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5 **BEFORE THE VICTIM COMPENSATION BOARD**
6 **OF THE STATE OF CALIFORNIA**
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9 In the Matter:

10 **Craig Richard Coley**

11 Claim No. 18-ECO-01

Proposed Decision

(Penal Code § 4900 et seq.)

12 **Introduction**

13 On January 22, 2018, an application for compensation as an erroneously convicted person
14 was filed on behalf of Craig Richard Coley (Coley) with the California Victim Compensation Board
15 (CalVCB). The application includes findings of actual innocence for both of his first-degree murder
16 convictions, as well as a full and complete pardon by the Governor. Coley is represented by
17 attorneys Nick Brustin of Neufeld, Scheck & Brustin, LLP, as well as Ronald Kaye of Kaye, McLane,
18 Bednarski & Litt, LLP. No appearance has been requested by the California Attorney General.
19 Senior Attorney Laura Simpton of CalVCB was assigned to this matter. After reviewing the
20 application and supporting documentation, CalVCB is mandated to recommend that the Legislature
21 appropriate \$ 1,958,740 as payment to Coley for being wrongfully imprisoned for 13,991 days.

22 **Procedural Background**

23 On November 11, 1978, Rhonda Wicht and her four-year-old son Donald were found
24 murdered in their beds in their Simi Valley apartment. Ms. Wicht had been beaten, raped, and
25 strangled to death. Donald had been smothered. A downstairs neighbor told police he heard noises
26 in Ms. Wicht's apartment at 4:30 a.m., presumably when the murders occurred, although he later
27 testified the noises occurred at 5:30 a.m. Another neighbor reported seeing a truck that belonged to
28 Coley drive away from the scene. Coley was Ms. Wicht's former boyfriend.

1 Coley was arrested the same day as the murders, even though earlier that morning he had
2 socialized with former coworkers at a restaurant until 4:30 a.m. and then dropped off another party at
3 their home at around 4:45 a.m. Coley worked as a manager for Carl Karcher Enterprises, where he
4 had been employed for the past 18 months after working six years in the restaurant industry.
5 Previously, Coley served in the United States Navy, including several deployments to Vietnam, and
6 received an honorable discharge. Coley had no prior criminal record.

7 Coley consistently maintained his innocence, including during a post-arrest interrogation and
8 while testifying at trial. Coley's first trial ended with a hung jury on April 13, 1979, at which time Coley
9 was released on bail pending retrial. On January 3, 1980, Coley's second jury found him guilty as
10 charged of both first-degree murders with special circumstances. Immediately thereafter, Coley was
11 taken into custody. Coley was sentenced on February 26, 1980, to life without the possibility of
12 parole for the murders of Rhonda and Donald Wicht.

13 Over the next 38 years, Coley was a model inmate. He avoided gangs and violence and
14 dedicated himself to religion. Coley earned an Associate degree in Theology, then a Bachelor of Arts
15 in Biblical Studies, and recently began studying for a Master's. Coley was a charter member and
16 officer of the prison chapter of the Veteran Affairs organization. Coley also worked a variety of prison
17 jobs, ranging from laundry service to office clerk.

18 In December 2013, after his convictions had been affirmed on appeal and multiple habeas
19 petitions denied, Coley filed a second petition for clemency with the Governor's Office. In September
20 2015, the Governor requested an investigation by the Board of Parole Hearings, which led three law
21 enforcement officers to opine "that the detective who originally investigated the matter mishandled the
22 investigation or framed Mr. Coley." As a result, in October 2016, the Simi Valley Police Department
23 and Ventura County District Attorney's Office initiated their own investigation that uncovered
24 significant exculpatory evidence. Specifically, new DNA testing of Ms. Wicht's bedsheet detected
25 sperm from an unknown male and absolutely no DNA belonging to Coley. Investigators also
26 identified other men who had associated with Ms. Wicht and engaged in violent sexual conduct.
27 Finally, investigators looked through the window belonging to the neighbor who claimed to have
28 spotted Coley's truck and concluded there was insufficient light to make such an identification.

1 Based upon the results of their investigation, the Simi Valley Police Department and Ventura
2 County District Attorney's Office supported Coley's clemency request. Both advised the Governor
3 that they "no longer have confidence in the weight of the evidence used to convict Mr. Coley" and the
4 current evidence "would meet the legal standard for a finding of factual innocence." On November
5 22, 2017, the Governor granted a full and unconditional pardon "because Mr. Coley did not commit
6 these crimes." The Governor ordered Coley's immediate release. Consequently, Coley was released
7 from prison that same day.

8 One week later on December 1, 2017, with the agreement of the Ventura County District
9 Attorney's Office, the Ventura County Superior Court granted Coley's motions to vacate his
10 convictions pursuant to Penal Code section 1473.7 and to find Coley factually innocent pursuant to
11 Penal Code section 851.8. The court's order expressly states that the innocence findings "shall be
12 binding" upon CalVCB. The order directs CalVCB to "recommend to the Legislature that an
13 appropriation be made and any claim filed shall be paid to Mr. Coley in accordance with Penal Code
14 section 1485.55, subdivision (d)."

15 On January 8, 2018, counsel for Coley submitted via email the underlying application for
16 compensation as an erroneously convicted person under Penal Code section 4900. However, the
17 application was not deemed filed until January 22, 2018, in order to satisfy the 60-day waiting period
18 following the reversal of a conviction mandated by Penal Code section 4901, subdivision (c). In
19 addition to the Governor's pardon and the superior court's order, the application includes a letter from
20 the Ventura County District Attorney requesting expedited approval of Coley's application for this
21 "extraordinary miscarriage of justice."

