

Memorandum

To: The California Commission on the Fair Administration of Justice

From: Emily Fowler and Caraine Leon Guerrero, Law Students

Wrongful Convictions: Causes and Remedies seminar, Golden Gate University School of Law

Re: Legal Obstacles to Asserting Civil Claims Against Criminal Defense Attorneys in Wrongful Convictions Cases

Date: October 19, 2007

Introduction:

The California Commission on the Fair Administration of Justice posed the following question: Are there inappropriate legal obstacles to asserting civil claims against the perpetrators of the injustice that led to their wrongful convictions?

The answer is yes.

The application of California Civil Procedure, Section 340.6, which governs the statute of limitations for claims against attorneys, and California Civil Procedure, Section 352.1, which limits the tolling period for a person under the disability of incarceration to two-years, together create an inappropriate legal obstacle preventing wrongfully convicted persons from asserting civil claims against the attorneys who represented them in the case that resulted in their wrongful convictions.

One of the most prevalent contributing causes of wrongful convictions is attorney malpractice, but victims of wrongful convictions are often barred from bringing a claim for malpractice against their criminal defense attorneys because California courts interpret the laws to mean that the statute of limitations has run while they sat in jail for the crime they did not commit. This injustice can be easily remedied by allowing the tolling of the statute of limitations period for legal malpractice claims while a person is under the disability of incarceration because of a *wrongful* conviction.

Current Law

Under current law a person has one year from the time of discovery of the wrongful act to file a claim for attorney malpractice, or alternatively, four years from the time the wrongful act took place, whichever occurs first.¹ There are, however, a few exceptions that allow the period to be tolled to exceed four years. One of those exceptions is when the plaintiff is under a legal or physical disability which restricts the plaintiff's ability to commence the legal action.² However, if a person is incarcerated on a criminal charge, the period a claim may be tolled cannot exceed two years.³ This leads to the absurd result that any person who has been wrongfully convicted and subsequently wrongfully deprived of liberty for more than six years is barred from bringing a claim against the attorney whose misconduct contributed to the conviction.

California Civil Procedure Section 340.6 provides as follows:

“An action against an attorney for a wrongful act or omission, other than for actual fraud, arising in the performance of professional services shall be commenced *within one year after the plaintiff discovers, or through the use of reasonable diligence should have discovered, the facts constituting the wrongful act or omission, or four years from the date of the wrongful act or omission, whichever occurs first.* In no event shall the time for commencement of legal action exceed four years except that the period shall be tolled during the time that any of the following exist: (1) The plaintiff has not sustained actual injury; (2) The attorney continues to represent the plaintiff regarding the specific subject matter in which the alleged wrongful act or omission occurred; (3) The attorney willfully conceals the fact constituting the wrongful act or omission when such facts are known to the attorney, except that this subdivision shall toll only the four-year limitation; and (4) *The plaintiff is under a legal or physical disability which restricts the plaintiff's ability to commence legal action.*” (emphasis added)

The law appears to be straightforward in its literal reading. The complexity and potential for injustice comes into play when the courts apply and try to harmonize this statute with recent case law defining the legal malpractice cause of action.

¹ Cal. Civ. Proc. Code § 340.6(a) (West 1977). (hereinafter, referred to as “§ 340.6”)

² *Id.* at subsection (a)(4).

³ Cal. Civ. Proc. Code § 352.1 (West 1994). (hereinafter, referred to as § 352.1”)

The provision which provides for tolling beyond four-years: “The plaintiff is under a legal or physical disability which restricts the plaintiff’s ability to commence a legal action”, specifically the language “legal or physical disability,” is vague and overbroad, leaving it open for interpretation by the courts. When language is vague, as it is here, it is appropriate for courts “to construe implicit exceptions where purely technical application of procedural rules would result in manifest injustice.”⁴ In the case of wrongfully convicted persons, it is manifest injustice to allow a statute of limitations to run while a person is wrongfully imprisoned. “Careful comparison of these statutory exceptions reveals the manifest common legislative purpose of attempting to avoid unjust application of statutes of limitation where circumstances effectively render timely commencement of action impossible or virtually impossible.”⁵ Likewise, limiting the tolling period to two-years for wrongfully convicted person is unjust, particularly unjust when in the context of an exoneree attempting to sue his criminal defense attorney on the grounds that the attorney’s incompetence was the *cause* of the unjust incarceration.

