, then the plaintiff would not be able to recover.²⁰ Instead, the “disqualifying criteria” in New Jersey “relate to the sentence(s) served by a claimant, and only address concurrent terms and terms that are being served at the time the complaint is filed.”²¹

The Court said that although “it may seem counterintuitive”, the “imposition of a consecutive sentence inures to plaintiff’s benefit, 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.”²²

Analysis

There is no need for any action regarding the issue raised in *Kamienski* concerning damages that may be awarded to a plaintiff pursuant to the Act. The 2013 amendment to N.J.S. 52:4C-5 clarified that a plaintiff may be awarded damages of \$50,000 for each year of incarceration, or twice the amount of their earnings during their last year before incarceration.

A second issue raised by the *Kamienski* case concerns the attorney fees that a claimant may recover. The statutory provision, N.J.S. 52:4C-5 subsection b., reads: “In 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.” The plaintiff in *Kamienski* argued that

the statute is silent as to whether “reasonable attorney fees” are limited to the fees incurred in the civil action or extends to all fees related to the criminal prosecution. He contends the Legislature did not anticipate that an exonerated person would have the resources to pay for his own defense from trial through applications for post-conviction relief and that, if it had, it would have intended to include all fees in order to “compensate” such persons “for the damages they suffered because of their wrongful imprisonment.”²³

The Court, however, said that “in the absence of any legislative language to the contrary, we conclude that ‘reasonable attorney fees’ recoverable under the Act are limited to those incurred in the successful pursuit of the civil claim.”²⁴ Although the current statutory language is relatively clear on this issue, it can be made clearer, and additional language is proposed in the Appendix.

A third and fourth issue arguably raised by this case present difficulties.

¹⁹ *Id.*

²⁰ *Id.* at 511.

²¹ *Id.*

²² *Id.* at 512.

²³ *Id.* at 522.

²⁴ *Id.* at 523.

Concurrent and Consecutive Sentences

There are different opinions among Staff regarding the manner in which the law treats concurrent and consecutive sentences. The claimant in *Kamienski* was serving a life sentence for murder and a consecutive 12-year term for a drug charge. The Court said that if he proved his innocence regarding the murder charge, he could recover for mistaken imprisonment pursuant to N.J.S. 52:4C-6(b), which provides 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.”

N.J.S. 52:4C-6 provides, in its entirety:

a. 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.

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 was served concurrently with the sentence for the conviction of another crime.

The Court below distinguished between concurrent and consecutive sentences, indicating that concurrent sentences were a bar to recovery without significant discussion since the case did not present that issue. The Court also said that consecutive sentences were treated differently by the statute, but did not provide guidance regarding the manner in which they are treated. The statute does not mention consecutive sentences.

1. Concurrent sentences

The simple case is the imposition of concurrent sentences of relatively equal length. If a claimant served a sentence that was not challenged, in addition to one that has been set aside, the claimant has not served any time in excess of that which would have served if the erroneous conviction had not happened. Subsection b. of N.J.S. 52:4C-6 deals with that situation.

There are, however, situations in which a claimant was given concurrent terms of unequal lengths. If the unchallenged term is much shorter than the challenged term, and was fully served, the claimant was incarcerated on the basis of a crime of which the claimant is innocent - the time after the expiration of the shorter sentence. N.J.S. 52:4C-6(b), in its current form, does not allow for a claim under those circumstances.

As noted above, the Court’s discussion of this issue included language stating that the “disqualifying criteria” for recovery under the Act “relate to the sentence(s) served by a claimant, and only address concurrent terms and terms that are being served at the time the complaint is

filed.”²⁵ The Court said that although “it may seem counterintuitive”, the “imposition of a consecutive sentence inures to plaintiff’s benefit, 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.”²⁶

This presents a question regarding whether the Commission deems it appropriate to consider adding language to the statute to address a situation in which a person receives a very short sentence which is not challenged and a much longer term that is later successfully challenged. If the Commission wishes to consider doing so, Part II of the Appendix contains draft language for consideration.

2. *Consecutive sentences*

In addition, although subsection a. of N.J.S. 52:4C-6 offers some guidance regarding consecutive sentences, the guidance is not explicit. If a consecutive sentence would have resulted in all the incarceration suffered without the sentence that was set aside, there was no incarceration resulting from the erroneous conviction, and no basis for damages. The opinion in *Kamienski* did not give real guidance on this issue.