22 **Determination of Issues**

23 Penal Code section 4900 allows any person, who has been erroneously convicted and
24 imprisoned for a felony offense, to apply for compensation from CalVCB.¹ CalVCB typically requests a
25 written response from the Attorney General pursuant to Penal Code section 4902, and then an informal
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28 ¹ Pen. Code, § 4900.

1 evidentiary hearing ensues in accordance with Penal Code section 4903.² Throughout these
2 proceedings, the applicant bears the burden to prove, by a preponderance of the evidence, that:

- 3 (1) the crime with which he was charged was either not committed at all, or, if
4 committed, was not committed by him, and
5 (2) he sustained injury through his erroneous conviction and imprisonment.³

6 If the applicant satisfies this burden of persuasion for both elements, then pursuant to Penal Code
7 section 4904, CalVCB shall recommend to the Legislature an award of compensation equal to \$140 per
8 day for every day of time spend in custody, including pre-trial confinement in county jail.⁴

9 An exception to this standard procedure occurs whenever Penal Code section 851.865
10 or Penal Code section 1485.55 applies.⁵ According to section 851.865,

11 If a person has secured a declaration of factual innocence from the court pursuant to
12 Section 851.8 or 851.86, the finding shall be sufficient grounds for payment of
13 compensation for a claim made pursuant to Section 4900. Upon application by the
14 person, the California Victim Compensation Board shall, without a hearing, recommend
15 to the Legislature that an appropriation be made and the claim paid pursuant to Section
16 4904.⁶

17 In other words, section 851.865 requires automatic compensation for those applicants with findings of
18 factual innocence under section 851.8. Section 1485.55 similarly provides:

19 In a contested proceeding, if the court has granted a writ of habeas corpus or when,
20 pursuant to Section 1473.6, the court vacates a judgment, and if the court has found that
21 the person is factually innocent, that finding shall be binding on the California Victim
22 Compensation Board for a claim presented to the board, and upon application by the
23 person, the board shall, without a hearing, recommend to the Legislature that an
24 appropriation be made and the claim paid pursuant to Section 4904.⁷

25 Accordingly, section 1485.55 likewise requires automatic compensation for applicants with findings of
26 factual innocence under section 1473.6. Thus, under section 851.865 or 1485.55, CalVCB must grant

27 ² Pen. Code, §§ 4902, subd. (a)-(b), 4903, subd. (a); Cal. Code Regs., tit. 2, § 615.1, subd. (a).

28 ³ Pen. Code, §§ 4903, subd. (a), 4904.

⁴ Pen. Code, § 4904.

⁵ Pen. Code, § 4902, subd. (a).

⁶ Pen. Code, § 851.865, subd. (a).

⁷ Pen. Code, § 1485.55, subd. (a).

1 an application supported by findings of innocence, whether issued under section 851.8 or 1473.6,
2 without first seeking a response from the Attorney General or conducting an evidentiary hearing.

3 This construction is confirmed by Penal Code section 4902, which provides in relevant part:

4 “If the provisions of Sections 851.865 or 1485.55 apply in any claim, the California Victim
5 Compensation Board shall, within 30 days of the presentation of the claim, calculate the
6 compensation for the claimant pursuant to Section 4904 and recommend to the
7 Legislature payment of that sum.”⁸

8 Consequently, not only must CalVCB automatically recommend payment without a hearing or response
9 from the Attorney General whenever an applicant has obtained the requisite findings of factual
10 innocence under section 851.8 or section 1473.6, but CalVCB must do so within 30 days after the
11 application is filed.

12 Here, Coley was confined for a total of 13,991 days for the first-degree murders of Rhonda and
13 Donald Wicht. This period of confinement consists of 153 days pretrial from November 11, 1978, to
14 April 13, 1979, and 13,838 days post-conviction from January 3, 1980, to November 22, 2017. Coley
15 obtained findings of factual innocence for both murder convictions under Penal Code section 851.8, as
16 well as Penal Code section 1473.7. Consequently, Penal Code sections 861.865 and 1485.55 both
17 apply to Coley’s application for compensation, even though only one is needed to mandate
18 compensation under Penal Code section 4902. CalVCB unequivocally accepts that Coley is actually
19 innocent of both murders for which he was erroneously incarcerated over 38 years. CalVCB
20 recognizes that, but for these convictions, Coley would not have spent 13,991 days “illegally behind
21 bars, away from society, employment, and [his] loved ones.”⁹ Therefore, Coley is entitled to a
22 recommendation of compensation in the amount of \$1,958,740, representing \$140 for each day of his
23 erroneous incarceration.

24 **Conclusion**

25 CalVCB hereby grants Coley’s application for compensation under Penal Code section 4900 as
26 mandated by Penal Code sections 851.854 and 1485.55 and, therefore, recommends that the

27 ⁸ Pen. Code, § 4902, subd. (a).

28 ⁹ *Holmes v. California Victim Compensation & Government Claims Bd.* (2015) 239 Cal.App.4th 1400.

1 Legislature appropriate \$ 1,958,740 as payment to Coley for his 13,991 days of erroneous
2 incarceration.

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4 Date: January 22, 2018

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6 Laura Simpton
7 Hearing Officer
8 California Victim Compensation Board
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**BEFORE THE VICTIM COMPENSATION BOARD
OF THE STATE OF CALIFORNIA**

In the Matter:

Craig Richard Coley

Claim No. 18-ECO-01

Notice of Decision

(Penal Code § 4900 et seq.)

On February 15, 2018, the California Victim Compensation Board adopted the attached Proposed Decision of the Hearing Officer as its Decision in the above-referenced matter.

Date: February 20, 2018

Tisha Heard
Board Liaison
California Victim Compensation Board