California Civil Procedure Section 352.1 sets a maximum tolling period for people under the disability of imprisonment. It states:

“If a person entitled to bring an action is at the time the cause of action accrued, imprisoned on a criminal charge, or in execution under the sentence of a criminal court for a term less than for life, the time of that disability is not a part of the time limited for the commencement of the action, not to exceed two years.”

Before Section 352.1 was enacted imposing a two-year limitation on tolling due to incarceration, the statute of limitations was tolled while a plaintiff was in prison.⁶ Perhaps because of a fear that without a limitation too many stale lawsuits would be brought, the new statute was enacted. However, the “new” statute does not differentiate between plaintiffs and wrongfully convicted

⁴ Lewis v. Superior Court (1985) 175 Cal.App.3d 366, 374.

⁵ Id. at 372.

⁶ Diaz v. Chatterton, (1964) 229 F.Supp. 19.

plaintiffs. Such a distinction should be made. If a person has been wrongfully incarcerated for crimes he did not commit and subsequent to his exoneration he should be permitted to do so, he wishes to file a claim against his attorney for malpractice, there should not be a limitation put on the tolling time. The fact that Section 340.6 contains exceptions is evidence of the Legislature's intent to avoid unjust application of the statute. Limiting the tolling period effectively prevents a *wrongfully* convicted person from filing a malpractice claim against his criminal defense attorney. This is exactly that, an unjust application of the statute.

WILEY'S REQUIREMENT OF "ACTUAL INNOCENCE"

In civil malpractice cases, the elements required to establish a cause of action are: (1) the duty of the attorney to act as other members of the profession would, (2) breach of this duty, (3) the breach was a proximate cause of the resulting injury, and (4) that there was actual injury.⁷ In *Wiley v. County of San Diego*, however, the California Supreme Court held that with malpractice cases in the *criminal* context (where there is alleged legal malpractice in the course of defending a client accused of a crime, also referred to as "criminal malpractice"⁸), the defendant must prove duty, breach, proximate cause, injury, *and actual innocence*.⁹ The proving of "actual innocence" essentially entails the showing by a preponderance of the evidence that the defendant did not commit the crime for which he was convicted.¹⁰ The *Wiley* court explained the policy reasons that compelled it to establish this additional element. Not requiring proof of actual innocence would "allow the criminal . . . to take advantage of his own wrong . . . [which] would shock the public conscience, engender disrespect for the courts and generally discredit the

⁷ *Wiley v. County of San Diego*, 19 Cal. 4th 532, 536 (Cal. 1998).

⁸ *Id.* at 536, n.1.

⁹ *Id.* at 545.

¹⁰ *Id.*

administration of justice.”¹¹ Furthermore, the *Wiley* court concluded that unless innocence is an element of a cause of action for criminal malpractice, “[a]ny subsequent negligent conduct by a plaintiff’s attorney is superseded by the greater culpability of the plaintiff’s criminal conduct.” “While a conviction predicated on incompetence may be erroneous, it is not unjust.”¹²

Though the *Wiley* court discussed several important policy reasons, it only alluded to the new rule’s connection to the statute of limitations. “Whether such relief is a prerequisite to maintaining a criminal malpractice action has significant implications, e.g., for determining statute of limitations and collateral estoppel issues . . . [however] we have no occasion on [the facts of this case] to address this distinct question.”¹³ In a concurring opinion, Justice Werdegar, cautioned that adding an “actual innocence” element to a cause of action for criminal malpractice would pose a problem when attempting to harmonize it with § 340.6.¹⁴ “In view of the time required to decide appeals and petitions for habeas corpus in criminal cases, the statute of limitations in most cases likely will run long before the convicted person has a chance to have the conviction set aside and . . . establish[] his or her actual innocence.”¹⁵ Justice Werdegar also expressed concern that this new rule condemns all nonstatutory tolling rules, including the ones defined by prior California Supreme Court cases.¹⁶

Twelve years after *Wiley*, in 2001, the California Supreme Court finally addressed the concerns that Justice Werdegar presented, or rather, the requirement of proving actual innocence within § 340.6, in 2001, in the case of *Coscia v. McKenna & Cuneo*.¹⁷

¹¹ *Id.* at 537-540.

¹² *Id.* at 539.

