

MEMO



JUN 08 2011

Senate of Pennsylvania

June 7, 2011

TO: ALL SENATORS

FROM: Stewart J. Greenleaf *Stewart*

SUBJECT: Cosponsorship – Post Conviction Relief Act amendment

Generally a person convicted of a crime has one year from the date of the conviction to file a post conviction relief action challenging the conviction. If the person misses the one-year deadline there are three exceptions to the rule that allow the person to bring a petition despite the expiration of the one-year time limit. The exceptions include (1) the failure to raise the claim previously was the result of interference by government officials with the presentation of the claim; (2) there is new evidence that was unknown to the person at the time of the trial and could not have been discovered by the exercise of due diligence; and (3) the right asserted is a constitutional right that was recognized by the Supreme Court of the United States or of Pennsylvania after the one-year time period expired and the court said that the right applied retroactively. In the case of these three exceptions the person has only 60 days to file a petition invoking the exception.

The General Assembly established the 60-day requirement in 1995 during the special session on crime (Act 32) to reduce the number of frivolous petitions filed by inmates. While a laudable goal at the time, after 15 years of experience, I have come to believe that the 60-day rule is a hurdle that works a hardship on many incarcerated individuals. I am introducing legislation amending section 9545 of the Judicial Code extending the time period to one year for bringing a petition based on one of the exceptions. A person convicted of a crime who several years later becomes aware of new evidence, for example, that quite possibly would have changed the outcome of his trial would have one year to file the petition.

Furthermore, under my legislation, a petition filed alleging a miscarriage of justice that lead to the conviction of a person who was factually innocent of the crime for which he was convicted, in light of all the credible evidence available at and subsequent to trial, may be filed at any time. When there is a claim of actual innocence accompanied by credible evidence, there should not be any time limit. As an example, in the case of Milton Scarborough, convicted with two others for a triple murder in Pennsylvania, all four witnesses recanted and two other people provided sworn affidavits identifying another person who they said confessed to participating in the murders. Scarborough has served more than 30 years in prison always maintaining his innocence. Despite the evidence that Scarborough did not participate in the murders, the court ruled that the 60-day rule precluded the court from even considering the new evidence.

The 60-day rule is unrealistic because it often takes years to determine whether fragments of new evidence, added together, are enough to construct a solid case. And, given that the persons involved are often incarcerated with no attorney actively working on their case, it makes complying with the rule next to impossible. The one-year rule is more realistic for most claims. However, there should be no time bar on a claim from a person who can present credible evidence that he is factually innocent of the crime for which he was convicted. Our law must give the courts an opportunity to at least review the evidence in these cases and not be forced to dismiss what may be a very valid claim simply because of the expiration of a time limit.

If you would like to cosponsor this legislation, please contact Pat Snively of my office by e-mailing her at psnively@pasen.gov.