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SUPERIOR COURT OF NJ
MERCER COUNTY
CIVIL DIVISION

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Attorneys for Plaintiff-Claimant

PAUL KAMIENSKI,	:	SUPERIOR COURT OF NEW JERSEY
	:	LAW DIVISION – MERCER COUNTY
Plaintiff-Claimant,	:	DOCKET NO. L-2106-10
	:	:
v.	:	Civil Action
	:	:
STATE OF NEW JERSEY	:	VERIFIED COMPLAINT FOR
DEPARTMENT OF THE TREASURY	:	COMPENSATION PURSUANT TO
	:	N.J.S.A. 52:4C-1, ET SEQ.
	:	WITH JURY DEMAND AND
	:	DESIGNATION OF TRIAL COUNSEL
Defendant.	:	

1. Paul Kamienski (“Plaintiff” or “Claimant”) brings this action (the “Action”) against the State of New Jersey Department of the Treasury (“Defendant”) under New Jersey’s wrongful imprisonment statute, N.J.S.A. 52:4C-1, et seq., (the “Wrongful Imprisonment Act”), alleging, generally, that Claimant was convicted and subsequently imprisoned by the State of New Jersey for more than 21 years for crimes which he did not commit, namely: two counts of first degree murder, in violation of N.J.S.A. 2C:11-3a(1); and (2) one count of felony murder, in violation of N.J.S.A. 2C:11-3a(3), (referred to herein collectively as the “Murder Convictions”).

2. Claimant formerly resided at 207 Ray Street, in the City of Garfield, County of Bergen, State of New Jersey, 07026, and now resides in the state of Florida.

3. Defendant can be found, resides and does business at State House, 125 West State Street, in the City of Trenton, County of Mercer, State of New Jersey, 08625.

4. On or about October 7, 1987, Claimant was named in five counts of a seven count indictment handed up by a grand jury sitting in the New Jersey Superior Court, Ocean County (“[Indictment No. 692-10-87”]).

a. Count One charged Claimant and his two co-defendants with the knowing or purposeful murder of Victim 1, contrary to N.J.S.A. 2C:11-3a(1) and (2).

b. Count Two similarly charged Claimant and the two co-defendants with the with the knowing or purposeful murder of Victim 2, contrary to N.J.S.A. 2C:11-3a(1) and (2).

c. Counts Three and Four charged only one of the co-defendants with capital murder in connection with the deaths of Victims 1 and 2. These counts were dismissed by the State pre-trial.

d. Count Five charged Claimant and his two co-defendants with the felony murders of Victims 1 and 2 (based on the killing and theft of cocaine from the victim-sellers during a putative drug deal), contrary to N.J.S.A. 2C:15-1 and N.J.S.A. 2C:11-3a(3);

e. Count Six charged a conspiracy among Claimant and the two co-defendants to commit the crimes of possession of cocaine (after it had been stolen from the murder victims) with intent to distribute, in violation of N.J.S.A. 24:21-19a, and/or

robbery in the first-degree, in violation of N.J.S.A. 2C:15-1, and/or murder, in violation of N.J.S.A. 2C:11-3 and N.J.S.A. 2C:5-2, and;

f. Count 7 charged a conspiracy among Claimant, the two co-defendants, the two murder victims and a courier/unindicted co-conspirator to possess cocaine with intent to distribute (prior to the murders and robbery), contrary to N.J.S.A. 2C:5-2 and N.J.S.A. 24:21-19a(1).

g. The State prosecuted Claimant for murder on the accomplice liability theory that, while he did not know of or plan in the killings, he helped cover them up afterwards. It further prosecuted him on the cocaine distribution charges on the theory that, while he did not have a financial interest in the aborted drug deal, he had introduced the sellers (the two murder victims) and buyers (the two co-defendants) knowing that they were contemplating a cocaine sale.

5. On or about November 18, 1988, following trial, a jury empanelled in the Superior Court of New Jersey, Ocean County – Criminal Division, returned a verdict against Claimant as follows:

a. “Not guilty” as to the two sub-parts of Count Six charging a conspiracy to commit robbery in the first degree and/or murder. And,

b. “Guilty” as to the remaining counts (namely, One, Two, Five and Seven) and that part of Count Six charging a conspiracy to distribute cocaine.

6. Following the jury’s verdict, Claimant, who had been out on bail since shortly after his arrest, was immediately remanded to the custody of the New Jersey State Department of Corrections.

7. On or about December 21, 1988, following post-trial motions, the trial judge who had overseen Claimant's trial, affirmed his convictions as to Count Seven and the conspiracy to distribute cocaine aspect of Count Six, but set aside Claimant's convictions as to Counts One, Two and Five, i.e., the Murder Convictions, entered a judgment of acquittal as to those counts and dismissed them on grounds of insufficient evidence.