¹³ *Id.* at 537.

¹⁴ *Id.* at 546 (Werdegar, J., concurring).

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Coscia v. McKenna & Cuneo*, 25 Cal. 4th 1194 (Cal. 2001).

Coscia's Two-Track Approach

The *Coscia* Court reaffirmed *Wiley*'s requirement that when a former criminal defendant sues his or her attorney for legal malpractice, the former client's "actual innocence [of the underlying criminal charge] is a necessary element of the plaintiff's cause of action."¹⁸ In reaffirming *Wiley*, however, *Coscia* added that the "actual innocence" required for such an action "must be shown by post-conviction exoneration in the form of a final judicial disposition of the criminal case."¹⁹ The court further defined (or rather, expanded) "actual innocence" to mean that the defendant obtained "reversal of his or her conviction, or other exoneration by post conviction relief."²⁰ The court justifies this specific requirement as one that protects against inconsistent verdicts, promotes judicial economy (eliminating duplicate litigation and/or frivolous malpractice claims), and encourages the representation of criminal defendants (by reducing the risk of baseless malpractice actions).²¹

Recognizing that the statute of limitations on the legal malpractice action will in most cases expire before the client can obtain post-conviction relief from the criminal conviction, *Coscia* attempted to reconcile these concerns and harmonize its rule with § 340.6.²² What it ultimately adopted was a "two-track approach" as applied by other jurisdictions.²³

First, the convict must timely and diligently pursue postconviction relief. Second, while postconviction relief is still pending, the convict must then file a malpractice claim within the time allotment of § 340.6.²⁴ The Court held that for purposes of the statute, the time of "actual injury" occurred at the time of representation, due to the financial and social ramifications of

¹⁸ *Wiley*, 19 Cal.4th 532, 545.

¹⁹ *Coscia*, 25 Cal.4th 1194, 1197-1198, 1199-1205.

²⁰ *Id.* at 1201.

²¹ *Id.* at 1204.

²² *Id.*

²³ *Id.* at 1210.

²⁴ *Id.* at 1210-1211.

conviction, incarceration, fines, or other damaging consequences.²⁵ The Court asserted that the two approaches harmonize the law because once the malpractice claim is filed, the trial courts have the authority to stay the claim until postconviction relief has been completed,²⁶ and held that this “two-track” approach would ensure that the malpractice claim would not be barred (by sec.340.6) and would protect the interests of the attorney defendants in receiving timely notice and avoiding stale claims.²⁷

The Problem

In applying § 340.6 and § 352.1, courts have generally followed the “two-track” approach adopted by the *Coscia* Court. Yet, this approach creates inappropriate legal obstacles to asserting civil claims for attorney malpractice. First, it assumes that a person is schooled in the law enough to be aware of an attorney’s malpractice at the time of the wrongful conviction. Second, it assumes that an incarcerated person would know of their right to file a claim for malpractice while incarcerated. Third, it requires that a person file a claim against their attorney before they have been exonerated (which, since *Wiley* has been one of the required elements of an attorney malpractice claim) and then finally, it suggests that a stay should be granted by the trial court, but does not require it. These assumptions and unreasonable requirements make it unlikely that any wrongfully convicted person would be successful in a suit against their criminal defense lawyer responsible for their conviction. A defense lawyer would in most cases prevail in dismissing the complaint on the grounds that it is time-barred under § 340.6. An example of this problem is illustrated by *Rose v. Hudson*.²⁸

²⁵ *Id.* (rejecting the *Coscia* defendant’s argument that an innocent person convicted of a crime does not actual injury until he or she is exonerated by postconviction relief)

²⁶ *Id.* at 1210-1211.

²⁷ *Id.* at 1211.

²⁸ 153 Cal.App.4th 641 (Cal. Ct. App. 2007).

