

**Claim of DAVID J. QUINDT - \$17,200**

**SUMMARY OF FACTS**

- Claimant is requesting compensation pursuant to California Penal Code section 4900 in the total amount of \$45,800.00 as a result of his wrongful conviction and incarceration for crimes that he did not commit.
- Claimant was arrested on February 18, 1999, for the murder of Riley Healing, who was killed during a home invasion robbery in October of 1998. Teenager Jennifer Salmon was also shot and critically injured during the crime.
- On December 1, 1999, claimant was convicted of murder and other related charges. While claimant was awaiting sentencing, the prosecuting attorney, Deputy District Attorney Mark Curry, received information that made him question claimant's guilt. Mr. Curry re-opened the investigation and requested that Mr. Quindt's sentencing be postponed. The District Attorney's Office ultimately determined that claimant did not have any involvement in the murder. Claimant was released from custody on May 22, 2000. On June 21, 2000, claimant was found to be factually innocent and all charges against him were dismissed. Subsequently, two men confessed to the crime and a third testified for the prosecution in exchange for a reduced sentence.
- Claimant was incarcerated a total of 458 days, 172 of which were served post-conviction.
- Claimant was incarcerated in the Sacramento County Jail.
- Claimant seeks \$45,800.00 (\$100 x 458 days incarceration) pursuant to Penal Code section 4900.

- On October 18, 2002, Mr. Quindt filed his claim pursuant to California Penal Code section 4900. (EXHIBIT 1). A letter from the prosecuting attorney, Deputy District Attorney Mark Curry, accompanied Mr. Quindt's claim. Mr. Curry's letter details the facts of Mr. Quindt's conviction and supports his claim of factual innocence. (EXHIBIT 2).
- Claimant's story of wrongful conviction was also the subject of an article written for the *Alicia Patterson Foundation Reporter* entitled, "Convicting the Wrong Man" by Sacramento Bee Staff Writer and Alicia Patterson Fellow, Gary Delsohn. Deputy District Attorney Curry suggested the article might be helpful in providing the Board with additional details of claimant's conviction and subsequent release from custody. A copy of the article is included as EXHIBIT 3.
- On June 21, 2000, Sacramento County Superior Court ordered the Department of Justice and local law enforcement to seal Mr. Quindt's arrest records for a period of three years, after which time they were to be destroyed. (EXHIBIT 4). Claimant informed staff via telephone that the Department of Justice misplaced the court order. According to Mr. Quindt, his felony arrest and conviction records were not actually sealed until October of 2002, and only after Mr. Quindt obtained judicial enforcement of the June 21, 2000, order. Mr. Quindt informed staff that the delay in sealing his records resulted in his termination from at least two positions of employment because he failed to pass background checks.

#### **SUMMARY OF CLAIM ISSUES**

- Should Mr. Quindt's claim for compensation pursuant to Penal Code section 4900 be denied as untimely?
- Should Mr. Quindt's claim for compensation pursuant to Penal Code section 4900 be denied because Mr. Quindt was not actually sentenced and therefore technically did not serve any part of the term of imprisonment for the crime of which he was convicted?
- Should the Board exercise its equitable powers and allow Mr. Quindt's claim under the provisions of the Tort Claims Act?
- If the Board considers Mr. Quindt's claim under the Tort Claims Act, what compensation should be allowed?

#### **DEPARTMENT POSITION**

The OFFICE OF THE ATTORNEY GENERAL does not object to the claim being **ALLOWED** under Penal Code section 4900, stating "it appears clear that Mr. Quindt did not commit the murder for which he was charged and convicted, nor did he contribute in any way to the bringing about of his arrest or conviction." The Attorney General's office does not make recommendations as to the timeliness issue.

### **STAFF RECOMMENDATION**

Staff recommends that the claim be **REJECTED** as a PC 4900 claim as untimely. The staff notes that the Board may consider the claim under the Tort Claims Act as an equity claim. Any amount allowed by the Board would be subject to Legislative approval under a claims bill.

### **STATUTORY LIMITATIONS**

Penal Code section 4900 *et seq.* authorizes the Board to approve claims for injuries sustained through erroneous conviction and imprisonment under certain conditions. Section 4901 limits the Boards ability to consider these claims to those that have been properly and timely filed.

