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6 **BEFORE THE VICTIM COMPENSATION BOARD**  
7 **OF THE STATE OF CALIFORNIA**

8  
9 In the Matter of the Claim of:  
10 **Zedrick Damien Turnbough**  
11 Claim No. 18-ECO-08

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

12 **Introduction**

13 On February 23, 2018, Zedrick Damien Turnbough (Turnbough) submitted an application for  
14 compensation as an erroneously convicted person to the California Victim Compensation Board  
15 (CalVCB). Attorneys David and Raquel Flyer represent Turnbough. Barton Bowers represents the  
16 California Department of Justice, Office of the Attorney General (AG). In its response to the  
17 application, the AG recommended Turnbough receive compensation because he was factually  
18 innocent of the crime. Turnbough's counsel agreed with the AG's analysis and recommendations,  
19 and waived further hearing and briefing. Senior Attorney Michelle D. Carrino of CalVCB was  
20 assigned to this matter.

21 After reviewing the application and supporting documentation, CalVCB recommends that the  
22 Legislature appropriate \$92,260 as payment to Turnbough for 659 days of wrongful conviction.

23 **Procedural Background**

24 On August 28, 2014, Anaheim police arrested Turnbough following a traffic stop and  
25 discovered a drug straw and a metal cylindrical object in his pocket. During a search at the detention  
26 facility, law enforcement discovered methamphetamine and heroin on his person.

27 On November 5, 2014, the Orange County District Attorney filed an amended information  
28 charging Turnbough with smuggling controlled substances into a correctional facility (counts one and

1 two), possession of methamphetamine (count three), possession of heroin (count four), possession of  
2 “metal knuckles” (count five), misdemeanor possession of controlled substance paraphernalia (count  
3 six), and misdemeanor resisting, obstructing, or delaying a peace officer (count seven). The  
4 information further alleged Turnbough had suffered 12 prior convictions for robbery, serious and  
5 violent felony convictions, and had served two separate prior prison terms.<sup>1</sup>

6 On February 10, 2015, a jury found Turnbough guilty on counts three, four, five, and six. The  
7 following day, the court sitting without a jury, found all the special allegations to be true. Counsel for  
8 Turnbough moved to reduce counts three, four, and five to misdemeanors pursuant to Proposition 47.<sup>2</sup>  
9 The court took the motion under submission and set sentencing for March 6, 2015.

10 On March 6, 2015, the trial court reduced the convictions in counts three, four, and six from  
11 felonies to misdemeanors. However, the trial court denied Turnbough’s motion to reduce count five to  
12 a misdemeanor, and sentenced Turnbough to a four-year prison term. The court did not impose  
13 punishment for the prior prison term enhancements, and stayed sentencing on the misdemeanors.

14 Turnbough appealed his conviction. On October 12, 2016, the Court of Appeal ordered  
15 Turnbough’s conviction for possessing “metal knuckles” reversed because the item in question did not  
16 meet the statutory definition of “metal knuckles.” On December 13, 2016, the Orange County Superior  
17 Court vacated the jury’s findings and dismissed count five. The trial court imposed new terms of six  
18 months each on counts three, four, and six to run concurrently, and ordered Turnbough released. As  
19 of that date, Turnbough had served 839 days in custody.

20 On February 23, 2018, Turnbough submitted the underlying application for compensation as an  
21 erroneously convicted person under Penal Code section 4900 seeking compensation for 468 days of  
22 wrongful incarceration. Turnbough alleged an additional \$71,983.75 for property loss, child support  
23 arrearages, and income loss.<sup>3</sup>

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25 <sup>1</sup> Pen. Code, §§ 211, 667, subds. (b)-(i), 1170.12, 667.5, subd. (b).

26 <sup>2</sup> Proposition 47, the ballot initiative passed by California voters on November 4, 2014, reduces certain  
27 drug possession felonies to misdemeanors.

28 <sup>3</sup> Turnbough originally sought \$137,503.75 in compensation, which included \$65,520 for 468 days of  
wrongful incarceration and \$71,983.75 in damages.