Rose v Hudson

The case of *Rose v. Hudson* is a perfect example of the injustice that can occur under the current law.²⁹ Pete Rose (hereinafter “Rose”) spent ten years of his life incarcerated for a crime he did not commit.³⁰ He was legally exonerated in February 2005.³¹ Seven months later, he filed a malpractice suit against the defense attorney who represented him at the trial that resulted in his conviction.³² Rose’s former defense attorney, who was appointed to represent him by the San Joaquin County Superior Court, made grievous and negligent errors which included the failure to adequately cross-examine key witnesses for the prosecution and/or present an expert witness to counter, failure to properly cross-examine other key witnesses, conducting inadequate discovery, disregarding Rose’s request to testify, and presenting an offensive closing argument.³³ Even so, the trial court dismissed Rose’s civil claim on the grounds that it was barred by the statute of limitations.³⁴ The California Court of Appeals affirmed.³⁵ Rose’s last hope lies in his pending Petition for Review to the California Supreme Court to reconsider his case and the lower courts’ strict and unjust application of the law.³⁶

The application of the *Coscia* rule to Pete Rose’s claim against his former attorney ultimately produced an unjust result, further injuring a man who had many years of his life stolen from him because of a wrongful conviction, and set an ominous precedent for many others wrongfully convicted and exonerated after years of incarceration. In the interests of fairness and following

²⁹ Attorney Mark Merin provided testimony to the Commission about this case on October 17, 2007.

³⁰ Rutberg, Susan, *Anatomy of a Miscarriage of Justice: The Wrongful Conviction of Peter J. Rose*, 37 Golden Gate U. L. Rev. 7, 9 (2006).

³¹ *Id.* at 21, citing to *Orders in Support of Finding of Factual Innocence, People v. Rose*, No. SC058356A (March 4, 2005).

³² *Rose v. Hudson*, 153 Cal. App. 4th 641, 647 (Cal. Ct. App. 2007).

³³ Rutberg, Susan, 37 Golden Gate U. L. Rev. at 31-32.

³⁴ *Id.* at 646.

³⁵ *Id.* at 658.

³⁶ Petition for Review, *Rose v. Hudson*, 153 Cal. App. 4th 641 (Cal. Ct. App. 2007), *petition filed* September 4, 2007.

sound public policy *Coscia* should not have been held applicable to Rose’s claim. However, since *Coscia* is the law, the Rose case can instead be used as impetus to change the law: § 340.6 should be amended to specifically state that the limitations period shall be tolled during the period of one’s incarceration as a “legal disability.”³⁷ Before advancing these alternatives, however, understanding how the current rules were applied in Rose’s case will help to understand why there is a need for the alternative.

Rose had always maintained his innocence from the very beginning.³⁸ He was arrested for the kidnapping and rape of a 13 year-old girl in 1994.³⁹ He was convicted in 1996.⁴⁰ Rose timely filed an appeal of his conviction, arguing, among other issues, the ineffective assistance of counsel. His conviction was affirmed by the appellate court in 1997 and denied review by the California Supreme Court in 1998. Rose then filed a petition for writ of habeas corpus, still alleging ineffective assistance of counsel. The appellate court remanded the case to the trial court, and after a hearing was held, the habeas petition was denied in 1999. Rose then filed petitions for review for denial of the writ of habeas in both the appellate court and the state Supreme Court, but both petitions were denied in 2000 and 2001, respectively.⁴¹ It wasn’t until a year later that California enacted a statute entitling one who was incarcerated to have access to DNA testing.⁴² Rose wrote to the Northern California Innocence Project (NCIP) in 2001. Because of backlog, his case was not investigated until 2003-2004. In 2004, the Golden Gate University office of NICP filed a motion for appointment of counsel pursuant to PC § 1405 on Rose’s behalf and requested DNA testing, which the Superior Court granted only a couple of

³⁷ See Cal. Civ. Proc. Code § 340.6(a)(4) (1977), which states, that the maximum four-year limit shall be tolled during the time that “the plaintiff is under a legal or physical disability which restricts the plaintiff’s ability to commence legal action.”

³⁸ Rutberg, Susan, 37 Golden Gate U. L. Rev. at 16.

³⁹ Petition for Review, *Rose v. Hudson*, at 6.

⁴⁰ *Id.* at 7.

⁴¹ *Id.* at 7.