This presents a question regarding whether the Commission deems it appropriate to consider adding language to the statute to explicitly address the manner in which consecutive sentences should be handled. If the Commission wishes to consider doing so, Part II of the Appendix contains draft language for consideration.

Timing of suit pursuant to the Act

One additional issue arises from a disagreement among Staff regarding the meaning of subsection a. of N.J.S. 52:4C-6.

One position is that the provision states the general principle that recovery was limited to time served as the result of the mistaken conviction, not other convictions. The other position is that suit for damages pursuant to the Act is barred until after a claimant is no longer incarcerated. That interpretation is supported by the fact that, as the Court explained,

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

²⁵ *Id.*

²⁶ *Id.* at 512.

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).]²⁷

The proposed language reflects Staff's consensus that a person has to wait until they are no longer incarcerated before they file an action under this act but it moves that language from N.J.S. 52:4C-6 to 52:4C-4. This was done in an effort to clarify that a person is not permanently ineligible from making a claim pursuant to the Act, but that a person may only raise the issue after they are no longer incarcerated. The ineligibility is therefore temporary, and shifting the language to this section may clarify it since N.J.S. 52:4C-4 deals with the time at which suit may be brought.

²⁷ *Id.* at 510.

Appendix

This Appendix is divided into two parts. The first part contains the straightforward proposed modifications to N.J.S. 52:4C-5, regarding the extent of the permissible attorneys fees. The second part contains proposed modifications to address the issue of when an individual may file suit pursuant to the Act, and the impact of concurrent, as opposed to consecutive, sentences.

Changes in both parts show proposed changes with strikeout for deletions and underlining for inserted language.

Part I

52:4C-5. Damages; taxability

- 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 the litigation with the Department of Treasury as authorized by this act. 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

This section has been modified to make it clear 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.

Part II

The part contains proposed modifications to address the issue of when an individual may file suit pursuant to the Act, and the impact of concurrent, as opposed to consecutive, sentences.

52:4C-4. Time to bring suit.

The suit, accompanied by a statement of the facts concerning the claim for damages, verified in the manner provided for the verification of complaints in civil actions, shall be brought by the claimant within a period of two years after his release from imprisonment, or after the grant of a pardon to him; provided, however, that any eligible claimant released or pardoned during the five-year period prior to May 2, 1996 shall have two years from the effective date of this act to file a suit. A suit may not be brought while the claimant is incarcerated.

Comment

There was a difference of opinion among Staff regarding the meaning of 52:4C-6 subsection a.

One position is that the provision states the general principle that recovery was limited to time served as the result of the mistaken conviction, not other convictions.

The other position is that suit for damages pursuant to the Act is barred until after a claimant is no longer incarcerated. That interpretation is supported by the fact that, as the Court explained,

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).]²⁸

The proposed draft language above reflects Staff’s consensus that a person has to wait until they are no longer incarcerated before they file an action under this act but it moves the language stating that from N.J.S. 52:4C-6 to 52:4C-4.

This was done in an effort to clarify that a person is not permanently ineligible from making a claim pursuant to the Act, but that a person may only raise the issue after they are no longer incarcerated.

The ineligibility is therefore temporary, and shifting the language to this section may clarify it since N.J.S. 52:4C-4 deals with the time at which suit may be brought.

52:4C-6. Noneligibility.

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

(1) a. A person serving a the term of imprisonment for which damages are sought, is 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~~

²⁸ *Id.* at 510.

~~(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 period of imprisonment for which damages are sought was served concurrently with the sentence for the conviction of another crime.~~

b. When the claimant served consecutive sentences:

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

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

Comment

There are different opinions among Staff regarding the manner in which the law treats concurrent and consecutive sentences. The claimant in *Kamienski* was serving a life sentence for murder and a consecutive 12-year term for a drug charge. The Court said that if he proved his innocence regarding the murder charge, he could recover for mistaken imprisonment pursuant to N.J.S. 52:4C-6 subsection b., which provides 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.”

N.J.S. 52:4C-6 provides, in its entirety:

a. 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.