Specifically, Penal Code Section 4901 states: Such claim, accompanied by a statement of the facts constituting the claim, verified in the manner provided for the verification of complaints in civil actions, must be presented by the claimant to the Board of Control within a period of six months after judgment of acquittal or discharge given, or after pardon granted, or after release from imprisonment, and at least four months prior to the next meeting of the Legislature of this State; and no claim not so presented shall be considered by the Board of Control." The Board cannot consider this claim under Penal Code section 4900 unless it was filed within the statutory time frame.

Mr. Quindt's claim was filed October 18, 2002, more than two years after he was released from jail (May 22, 2000) and found to be factually innocent (June 21, 2000). Mr. Quindt's claim is therefore untimely and cannot be considered by the Board under the provisions of Penal Code section 4900.

Even if Mr. Quindt's claim had been filed timely, it is questionable whether it meets the requirements for compensation pursuant to Penal Code section 4900. Specifically, compensation under Penal Code section 4900 is available to "any person who, being innocent of the crime with which he was charged for the reason that the crime with which he was charged was either not committed at all, or if committed, was not committed by him, shall have served the term or any part thereof for which he was imprisoned, may . . . present a claim against the State to the State Board of Control . . ."

Mr. Quindt was found to be factually innocent of the crime with which he was charged. However, it is questionable whether he served "the term or any part thereof for which he was imprisoned" because he was never formally sentenced for the crime. Technically, there was no "term" ever imposed for Mr. Quindt to serve. Although, it is clear that had Mr. Quindt been sentenced, the 172 days Mr. Quindt served post-conviction would have been credited as time served toward his sentence.

According to Deputy District Attorney Mark Curry, the only reason Mr. Quindt's sentencing was postponed was so that the District Attorney's Office could investigate allegations of Mr. Quindt's innocence, which ultimately led to the charges being dismissed against Mr. Quindt. Mr. Quindt remained in the Sacramento County jail from the date of his conviction (December 1, 1999) until his release from custody in May of 2000. The crimes for which Mr. Quindt was convicted carried a sentence of life without the possibility of parole.

If the Board wishes to consider Mr. Quindt's claim, it has authority under the Tort Claims Act to allow the claim in equity under Government Code section 905.2.

The Board would not be bound to consider the amounts provided for in the Penal Code as Mr. Quindt cannot be considered under those provisions. However, a look at the various provisions that Mr. Quindt would have been entitled to might prove instructive if the Board chooses to allow the claim in equity.

The Penal Code section in existence when Mr. Quindt was released and which would have applied to him had he filed a timely claim had a ten thousand dollar (\$10,000) cap. (See Penal Code section 4904, EXHIBIT 5) The amount he would have been entitled to if he were released from prison today and filed a timely claim would be "a sum equivalent to one hundred dollars (\$100) per day of incarceration served subsequent to the claimant's conviction..." (See Penal Code section 4904, EXHIBIT 1.) In this case, Mr. Quindt was incarcerated for 172 days after his conviction, which when multiplied by \$100 per day, totals \$17,200. Mr. Quindt was incarcerated a total of 458 days, however, only 172 of which occurred post-conviction.

Staff finds Penal Code section 4900 *et seq.* would be violated if the Board allowed the claim under that statute. However, the Board has the authority under the Tort Claims Act in equity to consider the claim if it so chooses. There may be sufficient evidence to establish claimant's entitlement to equitable relief for some compensation. It has been adequately demonstrated that claimant is innocent of the crimes for which he was convicted, did not contribute to the bringing about of his arrest or conviction, and has sustained injury through his erroneous conviction and imprisonment. Any award in equity would be subject to Legislative approval as part of a claims bill.

Staff recommends the claim be **ALLOWED** in the amount of \$17,200. The Legislature amended Penal Code section 4904 in 2000 by increasing the amount an erroneously convicted felon could recover. As such, the amendments reflect a legislative determination that \$100 for each day of post-conviction incarceration is appropriate compensation for persons erroneously convicted. Approving Mr. Quindt's claim in the amount of \$17,200 would be consistent with that legislative determination.