⁴² *Id.* at 8-9.

months later.⁴³ The DNA test conclusively proved that Rose could not have committed the crime.⁴⁴ As a result, Rose was released from prison in October 2004 and the court issued an order of exoneration in February 2005.⁴⁵ Just a few months later, Rose filed his legal malpractice claim in the trial court.⁴⁶

The defendant, Rose's former attorney, demurred on the ground that Rose was time-barred under § 340.6.⁴⁷ His argument was that Rose suffered "actual injury" upon conviction in 1995; therefore, under § 340.6, Rose should have filed his complaint no later than 2001. He further argued that under *Coscia*, even though Rose was seeking postconviction relief, he should have simultaneously filed the malpractice action (which would then be stayed until completion of the postconviction remedies).⁴⁸ The trial court sustained the demurrer without leave to amend and Rose appealed.⁴⁹ On appeal, Rose's main argument was that *Coscia* was decided after Rose was already incarcerated, so the *Coscia* two-track approach should not retroactively apply to Rose's situation.⁵⁰ The appellate court disagreed, asserting that retroactively applying judicial decisions is a well-established rule, basic in legal tradition.⁵¹ However, the court acknowledged that the rule is not absolute, as the California Supreme Court has expressly stated that a court may decline retroactive application of a rule in the interest of fairness and public policy.⁵²

Legislative History of § 340.6.

In looking to fairness of applicability of a statute, the legislative history and intent of § 340.6 may provide some answers to the question of whether incarceration can qualify as a "legal

⁴³ *Id.* at 9.

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Rose v. Hudson*, 153 Cal. App. 4th at 647-648.

⁴⁸ *Id.* at 648.

⁴⁹ *Id.*

⁵⁰ *Id.* at 649.

⁵¹ *Id.* at 653.

⁵² *Id.*

disability.” In *Bledstein v. Superior Court of Los Angeles County*, the state appellate court examined the legislative history of § 340.6 and held that “[t]he Legislature intended section 340.6 subdivision (a)(4) to be interpreted consistent with the definition of legal disability in section 352 – ‘[t]he time during which a plaintiff is imprisoned on a criminal charge’.”⁵³ The court also opined that including incarceration as a legal disability can be inferred because the tolling provision of “legal disability” was expressly stated so broadly in § 340.6, the legislature was aware of other tolling provisions in the chapter at the time of enactment of § 340.6, and assuming the legislature generally intends to maintain a consistent body of rules.⁵⁴

Along with the analysis of legislative intent, the court in *Bledstein* also discussed the obstacles that prisoners face that would support the argument that incarceration can amount to a “legal disability.”⁵⁵ Such obstacles include prison rules that do not allow personal appearances in court, little access to information or legal advice because they are severed from society, limited investigative functions (unlike a free person who is able to seek out witnesses on his behalf, for example), prison officials’ rights to deprive prisoners of other rights when the deprivation may be necessary for security, and the limited education and intelligence level of a substantial number of prisoners.⁵⁶ The *Bledstein* court emphasized the plight of the wrongfully convicted prisoner.

[The] wrongfully convicted defendant is devoting his time and psychic energy to surviving in a hostile . . . environment and in seeking a reversal of his conviction. His mail is inspected his access to legal materials-those mostly criminal-is limited, his contacts with family restricted . . . he must [then] convince an attorney

⁵³ *Bledstein v. Superior Court of Los Angeles County*, 162 Cal. App. 3d 152, 160 (Cal. Ct. App. 1984). (Note that this case was superseded by statute. See *Laird v. Blacker*, 2 Cal. 4th 606 (Cal. 1992). Though *Laird* held that “legislative intent disallowed tolling under any other circumstances not enumerated in the statute,” *Id.* at 618, it did not address the issue of whether the tolling exception of “legal disability” included incarceration in general. *Laird*’s primary conflict with *Bledstein* was defining “actual injury;” however, both these cases are pre-*Coscia*, so that issue is no longer applicable.)

⁵⁴ *Id.* at 162-163.

⁵⁵ *Id.* at 167-168, construing *Payne v. Superior Court*, 17 Cal. 3d. 908 (Cal. 1976).

⁵⁶ *Id.*

to file an action against another member of the bar asserting a competency claim that has not yet been adjudicated and in spite of which the client is still incarcerated. The paucity of cases found . . . suggests, as does logic, the futility of such an attempt. While prisoners as a class may be more litigious than any other similarly cohesive group, that litigation is directed primarily at their wardens . . . not at their attorneys.⁵⁷

The plight of the incarcerated and the legislative intent provide the support that in the interest of fairness and justice, the previously mentioned proposals should be adopted. There are still several public policy reasons for doing so.

