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Compensation No Consolation

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STAFF WRITER

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Jeffrey Blake has a brand new Ford Explorer, but because he has never had a license, his friend "Shy" drives him around.

Blake wears top-of-the-line hip-hop attire and sports nice, new jewelry. He is talking about buying a house and maybe opening a video rental store or an everything-for-a-dollar shop, if he can find the right situation.

Blake, once a poor kid from East New York, is bankrolling his new lifestyle with money from a nearly \$1.3-million settlement from New York State - compensation for 8 years he spent locked up for a double murder he didn't commit. After lawyers' fees, it comes to about \$900,000, about \$110,000 for each year in prison.

Blake, 34, who was released four years ago, is one of a handful of people to receive money under the state's "unjust conviction" law enacted in 1984. Among the 13 city murder convicts exonerated since 1998, 10 others are seeking awards.

"Clearly, the state is not really making them whole," said attorney Peter Neufeld, who negotiated Blake's settlement in March 2000. "The state sort of kidnapped these people, they went through physical and mental torture for years, and now the state is attempting in some way to compensate them."

Even at that, some defense lawyers say the state is not trying all that hard.

"What the state does is drag these cases out as long as humanly possible," said defense attorney Ron Kuby.

"They know they're going to have to pay," he said, "but the longer they wait, the longer they delay, the more desperate the claimant becomes to settle for less and less and less."

He likened the tactics to those applied by a "sleazy insurance company lawyer."

Officials at the Attorney General's Office, which negotiates settlements for the state, declined to comment.



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According to the Court of Claims, 200 "unjust conviction" claims have been filed in the past 17 years. Only 12 claims received awards, 63 were dismissed and 25 are pending. The claims paid totalled \$5.48 million, an average of \$457,000.

For reasons that are unclear, those figures do not include Blake's case, but Neufeld and the Attorney General's office said it was settled under the "unjust conviction" statute.

Even though only 7 percent of the claims are winners, New York's law "is probably the best" for the wrongfully convicted in the country, said Adele Bernhard, a Pace University professor who has researched the subject. Only 15 other states, the District of Columbia, and the federal government even have similar laws, she said.

Unlike most of the others, New York's law doesn't cap awards, require a pardon from the governor or bar payments for pain and suffering.

In New York, the wrongly convicted must show their conviction was overturned for actual innocence.

Last week, for instance, Anthony Faison and Charles Shepherd were in the Court of Claims in lower Manhattan trying to prove their innocence in the murder of a Brooklyn cabbie. Their convictions were vacated last year, with the district attorney's consent, when the sole eyewitness recanted and another man, who left fingerprints in the cab, pleaded guilty. But that's not enough to meet the test of the law. A decision in their compensation case is pending.

Under the New York law, the wrongly convicted also can't have helped convict themselves - through a false confession, for instance - and they can't have pleaded guilty to taking any part in the crime.

That rules out Lamont Branch. The Brooklyn man served 13 years before his brother admitted killing the victim accidentally. But Lamont's murder conviction was reversed only after he pleaded guilty to weapons possession for allegedly handing his brother the gun that killed Danny Josephs.

Branch denies he gave his brother the gun or had anything to do with the killing. He says he took the plea because his lawyer told him, "Either you take this and you go home or they [the Brooklyn District Attorney's office and the judge] are going to keep you in there the rest of your life."

Branch, now 38, can attempt to sue for civil rights violations. He would have to prove he was arrested without probable cause and prosecuted with actual malice.

"As you can imagine, that's very difficult to prove," Bernhard said.

The legislature can also pass a "moral obligations" bill to award money to a wronged man, but that's very rare and highly politicized, Bernhard said.

So far, the biggest payout under the state's wrongful-conviction law was \$1.9 million for Robert McLaughlin, who served 6 1/2 years for an 1979 execution-style murder in Marine Park.

In Blake's case, he was convicted on the word of a man, Dana Garner, who said he saw Blake open fire on a van with an Uzi submachine gun, killing two local men, on June 18, 1990.

Years later, Garner recanted. Legal Aid attorney Michelle Fox and investigator Janice Mitchell located Garner's ex-girlfriend, who confirmed he was in North Carolina during the double slaying.

At the time of his arrest, Blake was working in a religious articles store, making about \$200 a week.

Because he had little experience handling money and because "relatives come out of the woodwork" when an award is made, Neufeld said, he convinced Blake to take a structured settlement, investing the money and paying Blake a fixed monthly sum to live on.

Blake now lives in Brooklyn with his girlfriend, who is expecting a baby in June, his first child - although he has 65 nieces and nephews, he said.

For a kid who grew up poor with 13 brothers and sisters in the projects, Blake is relatively comfortable now, but he said the money is nothing compared to what he lost - more than eight years of his freedom, including the last years of his mom's life. Susie Blake, 62, died a year before her son was released.

Blake's shiny black SUV can't bring back his 20s, which he spent dodging fights, sexual predators and vindictive correction officers.

And his new clothes can't blot out the memories of rats that "kept me up all night" as they gnawed the boxes of food he kept in his cell.

"I don't care if they gave me double again," Blake said. "It will not make up for the time I did in prison."

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