

To: New Jersey Law Revision Commission
From: Rachael Segal, Legislative Law Clerk
Re: Interpretation of Provisions of N.J.S. 52:4C-1 to -7 (Mistaken Imprisonment Act) - Kamienski v. State Department of Treasury
Date: November 5, 2018

MEMORANDUM

Executive Summary

In *Kamienski v. State Department of Treasury*,¹ 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, specifically (1) whether plaintiff was ineligible under N.J.S. 52:4C-6 because he was not an “innocent person” due to his drug conspiracy conviction, and (2) whether the decision granting plaintiff’s *habeas corpus* petition satisfied his burden under N.J.S. 52:4C-3(b) to establish by clear and convincing evidence that “he did not commit the crime for which he was convicted” as a matter of law.

The Appellate Panel determined that plaintiff was eligible, that the *habeas corpus* decision did not satisfy plaintiff’s burden of proof, and clarified the calculation of damages for guidance on remand.

Background

The Mistaken Imprisonment Act, N.J.S. 52:4C-1 to -7, allows a claimant to recover monies for time mistakenly incarcerated if that claimant meets a number of requirements, including that he was convicted and sentenced, that he did not commit the crime, that his conduct did not bring about the conviction, and that he did not plead guilty for the crime in question.²

Plaintiff 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.³ He appealed, the murder convictions were reinstated,⁴ and he was resentenced to two life sentences⁵ with a “consecutive flat twelve-year term on the drug conspiracy conviction.”⁶ His convictions for murder and felony murder were set aside after his petition for habeas corpus

¹ *Kamienski v. State Department of Treasury*, 451 N.J. Super. 499 (App. Div. 2017).

² *See id.* at 503; *Id.* at 504 (citing N.J.S. 52:4C-3).

³ *Id.* at 503; *see id.* (noting events were from November 1988).

⁴ *Id.* at 504 (citing *State v. Kamienski*, 254 N.J. Super. 75 (App. Div.), *certif. denied*, 130 N.J. 18 (1992)).

⁵ With thirty years parole ineligibility.

⁶ *Kamienski*, 451 N.J. Super. at 504.

was granted, which challenged only his murder convictions.⁷

The United States District Court denied his petition; the Court of Appeals for the Third Circuit reversed and ordered his petition be 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.”⁸ Later, the trial court granted his summary judgment motion and awarded him \$343,000.⁹

Plaintiff, unhappy with the amount of the judgment in his favor, brought action against the State of New Jersey, Department of the Treasury (State), seeking \$5,913,671.30 in damages¹⁰ 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

The Court first considered whether plaintiff was eligible to recover under the Act.¹⁴ The State conceded that the language of N.J.S. 52:4C–6(a) was vague as written and argued that it “must be read in light of the Legislature’s stated purpose to provide a remedy for ‘innocent persons.’”¹⁵ However, a Statement from the Senate Judiciary Committee noted that amendments were adopted to “clarify[] that the bill is intended to cover only persons mistakenly convicted,”¹⁶ and stated that neither in those amendments “nor in any other provision does the Act limit eligibility to ‘truly faultless persons’ whose only conviction is the one of which they are innocent.”¹⁷

⁷ *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”).

⁸ *Id.* (citing *Kamienski v. Hendricks*, 332 Fed. Appx. 740, 740–41 (3rd Cir. 2009)).

⁹ *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”).

¹⁰ *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”).

¹¹ *Id.*

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.* (quoting N.J.S. 52:4C–1).

¹⁶ *Id.* at 510 (quoting *S. Judiciary Comm., Statement to S. 1036* (Sept. 19, 1996)).

¹⁷ *Id.* (“The plain language bars persons who are currently serving a term of imprisonment for another crime during that two-year period and persons who served a term concurrently with the wrongful conviction”).