8. The court then sentenced Claimant to a term of incarceration as follows: 12 years with six years' of parole ineligibility as to Count 6, and 12 years with four years' of parole ineligibility as to Count 7; with the sentences to be served consecutively.

9. In or about 1989, the State filed a notice of appeal seeking to reinstate the Murder Convictions against Claimant, and subsequently pursued the appeal through to its conclusion.

10. On or about February 19, 1992, the Superior Court of New Jersey, Appellate Division reversed the trial court's order dismissing the murder charges against Claimant, reinstated the Murder Convictions and ordered the matter remanded for resentencing.

11. On or about April 10, 1992, Claimant was resentenced as follows: two life sentences with 30 years' parole ineligibility for the Murder Convictions (the felony murder conviction being merged into the first degree murder convictions) and a consecutive term of 12 years' imprisonment for the drug conspiracy convictions (which drug convictions were merged together).

12. On or about June 26, 1992, the New Jersey Supreme Court denied Claimant's application for certification.

13. Following various unsuccessful petitions for post-conviction relief in the New Jersey State courts and in the federal courts, on or about June 26, 2002, Claimant filed an initial federal habeas corpus petition in the United States District Court under 28 U.S.C. § 2254, which petition alleged, among other things, that there was insufficient evidence adduced at trial to legally sustain the Murder Convictions.

14. Claimant later filed an amendment and supplement to his habeas petition that was subscribed to on or about September 3, 2009.

15. The District Court denied Claimant's habeas petition in its entirety on or about July 26, 2006.

16. Claimant filed a notice of appeal in the United States Court of Appeals for the Third Circuit seeking to reverse the District Court's denial of his petition for habeas corpus relief, which notice was deemed effective as of on or about July 26, 2006.

17. On or about November 2, 2006, the District Court issued a Certificate of Appealability as to the sufficiency of evidence with respect to the Murder Convictions.

18. Following briefing and oral argument, on or about May 28, 2009, the Court of Appeals issued a unanimous opinion and order that reversed the District Court's denial of Claimant's habeas corpus petition and remanded the matter to the District Court with instructions to grant the petition and order Claimant's immediate release from State custody.

19. In its written opinion the Court of Appeals concluded that there was insufficient evidence adduced at trial to support the Murder Convictions.

20. Both during oral argument and in its written opinion the Court of Appeals explicitly and implicitly faulted the Ocean County Prosecutor's Office appellate lawyers

for filing briefs which sought to “mislead” the New Jersey State Appellate Division, District Court and Court of Appeals as to the evidence which had been adduced at trial and which, in fact, caused the State appellate court to improperly reinstate the Murder Convictions against Claimant.

21. On or about June 15, 2009, following a contested hearing, the District Court ordered Claimant’s release from custody with certain bail conditions while the State sought review of the Court of Appeals’ decision in favor of Claimant.

22. On or about June 16, 2009, the New Jersey State Department of Corrections released Claimant from incarceration.

23. On or about July 2, 2009, the Court of Appeals denied the State’s motions for reconsideration and en banc review.

24. On or about July 10, 2009, the Court of Appeals issued its mandate on Claimant’s appeal.

25. On or about July 24, 2009, the Court of Appeals denied the State’s motion to stay and/or withdraw the mandate.

26. On or about July 30, 2009, the District Court issued an order granting Claimant’s petition for habeas corpus relief, which, among other things, vacated the Murder Convictions.

27. On or about September 29, 2009, the State filed a petition of certiorari in the United States Supreme Court, seeking to reverse the Court of Appeals’ ruling in favor of Claimant.

28. On or about January 19, 2010, the United States Supreme Court denied the State’s petition for certiorari.

29. On or about January 20, 2010, the District Court vacated all conditions of bail that it had imposed on Claimant.

30. Following the Court of Appeals' ruling and the United States Supreme Court's order denying certiorari, the State of New Jersey was barred from retrying Claimant on the charges underlying the Murder Convictions because of, among other things, the United States Constitution's prohibition against double jeopardy.

31. Claimant was incarcerated continuously by the State of New Jersey Department of Corrections from on or about October 18, 1988 through June 16, 2009.

32. Claimant's incarceration in New Jersey between October 18, 1988 through June 16, 2009, was due solely to his convictions on the charges contained in the Indictment.

33. Claimant did not commit the homicide offenses underlying the Murder Convictions.

34. Claimant did not by his own conduct cause or bring about the Murder Convictions.

35. Defendant is not immune from this Action, and this Action is not barred by the New Jersey Tort Claims Act, N.J.S.A. §§ 59:1-1 through 59:12-3, as the Wrongful Imprisonment Act expressly states that: "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 [therein] provided, bring a suit for damages in Superior Court against the Department of the Treasury."

36. Claimant served an Initial Notice Of Claim For Damages Against The State Of New Jersey upon the New Jersey State Department of the Treasury with respect

to his wrongful arrest, conviction and imprisonment by registered mail on or about August 24, 2009.