Just as the guilty should not profit from their misdeeds, neither should the innocent continue to be punished for the misdeeds of others. Rose spent nearly ten years of his life incarcerated for a crime he didn't commit: it should shock the public conscience that the courts would forbid him from trying to sue his lawyer on the grounds that the lawyer's malpractice contributed to his wrongful conviction. The responsibility for the crime should not be borne by the innocent. The California Supreme Court stated it more succinctly: "when an attorney raises the statute of limitation to occlude a client's action before that client has had a reasonable opportunity to bring suit, the resulting ban of the action not only starkly works an injustice upon the client but partially impugns the very integrity of the legal profession."⁵⁸

Coscia's public policy concerns included giving proper notice to the defendant, encouraging the representation of criminal defendants, and reducing frivolous claims.⁵⁹ Tolling § 340.6 for the period of incarceration will still achieve these goals. First, following the reasoning of *Coscia*, a convicted person can still pursue postconviction remedies and when allegations of ineffective assistance of counsel are raised in postconviction claims, the potential defendant attorney will certainly be put on notice of a potential civil suit in the event his former

⁵⁷ *Id.* at 172.

⁵⁸ *Bledstein*, 162 Cal. App. 3d at 174, quoting *Neel v. Magana, Olney, Levy, Cathcart, & Gelfand*, 6 Cal. 3d 176, 192 (Cal. 1971).

⁵⁹ *Coscia*, 25 Cal. 4th at 1204.

client is exonerated. Second, the proposed tolling amendment would not discourage the representation of criminal defendants. Rather, it would encourage a loftier public policy concern: ensuring *proper and competent* representation of counsel as guaranteed by the Sixth Amendment of the Constitution. Third, there is no evidence that frivolous claims will result from the tolling proposal. *Bledstein* has already considered and held the very opposite. The court in *Bledstein* held instead that requiring a prisoner to bring an action against his attorney while still incarcerated (the two-track requirement of *Coscia*) would increase the number of actions brought.⁶⁰ In addition, *Coscia*'s requirement of staying the malpractice action while postconviction remedies are still pending would lead to less judicial efficiency and administration. Instead, if the limitations period is tolled while a person is incarcerated, then the person can wait until after all his postconviction remedies are pursued before bringing a claim. Or if the person obtains a satisfactory postconviction remedy, then he or she may not even pursue a malpractice claim at all.⁶¹

A final consideration in the interests of fairness and the promotion of sound public policy concerns the recent breakthrough in technology (ie., DNA) that has led to the exoneration of many wrongfully convicted persons. In just the last couple of decades, there have been over 200 postconviction DNA exonerations.⁶² The average sentence served by these exonerees has been twelve years.⁶³ More striking is that of the first 130 DNA exonerations recorded, 32% of them were due, at least in part, to the incompetence of defense counsel.⁶⁴ Under current law and the strict rule of *Coscia*, without tolling the limitations period, most, if not all, of these exonerees

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² The Innocence Project, <http://innocenceproject.org/know/> (last visited October 11, 2007).

⁶³ *Id.*

⁶⁴ Barry Scheck, Peter Neufeld, Jim Dwyer, *Actual Innocence: When Justice Goes Wrong and How to Make it Right* 365 (New American Library 2003)(2000).

would likely *not* be able to pursue a legal malpractice claim against their incompetent lawyers. How can this be result be squared with justice?

Proposed Legislation

The solution to the unjust application of § 340.6 and § 352.1 is to return to former law providing that the statute of limitations does not run against a plaintiff while he is in prison.⁶⁵ Or alternatively, if there is a concern that this solution would open up the floodgates to untimely attorney malpractice lawsuits, new legislation should be proposed that would toll the statute of limitations while a person who has been *wrongfully* convicted is incarcerated. This would limit the application of the law to only those people who are later exonerated, a very rare circumstance, and could be done without upsetting the current law. A *wrongful conviction* could, and should, be deemed a “legal or physical disability” pursuant to § 340.6(a)(4). The only thing more outrageous than innocent people being wrongfully convicted and deprived of their freedom because of the malpractice of their lawyer, is that those people should also be prevented from the opportunity to hold their criminal defense lawyer accountable because, through no fault of their own, they were not exonerated within the time limits provided by the laws of our state. A simple change in the law would prevent further injustice to those who have already suffered from an unjust deprivation of their freedom.

⁶⁵ *Diaz*, 229 F.Supp. 19.