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 were set aside.”¹⁸ The Court recognized that other states had adopted a variety of approaches to set the threshold for eligibility.¹⁹ It noted that, although seemingly 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.”²⁰

To recover, a plaintiff must establish by clear and convincing evidence that he did not commit the crime for which he was convicted.²¹ 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.”²² The trial judge had found that N.J.S. 52:4C–3(b) did not require plaintiff to “prove his innocence,”²³ but that “the Third Circuit’s conclusion that the evidence was insufficient to sustain plaintiff’s murder convictions did not equate with a determination there was clear and convincing evidence that plaintiff did not commit the crimes charged, as required.”²⁴ Therefore, plaintiff failed to show that he was entitled to summary judgment by not demonstrating or proving²⁵ through evidence that he was mistakenly convicted and imprisoned.²⁶

He did not “satisfy each of the elements of his cause of action by presenting evidence that

¹⁸ *Kamienski*, 451 N.J. Super. at 510.

¹⁹ *Id.* (citing *N.Y. Ct. Cl. Act* § 8–b(5)(c) (McKinney 2017) (finding that New York requires a claimant to have all charges in the “accusatory instrument” be reversed and dismissed on specified grounds); *Id.* at 510–11 (citing *Vt. Stat. Ann.* tit. 13, § 5574(a)(3) (West 2017); *Wash. Rev. Code* § 4.100.040(2)(a) (West 2017)) (finding that under the Vermont and Washington statutes, the claimant must prove he or she “did not engage in any illegal conduct alleged in the charging documents”); *Id.* at 511 (finding that other states have required the claimant to provide proof of innocence of “any other felony arising out of or reasonably connected to the facts supporting the indictment or complaint, or any lesser included felony,” “another criminal offense arising from the same transaction,” “multiple charges arising out of the same behavioral incident,” and lesser included offenses”) (citations omitted).

²⁰ *Id.* at 512.

²¹ N.J.S. 52:4C–3(b).

²² *Kamienski*, 451 N.J. Super. at 512.

²³ *Id.* at 513 (“Observing ‘the federal appeals court said there was insufficient evidence to prove murder,’ she reasoned that the legislature did not intend to ‘put the onus on him to prove his innocence.’ She concluded plaintiff ‘has met the requirements of the [Mistaken] Imprisonment Act and we are just talking about the amount of the damages’”).

²⁴ *Id.*

²⁵ *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”).

²⁶ *Id.* at 513 (citing N.J.S. 52:4C–1).

met the standard defined in [the court's] Model Jury Charge."²⁷ Plaintiff merely cited his Court of Appeals opinion that ordered the issuance of a writ of habeas corpus, which "falls short of providing clear and convincing evidence that plaintiff did not commit the murders."²⁸

Knowing that damages would be calculated if plaintiff proved the elements of his claim on remand, the Appellate Division next offered guidance for calculation of damages.²⁹ The applicable provision provided that: "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."³⁰ Plaintiff argued that "the trial court erred in multiplying the number of years of incarceration by \$20,000 rather than by the amount he earned in the year prior to his incarceration."³¹ He conceded that the damages provision in the 1997 version of the Act was ambiguous and argued that it should be interpreted as if it "included the underlined language: Damages awarded under this act shall not exceed twice the amount of the claimant's income in the year prior to his incarceration for each year of incarceration or \$20,000.00 for each year of incarceration, whichever is greater."³²

Plaintiff presented an English professor as an expert witness to opine on grammatical principles.³³ However, the Appellate Division found that "the doctrine of the last antecedent ... holds that, unless a contrary intention otherwise appears, a qualifying phrase within a statute refers to the last antecedent phrase."³⁴ Since the phrase "for each year of incarceration" was not separated from \$20,000 with a comma, "the doctrine of last antecedent provides support for the interpretation that 'for each year of incarceration' applies only to \$20,000."³⁵ More persuasive to the Court was the legislative history of the damages provision, specifically the history of

²⁷ *Id.* at 514-15 (citing *Model Jury Charge (Civil)*, 1.19, "Burden of Proof—Clear and Convincing Evidence" (2011)) ("Clear and convincing evidence is evidence that produces in your minds a firm belief or conviction that the allegations sought to be proved by the evidence are true. It is evidence so clear, direct, weighty in terms of quality, and convincing as to cause you to come to a clear conviction of the truth of the precise facts in issue. The clear and convincing standard of proof requires that the result shall not be reached by a mere balancing of doubts or probabilities, but rather by clear evidence which causes you to be convinced that the allegations sought to be proved are true").