1 **Determination of Issues**

2 Penal Code section 4900 allows any person, who has been erroneously convicted and  
3 imprisoned for a felony offense, to apply for compensation from CalVCB.<sup>4</sup> CalVCB typically requests a  
4 written response from the Attorney General pursuant to Penal Code section 4902, and then an  
5 informal evidentiary hearing is conducted in accordance with Penal Code section 4903.<sup>5</sup> Throughout  
6 these proceedings, the claimant bears the burden to prove, by a preponderance of the evidence, that;

- 7 (1) the crime with which he was charged was either not committed at all, or if  
8 committed was not committed by him, and  
9 (2) he sustained an injury through his erroneous conviction and imprisonment.<sup>6</sup>

10 If the applicant satisfies this burden of persuasion for both elements, then pursuant to Penal Code  
11 section 4904, CalVCB shall recommend to the Legislature an award of compensation equal to \$140 per  
12 day for every day of time spent in custody, including pre-trial confinement in county jail.<sup>7</sup>

13 **A. Turnbough has Demonstrated Actual Innocence**

14 Turnbough was convicted and sentenced for possession of “metal knuckles” in violation of  
15 Penal Code section 21810. On appeal, Turnbough’s conviction was reversed because the court found  
16 the item he possessed did not meet the statutory definition of “metal knuckles” as intended by the  
17 Legislature.<sup>8</sup> Turnbough did not violate Penal Code section 21810 and thus, he is factually innocent of  
18 the charged crime.

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22 <sup>4</sup> Pen. Code, § 4900.

23 <sup>5</sup> Pen. Code, §§ 4902, subds. (a)-(b), 4903, subd. (a); Cal. Code Regs., tit. 2, § 615.1, subd. (a).

24 <sup>6</sup> Pen. Code, §§ 4903, subd. (a), 4904.

25 <sup>7</sup> Pen. Code, § 4904.

26 <sup>8</sup> Penal Code section 16920 defines “metal knuckles” as “any device or instrument made wholly or  
27 partially of metal that is worn for purposes of offense or defense in or on the hand that either protects  
28 the wearer’s hand while striking a blow or increases the force of impact from the blow or injury to the  
individual receiving the blow. The metal contained in the device may help support the hand or fist,  
provide a shield to protect it, or consist of projections or studs which would contact the individual  
receiving the blow.”

1 **B. Turnbough Suffered Injury Due to his Erroneous Incarceration**

2 Prior to his incarceration, Turnbough maintained a home, was gainfully employed, and was  
3 current on his child support obligations. Due to his conviction, he was unable to return to his apartment  
4 and lost all of his personal property. After his release, he was unable to find immediate employment  
5 and accrued child support arrears. Based upon the preceding, Turnbough has shown he was injured  
6 due to an erroneous conviction. Accordingly, Turnbough is entitled to compensation of \$140 per day  
7 for each day of erroneous incarceration.

8 **C. Compensation**

9 While Turnbough was wrongfully convicted on count five, he was correctly sentenced on three  
10 other counts. When an individual is serving a sentence for a valid, undisputed conviction, his  
11 imprisonment is not erroneous. On December 13, 2016, the trial court imposed new, concurrent terms  
12 of six months each on counts three, four, and six. Thus, for six months or 180 days, Turnbough's  
13 incarceration was due to valid criminal convictions. Accordingly, although Turnbough was incarcerated  
14 for 839, he is only eligible for compensation for 659 days. At the rate of \$140 per day, Turnbough is  
15 entitled to \$92,260 in compensation.

16 **Conclusion**

17 CalVVCB hereby grants Turnbough's application for compensation under Penal Code section  
18 4900 and recommends that the Legislature appropriate \$92,260 as payment to Turnbough for 659 days  
19 of erroneous incarceration.

20 Date: April 30, 2018

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22 Michelle D. Carrino  
23 Hearing Officer  
24 California Victim Compensation Board

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**BEFORE THE VICTIM COMPENSATION BOARD  
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In the Matter of the Claim of:  
**Zedrick Damien Turnbough**  
Claim No. 18-ECO-08

**Notice of Decision**

On May 17, 2018, the California Victim Compensation Board adopted the attached Proposed Decision of the Hearing Officer as its Decision in the above-referenced matter.

Date: May 21, 2018

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Michelle Greer  
Board Liaison  
California Victim Compensation Board