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

9 In the Matter of the Claim of:

10 **Peter Rose**

11 **Claim No. G554383**

Proposed Decision
(Penal Code §§ 4900 et seq.)

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13 Pursuant to California Code of Regulations, Title 2, § 617.6 and upon agreement of the
14 parties, an informal hearing based on the written record was held by Kyle Hedum, Hearing Officer,
15 who was assigned to hear this matter by the Executive Officer of the Victim Compensation and
16 Government Claims Board (Board).

17 Raymond S. Hasu, Attorney at Law, represented the claimant, Peter Rose (Rose). Mr.
18 Hasu waived his appearance and waived 15 days notice of the hearing pursuant to Penal Code
19 section 4902.

20 Michael P. Farrell, Deputy Attorney General, represented the California Department of
21 Justice, Office of the Attorney General (AG). Mr. Farrell waived his appearance and waived 15 days
22 notice of the hearing pursuant to Penal Code section 4902.

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24 **Evidence and Arguments Presented**

25 The AG did not introduce any evidence in opposition of this claim. Rose submitted the
26 following documents in support of his claim:

27 Exhibit A. Lodi Police Department Crime Report

28 Exhibit B. Reporters' Transcript of Appeal
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- 1 Exhibit C. Lodi Police Department Arrest Report
- 2 Exhibit D. Clerk's Transcript on Appeal
- 3 Exhibit E. Order Granting Writ of Habeas Corpus
- 4 Exhibit F. Finding of Factual Innocence
- 5 Exhibit G. Order of Exoneration
- 6 Exhibit H. DNA Analytical Report
- 7 Exhibit I. San Joaquin County Court Proceedings Transcript
- 8 Exhibit J. Second DNA Analytical Report
- 9 Exhibit K. Transcript of Victim Interview
- 10 Exhibit L. Copy of Newspaper Article
- 11 Exhibit M. Lodi Police Department Investigation Report
- 12 Exhibit N. Letter Brief with attachments

14 A thirteen-year old girl named A.R. was sexually assaulted on the morning of November 29,
15 1994 in Lodi, California.¹ While walking to school, A.R. was approached by a man who grabbed her,
16 punched her in the face, and then took her into an alley. The man then pulled her behind a house and
17 raped her. After raping A.R., the perpetrator jumped over a fence and ran away. A.R. walked out of
18 the alley and flagged down a passing car. A.R. told the car's driver, Ronald White, that she had been
19 molested and asked to be taken to her aunt's house. As Mr. White drove to the aunt's house, A.R.
20 pointed to a man on the street and said, "there he is." After A.R. arrived at the home of her aunt,
21 Wendy Neri, A.R.'s mother called 911. She told the dispatcher that A.R. had been raped but did not
22 know the identity of the assailant. Lodi police then picked up A.R. and took her to the hospital, where a
23 sexual assault examination was performed.
24

25 On December 21, 1994, Lodi police arrested Rose for the sexual assault and rape of A.R.. On
26 November 3, 1995, Rose was convicted by jury of kidnapping a child under the age of fourteen,
27 kidnapping with the intent to commit rape, kidnapping for a lewd and lascivious act, rape by force and
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29 ¹ A.R.'s full name will not be disclosed in this Proposed Decision in order to protect the confidentiality of her identity.

1 fear, and forcible oral copulation. On April 5, 1996, he was sentenced to a prison term of 27 years. On
2 October 29, 2004, the court granted Rose's petition for writ of habeas corpus and vacated his
3 conviction. On February 8, 2005, Rose brought a motion for a finding of factual innocence pursuant to
4 Penal Code section 851.8. The San Joaquin County District Attorney's Office joined in that motion,
5 which the court granted on February 18, 2005.

6 DNA testing performed in 2004 on a semen sample collected from A.R.'s underpants at the time
7 of her sexual assault examination eliminated Rose as a suspect in the rape. DNA testing of this sample
8 was not performed prior to Rose's trial because the sample contained insufficient spermatozoa to
9 permit such analysis, given the available technology at that time. A new DNA testing method called Y-
10 STR has been developed since Rose's conviction, however, and this new technique made it possible to
11 test the semen sample, which had been preserved. On June 7, 2004, the court ordered that this DNA
12 analysis be performed. The results of this analysis conclusively establish that Rose could not have
13 been the donor of the semen found in A.R.'s underpants on the afternoon she was raped. As reported
14 by the Serological Research Institute, "[t]he male DNA found in the epithelial and sperm extracts from
15 [A.R.'s] panties ... could *not* have originated from Peter Rose." (emphasis in original).
16

17 A second DNA test was performed in 2005 on oral swabs taken from a man identified as A.R.'s
18 boyfriend at the time of the rape. This testing was done at the prosecutor's request to rule out the
19 possibility that, because A.R. had been sexually active with her boyfriend days before the attack, the
20 semen sample could have come from that earlier sexual contact, rather than from the November 29,
21 1994, assault. The second DNA test proved that neither A.R.'s boyfriend nor Rose were the donors of
22 the sperm sample. Based on A.R.'s statements to the Lodi police, the semen in her underpants could
23 only have been deposited by either her boyfriend or the rapist. Therefore, since DNA testing has
24 excluded both A.R.'s boyfriend and excluded Rose as the semen donor, Rose could not have been
25 A.R.'s assailant.
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27
28 The other primary component of the prosecution's case against Rose at trial was A.R.'s in-court
29 identification of Rose as her assailant. However, A.R. has recently recanted her identification. Shortly

1 after Rose's conviction was overturned and he was released from Mule Creek State Prison, A.R.
2 contacted reporter Jeffrey Barker at the *Stockton Record*. She told Barker that she was never sure of
3 her identification: "I'm not sure. I *wasn't* sure." (emphasis in original). In fact, A.R. told Barker what
4 she had told the Lodi police when originally interrogated, that she never got a look at her attacker's
5 face. She said that she was pressured by the police and "went along with [the] police because they
6 seemed to have evidence lined up against Rose."