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 was served concurrently with the sentence for the conviction of another crime.

The Court below distinguished between concurrent and consecutive sentences, indicating that concurrent sentences were a bar to recovery without significant discussion since the case did not present that issue. The Court also said that consecutive sentences were treated differently by the statute, but did not provide guidance regarding the manner in which they are treated. The statute does not mention consecutive sentences.

I. Concurrent sentences

The simple case is the imposition of concurrent sentences of relatively equal length. If a claimant served a sentence that was not challenged, in addition to one that has been set aside, the claimant has not served any time in excess of that which would have served if the erroneous conviction had not happened. Subsection b. of N.J.S. 52:4C-6 deals with that situation.

There are, however, situations in which a claimant was given concurrent terms of unequal lengths. If the unchallenged term is much shorter than the challenged term, and was fully served, the claimant was incarcerated on the basis of a crime of which the claimant is innocent - the time after the expiration of the shorter sentence. N.J.S. 52:4C-6(b), in its current form, does not allow for a claim under those circumstances.

As noted above, the Court’s discussion of this issue included language stating that the “disqualifying criteria” for recovery under the Act “relate to the sentence(s) served by a claimant, and only address concurrent terms and terms that are being served at the time the complaint is filed.”²⁹ The Court said that although “it may seem counterintuitive”, the “imposition of a consecutive sentence inures to plaintiff’s benefit, 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.”³⁰

The above language is provided for consideration if the Commission deems it appropriate to consider adding language to the statute to address a situation in which a person receives a very short sentence which is not challenged and a much longer term that is later successfully challenged.

2. *Consecutive sentences*

In addition, although subsection a. of N.J.S. 52:4C-6 offers some guidance regarding consecutive sentences, the guidance is not explicit. If a consecutive sentence would have resulted in all the incarceration suffered without the sentence that was set aside, there was no incarceration resulting from the erroneous conviction, and no basis for damages.

The above language is provided for consideration if the Commission deems it appropriate to consider adding language to the statute to explicitly address the manner in which consecutive sentences should be handled.

²⁹ *Id.*

³⁰ *Id.* at 512.

Appendix - Existing Law (for reference)

52:4C-1. Findings, declarations relative to persons mistakenly imprisoned.

The Legislature finds and declares that innocent persons who have been convicted of crimes and subsequently imprisoned have been frustrated in seeking legal redress and that such persons should have an available avenue of redress to seek compensation for damages. The Legislature intends by enactment of the 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.

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, may, 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.

52:4C-2. Suit for damages.

a. Notwithstanding the provisions of any other law, any person convicted and subsequently imprisoned for one or more crimes which he did not commit may, under the conditions hereinafter provided, bring a suit for damages in Superior Court against the Department of the Treasury.

b. Any award of damages to such person in an action against the State or any political subdivision thereof or against any employee of the State or any political subdivision thereof with respect to the same subject matter shall be offset by any award of damages awarded under this act.

52:4C-3. Evidence claimant must establish.

The person (hereinafter titled, "the claimant") shall establish the following by clear and convincing evidence:

a. That he was convicted of a crime and subsequently sentenced to a term of imprisonment, served all or any part of his sentence; and

b. He did not commit the crime for which he was convicted; and

c. He did not commit or suborn perjury, fabricate evidence, or by his own conduct cause or bring about his conviction. Neither a confession or admission later found to be false shall constitute committing or suborning perjury, fabricating evidence, or causing or bringing about his conviction under this subsection; and

d. He did not plead guilty to the crime for which he was convicted.

52:4C-4. Time to bring suit.

The suit, accompanied by a statement of the facts concerning the claim for damages, verified in the manner provided for the verification of complaints in civil actions, shall be brought by the claimant within a period of two years after his release from imprisonment, or after the grant of a pardon to him; provided, however, that any eligible claimant released or pardoned during the five-year period prior to May 2, 1996 shall have two years from the effective date of this act to file a suit.

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 the litigation. 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.

52:4C-6. Noneligibility.

a. 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.

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 was served concurrently with the sentence for the conviction of another crime.

52:4C-7. Applicability of act.

6. The provisions of this amendatory and supplementary act (P.L.2013, c.171) shall apply to any claimant released from imprisonment or granted a pardon on or after the effective date of this act.