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

In the Matter of the Claim of:

Isaiah Barrett

Claim No. G580801

Notice of Decision

On May 20, 2010, the California Victim Compensation and Government Claims Board adopted the attached Proposed Decision of the Hearing Officer as its Decision in the above-referenced matter.

Date: May 20, 2010



Tisha Heard
Board Liaison
California Victim Compensation and
Government Claims Board

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

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11 In the Matter of the Claim of:

12 **Isaiah Barrett**

13 Claim No. G580801

Proposed Decision

(Penal Code § 4900 et seq.)

14
15 **Introduction**

16 A telephonic hearing on this claim was held on August 10, 2009, in Sacramento, California, by
17 Roslyn Mack, the Hearing Officer assigned to hear this matter by the Executive Officer of the
18 California Victim Compensation and Government Claims Board.

19 The claimant, Isaiah Barrett, represented himself.

20 The California Department of Justice, Office of the Attorney General (Attorney General) was
21 represented by Michael Farrell, Esq.

22 The record remained open for the submission of additional evidence and argument and closed
23 on February 18, 2010.

24 After consideration of all the evidence, it is determined that Barrett failed to prove by a
25 preponderance of the evidence that he was imprisoned in state prison as a result of an erroneous
26 conviction. Thus, the Hearing Officer recommends that Barrett's claim for compensation under Penal
27 Code section 4900 be denied.

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1 **I. Procedural History**

2 In 1974, Barrett and a co-defendant were charged with forcibly carrying a person from one
3 place to another place within the county, unlawful sexual intercourse, unlawful sexual intercourse with
4 a female less than 18 years of age, sodomy, and oral copulation by means of force, violence, and
5 duress.¹ In 1975, Barrett pled guilty to violating Penal Code section 288a (oral copulation with no
6 force involving an adult female) and was sentenced to probation. Barrett was ordered to register as a
7 sex offender pursuant to Penal Code section 290. Barrett also filed a notice stating that he knew he
8 was required to register as a sex offender.

9 In 1975, the California Legislature decriminalized the act of oral copulation between
10 consenting adults, the crime for which Barrett was convicted. In 1998, Penal Code section
11 290(a)(2)(F)(i) was enacted which provided, in pertinent part:

12 "Notwithstanding any other subdivision, a person who was convicted before January 1, 1976,
13 under subdivision (a) of Section 286, or Section 288a, shall not be required to register
14 pursuant to this section for that conviction if the conviction was for conduct between
15 consenting adults that was decriminalized by Chapter 71 of the Statutes of 1975 or Chapter
16 1139 of the Statutes of 1976.²

17 The statute also provided that an individual could remove his name from the sex offender registry by
18 submitting a declaration and official documentation to the Department of Justice, supporting that his
19 conviction was for conduct between consenting adults that has been decriminalized.³ Barrett did not
20 take any steps to remove his name from the sex offender registry.

21 In 2004, Barrett was charged with failure to register as a sex offender based on his 1975
22 conviction. Barrett was represented by a public defender who advised him to plead guilty in order to
23 avoid prison time. The public defender did not tell Barrett that he was no longer required to register.
24 Barrett was dissatisfied with the public defender and asked the court to appoint a new attorney. The
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27 ¹ Pen. Code, §§ 207, 261.3, 261.5, 286, and 288a.

28 ² Stats. 1997, ch. 821, effective on January 1, 1998.

29 ³ *Ibid.*

1 court denied Barrett's motion for new counsel, and on August 24, 2004, Barrett pled guilty to violating
2 Penal Code section 290 in exchange for 90 days in county jail and three years probation.

3 In January 2007, Barrett was convicted of making terrorist threats and obstruction and resisting
4 an executive officer and sentenced to prison for two years.⁴ Barrett was subsequently sentenced to
5 state prison for parole violations on the following dates. On October 24, 2007, Barrett was found to
6 have violated his parole by failing to register as a sex offender when he moved to a new residence, and
7 he served 45 days in state prison. On August 11, 2008, Barrett was arrested for violating Jessica's
8 Law⁵ for residing within 2,000 feet of a public school or park and for other violations and his parole was
9 revoked again. As a result of this violation, Barrett spent an additional 151 days in two state prisons
10 from August 11, 2008, to January 8, 2009. Eventually, Barrett's conviction for violating Penal Code
11 section 290 was overturned, and he subsequently timely filed his petition for compensation under Penal
12 Code section 4900. He is requesting compensation for 196 days in state prison.

13 **II. Barrett's Testimony and Argument.**

14 Barrett registered as a sex offender intermittently between the years of 1997 through 2006. He
15 testified that, when he was arrested in 2004 for failing to register, he was not aware that he was no
16 longer required to register. He pled guilty, to avoid going to prison, only after the court denied his
17 request for a new attorney. Barrett asserts that his attorney was ineffective, and that he would not have
18 pled guilty if his attorney had advised him that he was not required to register. Barrett acknowledged
19 that he is familiar with judicial plea forms, but he argued that he initialed all the plea form
20 admonishments under pressure.

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23 ⁴ Pen. Code, §§ 69, 422.