²⁸ *Kamienski*, 451 N.J. Super. at 516; *see id.* at 517 ("Although the Court of Appeals commented on the lack of evidence to prove essential elements of the murder charges as well as certain concessions made by the prosecutor during the trial, it is clear the court's conclusion that a writ of habeas corpus must be issued was based on reasoning that the evidence failed to prove plaintiff's guilt beyond a reasonable doubt and did not include any declaration that he was factually innocent. In short, it can be characterized as a finding of legal innocence but not actual innocence. This was an insufficient basis upon which to award summary judgment to plaintiff").

²⁹ *Id.*

³⁰ *Id.* (citing *L. 1997, c. 227, § 5(a)*). Please note that this case relies on the 1997 version of the statute.

³¹ *Id.* at 518.

³² *Id.*

³³ *Id.*

³⁴ *Id.* at 518-19 (citing *State v. Gelman*, 195 N.J. 475, 484 (2008)).

³⁵ *Id.* at 519 (citing *Gudgeon v. Cty. of Ocean*, 135 N.J. Super. 13, 17 (App. Div. 1975)) (noting that where a comma sets off a modifying phrase from previous phrases, the modifying phrase applies to all previous phrases).

amendments to N.J.S. 52:4C–5.³⁶ Pertinent to this issue is the restructured definition of the ceiling for damages passed in 2013, which states that: “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.”³⁷

The Court noted that a Senate Judiciary Committee Statement clarified that the 2013 amendment did not change the way in which the ceiling for damages was determined.³⁸ The Appellate Panel concluded that provision provided two caps, where the claimant would receive the greater of either “twice the amount he earned in the year prior to his incarceration” or “an amount calculated by multiplying the years of incarceration by \$20,000.”³⁹

The Court briefly addressed the challenge to the calculation of the attorney fee award⁴⁰ for guidance on remand.⁴¹ The trial court determined that plaintiff “was entitled only to reasonable attorney fees incurred in the instant litigation,”⁴² and the Appellate Division clarified that “‘reasonable attorney fees’ recoverable under the Act are limited to those incurred in the successful pursuit of the civil claim.”⁴³

Conclusion

Staff seeks authorization to conduct additional research and outreach in order to determine whether modifying the statute in some way, would aid in interpreting the provision and potentially obviate the need for additional litigation regarding the issue addressed in *Kamienski v. State Department of Treasury*. It is noted that the 2013 amendment to N.J.S. 52:4C–5 clarifies the effect of the damages provision for future cases.

³⁶ *Id.* at 519-20 (citing *L. 2013, c. 171*).

³⁷ N.J.S. 52:4C–5(a)(1).

³⁸ *Kamienski*, 451 N.J. Super. at 520 (citing *S. Judiciary Comm., Statement to S. 1219* (June 21, 2012)).

³⁹ *Id.* at 521.

⁴⁰ *Id.* at 522 (Plaintiff “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”).

⁴¹ *Id.* at 521 (This will be addressed only if plaintiff succeeds on remand).

⁴² *Id.*; *Id.* at 521-22 (quoting *L. 1997, c. 227, § 5(b)*) (“The provision of the Act applicable to plaintiff’s claim stated: “In addition to the damages awarded pursuant to subsection a., the claimant shall be entitled to receive reasonable attorney fees”).

⁴³ *Id.* at 523; *Id.* at 522 (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”).