

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**BEFORE THE VICTIM COMPENSATION AND GOVERNMENT CLAIMS BOARD
OF THE STATE OF CALIFORNIA**

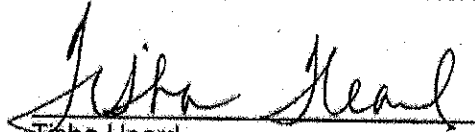
In the Matter of the Claim of:

Francisco Carrillo

Notice of Decision

On May 15, 2014, the California Victim Compensation and Government Claims Board adopted the attached Proposed Decision of the Hearing Officer as its Decision in the above-referenced matter.

Date: May 22, 2014


Tisha Heard
Board Liaison
California Victim Compensation and
Government Claims Board

1
2
3
4
5
6 **BEFORE THE VICTIM COMPENSATION AND GOVERNMENT CLAIMS BOARD**
7 **OF THE STATE OF CALIFORNIA**
8

9 In the Matter of the Claim of:

Proposed Decision

10 **Francisco Carrillo**

(Penal Code § 4900 et seq.)

11 **Introduction**
12

13 This claim for compensation as an erroneously convicted person was decided based on the
14 written record by considering all the evidence submitted to date and without the necessity of a
15 telephonic or in-person hearing. Kelsey Harris was assigned to hear this matter by the Executive
16 Officer of the California Victim Compensation and Government Claims Board. Mr. Carrillo (Claimant)
17 was represented by Ronald Kaye, attorney at law. The California Department of Justice, Office of the
18 Attorney General (AG), was represented by Heather S. Gimle.

19 After considering all the evidence, it is determined that the Claimant has proven by a
20 preponderance of the evidence that the crime with which he was charged was not committed by him.
21 It is also determined the Claimant has proven by a preponderance of the evidence that he sustained
22 pecuniary injury as a result of this conviction. Therefore, it is recommended that Claimant receive
23 compensation pursuant to Penal Code section 4900 et seq. in the amount of \$683,300.

24 **Arrest and Conviction**

25 At approximately 7:00 p.m. on January 18, 1991, Donald S.¹ was shot near the front of his
26 home. He was outside talking to his son and his son's five friends when a car drove by and the
27

28 ¹ Last name excluded for privacy.

1 passenger shot at the individuals. Donald S. later died due to the injuries he received from the
2 shooting.

3 Claimant's first trial resulted in a mistrial when the jury deadlocked seven to five for acquittal.
4 Claimant was re-tried and on June 30, 1992, he was convicted for murder and six counts of attempted
5 murder. Claimant was sentenced to 30 years to life for the murder and consecutive and concurrent life
6 terms with the possibility of parole for the attempted murders.

7 Evidence presented at the trials included the fact that the home of Donald S. was in the
8 Neighborhood Crips territory and there was a gang rivalry between the Neighborhood Crips and the
9 Young Crowd gang. Claimant was a member of the Young Crowd gang. One of the witnesses
10 identified Claimant as the shooter on the night of the crime from a gang book and a line-up. He also
11 identified the Claimant at the first trial, but later withdrew that identification at a second trial. Before
12 trial, five of the six witnesses (the victim's son and friends) identified Claimant from a line-up, and they
13 identified Claimant in court as the shooter in both trials.

14 Claimant testified in both trials. He admitted that he had been a member of the Young Crowd
15 gang, but asserted that he had been distancing himself from the gang to focus on school and his then-
16 pregnant girlfriend. Claimant also testified he had been home with his father on the night of the
17 murder.

18 **Post Conviction and Penal Code Section 4900 Claim**

19 On September 24, 2010, Claimant filed a petition for writ of habeas corpus with the Los
20 Angeles Superior Court. In support of his petition, he argued that false testimony was introduced in
21 his trial that was probative of the issue of guilt. The Claimant introduced declarations from five of the
22 six eyewitnesses, who rescinded their identifications of the Claimant. The District Attorney's Office
23 conducted recorded interviews with the eyewitnesses. In these interviews, five of the six eyewitnesses
24 verified that they were not able to accurately identify the Claimant as the shooter. The Los Angeles
25 Sherriff's Department also conducted interviews with the six witnesses. During these interviews, two
26 of the bystanders reaffirmed the Claimant as the shooter.

27 Due to the conflicting eyewitness statements, on March 7, 2011, Judge Paul A. Bacigalupo
28 conducted an evidentiary hearing for the purpose of determining credibility. The Claimant and five of

1 the six eyewitnesses testified. The court also observed a reenactment that involved a car driving by
2 the scene of the crime at about the time that the crime occurred to assess visibility of the passenger.
3 Judge Bacigalupo made credibility findings about the testimony of the eyewitnesses who had originally
4 identified the claimant as the shooter, but later recanted. The Judge also made a credibility finding
5 about the testimony of the Claimant. In summary, the Judge found that one of the witnesses was
6 credible in stating that he could not identify the shooter the night of the crime; the victim's son relied on
7 another witness' identification in making his own identification; three other witnesses who had
8 recanted were deemed credible; and the witness who identified the Claimant as the shooter's
9 testimony was incredible. Further, the court made the determination that the Claimant's testimony
10 regarding his denial of being the shooter was credible that he was at home with his father at the time
11 of the shooting. On March 14, 2011, the District Attorney conceded that Claimant had met his burden
12 of proof and the court granted the writ. On March 16, 2011, Claimant was released.