37. The aforesaid notice of claim was timely served under N.J.S.A. § 59:8-1 et seq.

38. Claimant commenced this Action within two years of his release from incarceration on the Murder Convictions.

39. This Action is timely commenced under N.J.S.A. § 52:4C-4.

40. Claimant's income in 1987, i.e., the year prior to his incarceration on the Murder Convictions, was \$143,307.00.

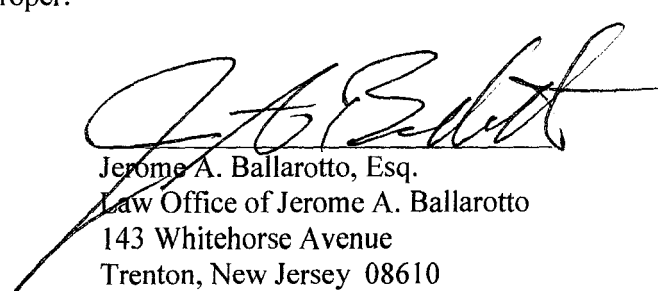
41. Claimant filed an income tax return with the State of New Jersey for the calendar year 1987 that reported total income in the amount of \$143,307.00.

42. Claimant has incurred reasonable attorneys' fees and litigation costs in connection with this Action, as well as his underlying criminal defense, direct appeal and ancillary proceedings, in amounts to be determined at trial or by the court.

PRAYER FOR RELIEF

WHEREFORE, pursuant to the Wrongful Imprisonment Act, Claimant requests judgment against Defendant for all allowed statutory damages, attorneys' fees and costs, and any other relief as the court may deem proper.

Dated: August 16, 2010


Jerome A. Ballarotto, Esq.
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143 Whitehorse Avenue
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(609) 581-8555

Attorney for Plaintiff-Claimant

JURY DEMAND

Claimant hereby demands trial by a jury on all of the triable issues with this Complaint, pursuant to New Jersey Court Rules 1:8-2(b) and 4:35-1(a).

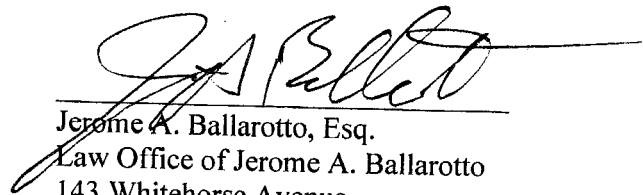
DESIGNATION OF TRIAL COUNSEL

Pursuant to New Jersey Court Rule 4:25-4, Claimant designates Jerome A. Ballarotto, Esq., as trial counsel in this matter.

CERTIFICATION PURSUANT TO R. 4:5-1(b)(2) REGARDING OTHER PROCEEDINGS AND PARTIES

I certify in accordance with New Jersey Court Rule. 4:5-1(b)(2) that the instant matter in controversy is not the subject of any other action pending in any court or of a pending arbitration proceeding to the best of my knowledge and belief. Also, to the best of my knowledge and belief no other action or arbitration proceeding is contemplated, except that Claimant is contemplating bringing an action in the United States District Court for the District of New Jersey pursuant to 42 U.S.C. § 1983 and any other applicable statutes and common law causes of action against all persons and entities who are responsible for his wrongful arrest, conviction and imprisonment. Further, other than the parties set forth in this Complaint, I know of no other parties that should be a part of this Action. In addition, I recognize my continuing obligation to file and serve all parties and the court an amended certification if there is a change in the facts stated in this original certification.

Dated: August 16, 2010

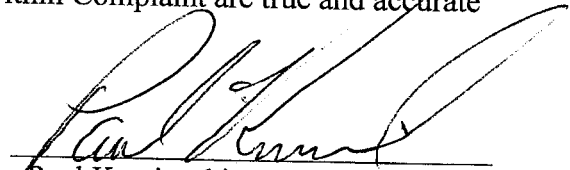
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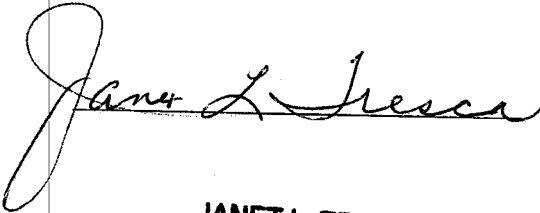
Attorney for Plaintiff-Claimant

VERIFICATION

The undersigned, of full age, being duly sworn upon oath according to law, deposes and says that the foregoing statements contained in the within Complaint are true and accurate according to his belief and knowledge.


Paul Kamienski
Plaintiff-Claimant

Sworn to and subscribed
Before me August 11, 2010



JANET L. TRESCA
NOTARY PUBLIC OF NEW JERSEY
MY COMMISSION EXPIRES OCT. 28, 2014