

Make the Court of Claims Act Modern Again

'Hamilton' changed New York's criminal law in 2014, yet eight years later "actual innocence"-dismissals are not bases for "actual innocence" claims in civil court. The solution is thus straightforward: Make the Court of Claims Act modern again.

Suppose a man is arrested, convicted, and then incarcerated for a murder he did not commit. Suppose he spends decades in prison as his family, friends and the outside world move on without him. And suppose he is fortunate enough to then prove his innocence, to offer this proof to the court, and to have the court vacate his conviction and dismiss the charges. Paradoxically, if this man's conviction were set aside on the standalone basis of "actual innocence" in criminal court, he would be barred from recovering money with an "actual innocence" claim under the Court of Claims Act. You read that correctly: "Actual innocence" dismissals in criminal court are not a basis for "actual innocence" civil claims under the present state of New York law. The legislature's New Year's resolution should be to rectify this oversight immediately.

This statutory anomaly for New York's exonerees is a function of developmental pace. The criminal law in this arena has simply developed faster than the civil law. New York State passed its civil "actual innocence" statute in 1984. Known as "Section 8-b," the law, groundbreaking at the time, was based on a legislative finding 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." See Court of Claims Act §8-b(1). Such exonerees, the legislature added, "should have an available avenue of redress over and above the existing tort remedies to seek compensation for damages." *Id.*

In this spirit, Section 8-b allows exonerees to obtain compensation directly from the State in the New York Court of Claims when they affirmatively demonstrate their innocence and show, among other things, that their convictions were set aside and dismissed pursuant to certain limited avenues—namely, “paragraph (a), (b), (c), (e) or (g)” of the Criminal Procedure Law §440.10(1). See Court of Claims Act, Section 8-b(3). These provisions—call them “Predicate Dismissals”—allow defendants to set aside their convictions under a variety of circumstances, ranging from criminal courts lacking jurisdiction, to convictions secured through prosecutorial or judicial misconduct, cases involving defendants who were incompetent to stand trial when they were convicted, and cases where there is new and previously unavailable evidence that would have potentially affected the jury’s decision. An actually-innocent claimant whose conviction was set aside through one of these avenues will remain a candidate for 8-b compensation. An actually innocent claimant whose conviction was set aside through a different avenue will be out of luck—a rule that courts enforce strictly. See, e.g., *Kolnacki v. State*, 8 N.Y.3d 277, 281 (2007) (“We have consistently held that nothing less than strict compliance with the jurisdictional requirements of the Court of Claims Act is necessary”).

When Section 8-b was passed back in 1984, “actual innocence” was not yet a freestanding basis to set aside one’s conviction in criminal court. Thus, it was not accommodated in the list of Predicate Dismissals that allow for 8-b compensation in civil court. But thirty years after 8-b became law, we experienced a sea-change. New York’s Appellate Division recognized “actual innocence” as a freestanding basis to vacate a conviction under criminal law. In *People v. Hamilton*, it held that the imprisonment of an actually innocent inmate violates constitutional

rights, including *inter alia* the right to Due Process, regardless of when or how the proof of innocence emerged. 115 A.D.3d 12, 26 (2d Dept. 2014). Because New York's Criminal Procedure Law allows convictions to be set aside when secured in violation of constitutional rights, and because being actually-innocent now implies that a conviction was unconstitutional, actually innocent defendants can now have their convictions set aside and dismissed under the Criminal Procedure Law. Critically, the provision allowing these tragic and unconstitutional convictions to be set aside is Criminal Procedure Law Section 440.10(1)—at paragraph h.

The careful reader will notice the problem: paragraph h is not listed among the Predicate Dismissals for 8-b civil claims. See, e.g., *Greene v. State*, 187 A.D.3d 539 (1st Dept. 2020) (“Because paragraph (h) of CPL 440.10(1) is not enumerated in Court of Claims Act §8-B(3)(b)(ii), the Court of Claims properly dismissed the claim”). Thus, Section 8-b was built to compensate the “actually innocent,” yet “actual innocence” in criminal court remains an unavailable springboard for redress. A statute designed in 1984 to help exonerees avoid “technical obstacles in the law” (Court of Claims Act §8-b(1)) now imposes a blatant technical obstacle that harms the very people the law is designed to help most.

This legal history demonstrates both the source of the problem and the path to salvation. The problem is that the Court of Claims Act has simply not kept pace with legal developments for how to set aside convictions in criminal court. *Hamilton* changed New York's criminal law in 2014, yet eight years later “actual innocence”-dismissals are not bases for “actual innocence” claims in civil court. The solution is thus straightforward: Make the Court of Claims Act modern again.

Before the year is over, the New York legislature should amend Section 8-b of the Court of Claims Act to pertain to exonerees whose convictions “were reversed or vacated ... on any of the following grounds: ... paragraph (a), (b), (c), (e), (g) *or* (h) of subdivision one of section 440.10 of the criminal procedure law.” This change—adding section h—would allow an actual-innocence dismissal in criminal court to form a basis for an actual-innocence action in the Court of Claims, aligning civil and criminal law, and fixing one of the most glaring anachronisms in the New York statutory code. It will also offer this fix to some of the most deserving claimants to step into our courtrooms: those innocent men and women who have had their lives torn apart by convictions for crimes they did not commit. These victims have waited years, sometimes decades, for justice to prevail in their criminal cases. They should not have to wait again for the legislature to cure this oversight.

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