13 Claimant then timely filed his application for compensation as an erroneously convicted person
14 on October 12, 2011. He claimed that he was erroneously convicted because he was not the person
15 who committed the crime of murder and attempted murder. He also claimed that he had suffered
16 pecuniary injury because he was a full-time student at the time of his conviction and had numerous
17 odd jobs.

18 **Determination of Issues**

19 In order to be successful on a claim pursuant to Penal Code section 4900, a Claimant must
20 prove the following by a preponderance of the evidence:

- 21 (1) that the crime with which he was charged was either not committed at all, or, if committed,
22 was not committed by him; and
23 (2) that he sustained a pecuniary injury through his erroneous conviction and imprisonment.²
24
25
26

27 ² Pen. Code, § 4903; *Tennison v. Victim Compensation and Government Claims Board* (2006) 152 Cal.
28 App. 4th 1164; Pen. Code, § 4904.

1 This is a demanding standard, and a Claimant must prove his innocence by a preponderance
2 of the evidence.³ Preponderance of the evidence means evidence that has more convincing force
3 than that opposed to it.⁴

4 In reaching its determination of the merits of the claim, the Board may consider the Claimant's
5 mere denial of commission of the crime for which he was convicted, reversal of the judgment of
6 conviction on appeal, acquittal of the Claimant on retrial, or the failure of the prosecuting authority to
7 retry the Claimant for the crime. However, those factors will not be deemed sufficient evidence to
8 warrant the Board's recommendation that a Claimant be indemnified in the absence of substantial
9 independent corroborating evidence that the Claimant is innocent of the crime charged.⁵ The Board
10 may also consider as substantive evidence testimony of witnesses that the Claimant had an
11 opportunity to cross-examine, and evidence to which the Claimant had an opportunity to object,
12 admitted in prior proceedings relating to the Claimant and the crime with which he was charged. All
13 relevant evidence is admissible, irrespective of whether it would be admitted at a criminal jury trial or
14 in a civil or administrative proceeding, so long as the evidence is probative to the Claimant's assertion
15 that he is innocent.⁶ The formal hearing rules of the Administrative Procedures Act are not
16 applicable.⁷ Additionally, the Board is now bound by "factual findings and credibility determinations
17 establishing the court's basis for granting a writ of habeas corpus."⁸

18
19
20
21
22 ³ *Diola v. State Board of Control* (1982) 135 Cal.App.3d 580, 588 fn. 7.

23 ⁴ *People v. Miller* (1916) 171 Cal. 649, 652; *Diola, supra*.

24 ⁵ Cal. Code Regs., tit. 2, § 641; *Tennison v. Victim Compensation and Government Claims Board*,
25 *supra*.

26 ⁶ Cal. Code Regs., tit. 2, § 641.

27 ⁷ Cal. Code Regs., tit. 2, § 615.1.

28 ⁸ Pen. Code, § 4903(b).

1 If a claimant meets his burden of proof, the Board shall recommend to the legislature that an
2 appropriation of \$100.00 be made for each day of incarceration in prison served subsequent to the
3 Claimant's conviction.⁹

4 **Murder and Attempted Murder**

5 Claimant contends that he is entitled to compensation because he was convicted and served
6 prison time for a crime that he did not commit. Claimant alleges that the factual findings reached on
7 March 14, 2011, are binding. Specifically, Judge Bacigalupo made credibility findings about the
8 testimony of the eyewitnesses who had originally identified the claimant as the shooter, but later
9 recanted. The Judge also made a credibility finding about the testimony of the Claimant. In summary,
10 the Judge found that one of the witnesses was credible in stating that he could not identify the shooter
11 the night of the crime; the victim's son relied on another witness' identification in making his own
12 identification; three other witnesses who had recanted were deemed credible; and the witness who
13 identified the Claimant as the shooter's testimony was incredible. Further, the court made the
14 determination that the Claimant's testimony regarding his denial of being the shooter was credible that
15 he was at home with his father at the time of the shooting. Because these determinations are binding
16 on the Board, the claimant has shown by a preponderance of the evidence that the crime was not
17 committed by him.

18 **Pecuniary Injury**

19 Claimant states that he was a full-time high school student at the time of his conviction. Due to
20 his full-time status as a student, claimant worked various jobs such as selling candy for charity,
21 performing tune-ups on automobiles and lawnmowers, selling ice-cream, and during the summer
22 worked as a bagger for a grocery store. While incarcerated, the claimant earned his General
23 Education Degree. Now, he is a full-time undergraduate student at Loyola Marymount University.

24 **Conclusion**

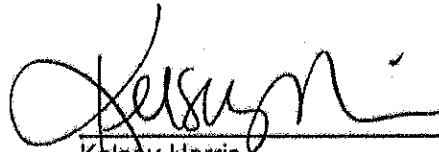
25 Based on the evidence, it is determined that the Claimant has provided sufficient proof to find
26 that he has suffered a pecuniary loss due to his incarceration. Although he may not have been

27
28 ⁹ Pen. Code, § 4904.

1 employed full-time due to his age at the time of his conviction, his statements regarding his education
2 and various part-time employment that were submitted under penalty of perjury provide a
3 preponderance of evidence that he likely would have obtained employment if not for his erroneous
4 conviction.

5 Claimant was released from prison on March 16, 2011, after serving 6,833 days incarcerated in
6 prison. It is recommended to the Legislature that an appropriation be made to pay the claim of
7 Francisco Carrillo in the sum of \$683,300.

8
9
10 Date: April 14, 2014



11 Kelsey Harris
12 Hearing Officer
13 California Victim Compensation and
14 Government Claims Board
15
16
17
18
19
20
21
22
23
24
25
26
27
28