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Submission for CURE NY
Actual Innocence and Parole

The Parole Board must consider:

- (vii) The seriousness of the offense with due consideration to the type of sentence, length of sentence and recommendations of the sentencing court, the district attorney, the attorney for the inmate, the pre-sentencing probation report as well as consideration of any mitigating or aggravating factors, and activities following arrest prior to confinement”
NYS Executive Law § 259 (i) (2) (c) (a)

Many clients maintain innocence. This is something they assert after arrest and prior to confinement and continue during incarceration. They file all appeals and a habeas corpus in federal court and can be denied any relief.

The NYS Constitution prohibits cruel and unusual punishment. NYS Constitution affords a criminal defendant due process. The same protections are afforded in the US Constitution. However, in NYS there isn't an exact way to claim “actual innocence” providing an exact relief.

In some cases, actual innocence is raised under NYS CPL § 440.10 (1) (h) indicating if the defendant can prove actual innocence continued incarceration is fundamentally unfair and violates the NYS Constitution, People v. Bermudez, 25 Misc. 3d 1226 (A) (New York Co., 2009); People v. Wheeler-Whichard, 25 Misc. 3d 690 (Kings Co., 2009).

The most fundamental purpose of the constitutions and the criminal justice system should be to ensure innocent people go free, People v. Claudio, 83 N.Y. 2d 76 (1993). There should be no law of remedies that closes all hopes of vindication, People v. Tankleff, 49 A.D. 3d 1160 (2d Dep't, 2007). Often times appeals are filed due to ineffective assistance of counsel, prosecutorial misconduct, or claims of newly found evidence, (NY City Bar, 2011). However, often times once convicted an innocent person fails to receive relief. When they do, it can take decades to move through the courts.

Fifty three people in NYS were exonerated where their cases were studied by the NYS Bar (NYSBA, 2009). The NYS Bar Association identifies ensuring fair administration of justice must be the number one priority in the criminal justice system (NYSBA, 2009). Of these cases studied, only half were the result of DNA evidence proving their innocence (NYSBA, 2009). Usually these are the people who receive relief. There are limited ways a person convicted on false testimony, false eye-witness identification, ineffective assistance of counsel or prosecutorial misconduct claims can find assistance or relief. The NYSBA identifies in 50 % of these cases the conviction was a result of prosecutorial misconduct or general errors by the government (NYSBA, 2009).

Parole currently affords NO relief to these people either. People who maintain their innocence have no means to do so when they appear before the Parole Board. The Board's response is "We are bound by your conviction".

NYS Executive Law § 259 (i) (2) (c) (a) (vii) allows for the Parole Board to consider issues that happened after arrest and prior to confinement. This should mean when people maintain their innocence it should be considered. The Parole Board fails to consider this. **People** might be telling the truth. It is possible they are innocent and were wrongfully convicted. It is unconstitutional and cruel and unusual punishment for the Parole Board to ignore this.

REFERENCES

- NYC Bar Association (2011). Report by the Criminal Justice Operations and Criminal Courts Committee in Support of Amending CPL 440.10, Retrieved June 21, 2012 from <http://www.nycbar.org>
- NYS Bar Association (2009). Final Report on Wrongful Conviction

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Editor
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Dear Editor,

I read with renewed pleasure the Summer 2012 issue of the newsletter of International CURE. I am writing to express how rewarding it was to read the article by attorney Cheryl L. Kates "Yes We Can!".

In the State of New York, Ms. Kates has been our legal advocate and voice of the voiceless. I have personally had the pleasure of her representing me against the New State Parole Board (now called the Department of Corrections and Community Supervision). I am a New York State prisoner, who has been incarcerated for forty years on a sentence of 15 years to life for murder. I have appeared before the NYS Parole Board on 15 occasions, two of them were based on reversals. My last reversal of March of this year was because of the outstanding work of attorney Cheryl Kates who has represented me for over five years.

As Ms. Kates mention in her article, the United States system may afforded us greater rights then in other countries, but it is not always fair. However, Ms. Kates representation helps balance the playing field. I appreciated the excellent piece you published by attorney Cheryl Kates. International CURE has always been there to educate the masses of the changes taking place around the world.

Sincerely yours,

Aaron Talley

You are The Best! :)