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BEFORE THE VICTIM COMPENSATION BOARD
OF THE STATE OF CALIFORNIA

In the Matter of the Claim of:

Notice of Decision

Luis Vargas

On November 17, 2016, the California Victim Compensation Board adopted the attached Proposed Decision of the Hearing Officer as its Decision in the above-referenced matter.

Date: November 21, 2016



Tisha Heard
Board Liaison
California Victim Compensation Board

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6 **BEFORE THE VICTIM COMPENSATION BOARD**
7 **OF THE STATE OF CALIFORNIA**
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9 In the Matter of the Claim of:

Proposed Decision

(Penal Code § 4900 et seq.)

10 **Luis Vargas**
11

12 **Introduction**

13 This claim for compensation as an erroneously convicted person was decided based on the
14 written record and without the necessity of a hearing. Kyle Hedum was assigned to hear this matter
15 by the Executive Officer of the California Victim Compensation Board. Luis Vargas (Vargas) was
16 represented by Raquel Cohen of the California Innocence Project. The California Department of
17 Justice, Office of the Attorney General (AG), was represented by Deputy Attorney General Barton
18 Bowers.

19 In this matter, the court granted Vargas's writ of habeas corpus and made a finding of
20 factual innocence pursuant to Penal Code¹ section 851.86. According to section 4902, when a court
21 makes a finding of factual innocence, the Board shall, without a hearing, recommend to the
22 Legislature that an appropriation be made and the claim paid pursuant to section 4904. Therefore, it
23 is recommended that Vargas be compensated in the amount of \$886,760, calculated at the rate of
24 \$140 per day for 6,334 days of imprisonment.
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27 ¹ All further statutory references are to the Penal Code unless otherwise indicated.
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1 **Background**

2 On July 21, 1998, officers from the Los Angeles Police Department arrested Vargas for the
3 sexual assault of three separate people in Los Angeles between February 3, 1998, and June 6, 1998.
4 On June 1, 1999, the Los Angeles County District Attorney's Office filed an amended information
5 charging Vargas with forcible rape, kidnap to commit rape, and attempted sodomy by force.

6 The prosecution's theory at trial was simple and straightforward: based on the wealth of
7 similarities between the crimes, all three attacks had to have been committed by the same perpetrator.
8 The prosecution's case relied solely on eyewitness identifications from each of the victims; no physical
9 evidence ever linked Vargas to these crimes. The victims originally doubted their identification of
10 Vargas. However, as time went on, and as the victims either saw Vargas in person or in photographs,
11 the victims became more confident in their identification.

12 On June 15, 1999, a jury found Vargas guilty of forcible rape, forcible attempted sodomy,
13 kidnapping, and two counts of assault with intent to rape. The court also found true the allegation that
14 he used a deadly weapon during the commission of each committed offense. The court found true all
15 other alleged special circumstances. By the People's motion, Count 5 was dismissed pursuant to
16 section 1385. The court sentenced Vargas to 55 years to life.

17 On July 27, 2000, Vargas filed a Petition for Review in the California Supreme Court. The
18 California Supreme Court denied the petition on August 30, 2000. On July 2, 2012, the Los Angeles
19 County Superior Court granted Vargas's Motion for Appointment of Counsel for the purpose of
20 investigating, and if appropriate, filing a motion for DNA testing. The California Innocence Project was
21 appointed as Vargas's counsel.

22 On December 14, 2012, Vargas moved for DNA testing on biological evidence collected from
23 one of the victims. Physical evidence was not collected from two other victims. After the Los Angeles
24 County District Attorney's Office filed a letter conceding to the requested testing, on March 20, 2013,
25 the court granted Vargas's motion for DNA testing. On October 17, 2013, the court ordered post-
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1 conviction DNA testing to be performed. This testing of the DNA found on the victim's clothing
2 confirmed that the suspect known as the "Teardrop Rapist" was the perpetrator.²

3 At the conclusion of the DNA testing, Vargas filed a petition for writ of habeas corpus in Los
4 Angeles Superior Court. In the petition, Vargas argued: (1) that new evidence of third-party culpability
5 completely undermined the prosecution's case and pointed unerringly to his innocence; and (2) that
6 his due process rights were violated because his conviction was based upon false eyewitness
7 identifications.

8 On November 11, 2015, the Los Angeles County District Attorney's Office filed a concession
9 letter with the Los Angeles Superior Court, stating that Vargas had met the new evidence standard as
10 the newly discovered evidence—namely the DNA evidence, implicated the "Teardrop Rapist" and
11 excluded Vargas. The Los Angeles County District Attorney's Office requested that the court grant the
12 habeas petition and that Vargas's conviction be set aside and expressed no intentions to refile
13 charges against Vargas. In its stipulation, the prosecution agreed that the new DNA evidence
14 completely undermined the prosecution's theory and pointed unerringly to Vargas's innocence.

15 On November 23, 2015, the Los Angeles Superior Court granted Vargas's habeas petition.
16 The court vacated and set aside all counts and dismissed the information. On October 5, 2016, the
17 Los Angeles Superior Court granted Vargas's unopposed motion for a finding of factual innocence
18 pursuant to section 851.86.

19 **Determination of Issues**

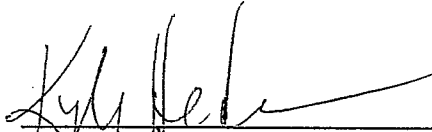
20 In order to be successful on a claim as an erroneously convicted person, a claimant must
21 prove the following by a preponderance of the evidence:

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

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26 ² Between 1994 and 2012, Los Angeles was terrorized by an unknown perpetrator commonly referred
27 to as the Teardrop Rapist. The Teardrop Rapist was linked to approximately 39 sexual assaults
28 through DNA.

1 A finding of factual innocence from the court is sufficient grounds for payment of
2 compensation for a 4900 claim. Because the provisions of section 861.865 or 1485.55 apply in this
3 claim, Vargas is entitled to compensation at the rate of \$140 per day for the 6,334 days he served in
4 custody beginning from the date of his arrest⁴ until his release from state prison.⁵ The Board
5 recommends to the Legislature that it appropriate \$886,760 to compensate Vargas for the injury he
6 suffered as a result of this erroneous conviction.

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9 Date: October 10, 2016



10 Kyle Hedum
11 Hearing Officer
12 California Victim Compensation Board
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25 ³ Pen. Code, § 4903.

26 ⁴ Penal Code section 4904 states that the \$140 per day in compensation "shall include any time spent
27 in custody, including in a county jail, that is considered to be part of the term of incarceration."

28 ⁵ Pen. Code, § 4904.