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MINORITY REPORTY
change from Majority in *italics*

COMMITTEE AMENDMENT “.” To LD 302, An Act To Amend the Laws Governing Post-conviction Review in Order To Facilitate the Fair Hearing of All Evidence in Each Case Involving a Claim of Innocence

Amend the bill by amending the title to read:

An Act To Amend the Laws Governing Post-conviction Review in Order To Facilitate the Fair Hearing of All Newly-discovered Evidence ~~in Each Case Involving a Claim of Innocence~~

Amend the bill by striking out everything after the enacting clause and inserting in its place the following:

Sec. 1. 15 MRSA §2128-B is enacted to read:

§2128-B. Time for filing

The following filing deadlines apply.

1. Filing deadline for direct impediment. ~~A- Except as provided in subsection 1-A,~~ a one-year period of limitation applies to initiating a petition for post-conviction review seeking relief from a criminal judgment under section 2124, subsection 1 or 1-A. The limitation period runs from the latest of the following:

A. The date of final disposition of the direct appeal from the underlying criminal judgment or the expiration of the time for seeking the appeal; and

B. The date on which the constitutional right, state or federal, asserted was initially recognized by the Law Court or the Supreme Court of the United States if the right has been newly recognized by that highest court and made retroactively applicable to cases on collateral review; ~~or,~~

~~C. The date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.~~

The time during which a properly filed petition for writ of certiorari to the Supreme Court of the United States with respect to the same criminal judgment is pending is not counted toward any period of limitation under this subsection.

Sec. 2. 15 MRSA §2128-B, sub-§1-A is enacted to read:

1-A. No filing deadline for direct impediment if newly discovered evidence.
If the factual predicate of the claim is based on newly discovered evidence then the claim

may be filed at any time regardless of when the newly discovered evidence could have been obtained or discovered through the exercise of due diligence. The court may require the petitioner to provide additional information about the nature of the newly-discovered evidence. *The court may summarily dismiss the petition if it determines that the petitioner has not made a prima facie showing that the new evidence was material and would have affected the verdict.* The fact that a petition initiated pursuant to subsection 1, former paragraph C was dismissed as untimely filed or for the failure to exercise due diligence does not preclude the initiation of a petition for review under this subsection based on the same or different newly-discovered evidence.

SUMMARY

This amendment is the minority report of the Joint Standing Committee on Judiciary. It replaces the bill and changes the title. It provides that there is no deadline for filing a petition for post-conviction review based on newly-discovered evidence. The court may require the petitioner to provide additional information about the nature of the newly-discovered evidence. *The court may summarily dismiss the petition if the court determines that the petition has not made a prima facie showing that the new evidence was material and would have affected the verdict.*

This amendment ensures that a person can seek post-conviction review on the basis of newly-discovered evidence even if the person had filed for review and the petition was dismissed because it was untimely filed or because the evidence was not discovered earlier because of the lack of due diligence. It makes clear that the fact that a person whose petition under former subsection 1, paragraph C was dismissed because untimely file or for failure to exercise due diligence does not disqualify the person from filing such a petition under the new law.