7 After A.R. made those statements to the reporter, she contacted Assistant District Attorney
8 Brian Short and confirmed those statements, telling the prosecutor that "she was unsure at the time
9 whether it was Rose," and that "she's unsure now whether he was the person that did this to her."
10 Accordingly, A.R. told the prosecutor that "she would not be able to testify that Rose is the person that
11 did this crime to her."
12

13 Apart from A.R., the only person to identify Rose at trial was Ronald White, the driver of the car
14 that A.R. flagged down after her assault. At trial, Mr. White identified Rose as the man whom A.R.
15 pointed to as he drove her to her aunt's house. However, A.R. told the Lodi police that the person she
16 pointed to while in Mr. White's car was not Rose, but "just somebody walking."
17

18 Findings of Fact

19 1. It is found that Rose was convicted on November 3, 1995, of kidnapping a child under the
20 age of fourteen, kidnapping with the intent to commit rape, kidnapping for a lewd and lascivious act,
21 rape by force and fear, and forcible oral copulation.

22 2. It is found that Rose was sentenced to 27 years state prison on April 5, 1996.

23 3. It is found that Rose underwent DNA testing in 2004 and the result of the tests
24 determined that Rose was not the donor of sperm found on the victim's underpants.

25 4. It is found that Rose's petition for writ of habeas corpus was granted on October 29, 2004.

26 5. It is found that Rose was declared factually innocent on February 8, 2005, which was not
27 opposed by the San Joaquin County District Attorney.
28

29 6. It is found that Rose was incarcerated for a period of 3,282 days subsequent to his

conviction.

7. It is found that Rose suffered pecuniary injury as a result of the erroneous conviction and subsequent incarceration.

Determination of Issues

Penal Code section 4903 establishes the requirements for a successful claim for an erroneously convicted felon. A person convicted and imprisoned for a felony may submit to the Board for pecuniary injury sustained through his erroneous conviction and imprisonment (Penal Code, § 4900.) The claim must be filed within six months after judgment of acquittal or discharge, granting of a pardon, or release from imprisonment (Pen. Code, § 4901.) Rose's claim was timely.

The claimant must prove: 1) that the crime with which he was charged was either not committed at all, or, if committed, was not committed by him; 2) that he did not by any act or omission on his part, either intentionally or negligently, contribute to the bringing about of the arrest or conviction for the crime; and 3) that he sustained a pecuniary injury through his erroneous conviction and imprisonment (Pen. Code, § 4903.) If the claimant meets his burden of proof, the Board shall recommend to the legislature that an appropriation of \$100.00 be made for the claimant for each day of incarceration served subsequent to the claimant's conviction (Pen. Code, § 4904.)

The claimant also has the burden of proving his innocence by a preponderance of the evidence. (*Diola v. Board of Control* (1982) 135 Cal.App.3d 580, 588, fn.7.)

In reaching its determination of the merits of the claim, the Board may consider the following, but the following will not be deemed sufficient evidence to warrant the Board's recommendation that the claimant be indemnified in the absence of substantial independent corroborating evidence that the claimant is innocent of the crime charged: (1) claimant's mere denial of commission of the crime for which he was convicted; (2) reversal of the judgment of conviction on appeal; (3) acquittal of

1 claimant on retrial; or (4) the failure of the prosecuting authority to retry claimant for the crime. (Cal.
2 Code Regs., tit. 2, § 641.²)


3 Testimony of witnesses claimant had an opportunity to cross-examine, and evidence to which
4 claimant had an opportunity to object, admitted in prior proceedings relating to the claimant and the
5 crime with which he was charged, may be considered by the Board as substantive evidence. The
6 Board may also consider any information that it may deem relevant to the issue before it. (Reg., §
7 641.)

8 Based upon Findings of Fact numbers 1 through 7, the applicant has proven by a
9 preponderance of the evidence that the crime with which he was charged was not committed by him;
10 that he did not by any act or omission on his part, either intentionally or negligently, contribute to the
11 bringing about of his arrest or conviction for the crime; and that he sustained a pecuniary injury
12 through his erroneous conviction and imprisonment. It is further found that Rose was incarcerated for
13 a total of 3,282 days subsequent to his conviction
14

15 **Order**

16 The Board shall recommend that the Legislature make an appropriation in the amount of
17 \$328,200 to indemnify Rose for pecuniary injury sustained through his erroneous conviction and
18 imprisonment.
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20 Date: September 21, 2005

21 
22 Kyle Hedum
23 Hearing Officer
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29 ² All citations to regulations are to California Code of Regulations, title 2.