24 ⁵ The California Department of Corrections and Rehabilitation ("CDCR") provides the following
25 information on its website at http://www.cdcr.ca.gov/Parole/Sex_Offender_Facts/Jessicas_Law.html
26 regarding its enforcement of Jessica's Law. Proposition 83, commonly referred to as Jessica's Law,
27 was passed by voters on Nov. 7, 2006. In relevant part, it prohibits sex offenders from living within
28 2,000 feet of any school and park, and mandates Global Positioning System supervision for life. CDCR
29 Parole agents are responsible for enforcing the terms and conditions of Jessica's Law while a parolee
is under the State's jurisdiction. Parolees found to be in non-compliant housing can be arrested for
violating the terms and conditions of their parole, and referred to the Board of Parole Hearings for a
revocation hearing, and possibly returned to prison.

1 In October 2006, when Barrett was facing new charges for making criminal threats, he learned
2 from an attorney that he was no longer required to register as a result of his 1974 conviction. Barrett
3 testified that he suffered greatly as a result of being labeled a sex offender. He was imprisoned for
4 parole violations, was required to wear a tracking device, was unable to go home to his family, could
5 not live near a school or park, was fired from a job, and was unable to travel to the current hearing
6 because his parole officer could not supervise him as required by the registration.

7 Barrett acknowledged that he was convicted for fraud in 2001, and possibly theft and burglary
8 between 1990 and 1993. He was also convicted and sentenced to prison for making criminal threats.

9 In a letter dated March 18, 2010, Barrett noted that his name was still listed on the sex offender
10 registry as a result of his 1974 conviction.

11 **III. The Attorney General Recommendation.**

12 The Attorney General made the following arguments against compensating Barrett. Barrett's
13 conviction for violating Penal Code section 290 was not erroneous. If a defendant does not take
14 affirmative steps to remove his name from the registry, he is still required to register. Because Barrett
15 did not seek to remove his name from the registry, his conviction was proper. Further, Barrett
16 contributed to his conviction by pleading guilty to failure to register as a sex offender. When he
17 admitted his guilt in 2004, Barrett signed a change of plea form stating that his plea was free and
18 voluntary and that he understood all the issues addressed in the plea form. This voluntary plea clearly
19 establishes that Barrett contributed to his conviction.

20 Second, Barrett did not serve any time in prison pursuant to this conviction. Barrett was given
21 credit for time served in jail pending his entry of plea, and he was released from custody the same day
22 that his plea was accepted by the court. Time served as a result of his subsequent parole violations is
23 not time served pursuant to a conviction.⁶

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29 ⁶ People v. Guzman (2005) 35 Cal.4th 577, 590.

Findings

A preponderance of the evidence supports the following findings:

1. In 1974, Barrett was convicted of violating Penal Code section 288a (oral copulation involving an adult woman with no force) and he was ordered to register as a sex offender under Penal Code section 290.
2. In 1975, the act of oral copulation between consenting adults was decriminalized.
3. Barrett registered as a sex offender at various times from 1997 through 2006.
4. Prior to his conviction in 2004 for violating Penal Code section 290, Barrett did not take any steps to remove his name from the sex offender registry.
5. In 2004, Barrett voluntarily pled guilty to failure to register as a sex offender and he was given credit for time served in county jail.
6. Barrett subsequently served time in state prison for parole violations arising out of his 2004 Penal Code section 290 conviction.
7. Barrett's name is still listed on the sex offender registry.

Determination of Issues

Penal Code section 4900 provides that any person erroneously convicted of any felony and sentenced to prison may present a claim to the Board for the pecuniary injury sustained as a result of the erroneous conviction. Penal Code section 4903 establishes the requirements which the claimant must satisfy in order to state a successful claim. The claimant must prove all of the following by a preponderance of the evidence:

- 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.⁷

⁷ *Diola v. Board of Control* (1982) 135 Cal.App.3d 580, 588, fn 7; *Tennison v. Victim Compensation and Government Claims Board* (2000) 152 Cal. App. 4th 1164.

1 Preponderance of the evidence means evidence that has more convincing force than that opposed to
2 it.⁸ All of the elements of Penal Code section 4900 must be proven in order for the Board to approve
3 the claim.

4 In evaluating a claim, the following factors may be considered by the Board but will not be
5 deemed sufficient evidence to warrant the Board's recommendation that the claimant be indemnified
6 in the absence of substantial independent corroborating evidence that the claimant is innocent of the
7 crime charged:

- 8 (1) claimant's mere denial of commission of the crime for which he was convicted;
- 9 (2) reversal of the judgment of conviction on appeal;
- 10 (3) acquittal of claimant on retrial; or
- 11 (4) the failure of the prosecuting authority to retry claimant for the crime.⁹

12 Finally, the Board may consider any information that it deems relevant to the issue before it.¹⁰ If the
13 claimant meets his burden of proof, the Board shall recommend to the Legislature that an appropriation
14 of \$100.00 per day of incarceration served after the conviction be made for the claimant.¹¹

15 Here, Barrett failed to meet his burden of proving that he is eligible for compensation under
16 Penal Code section 4900 because he failed to prove that he was erroneously convicted. Prior to his
17 conviction in 2004, Barrett was aware that he was identified as a sex offender who must register.
18 Effective 1998, persons who were previously convicted of oral copulation between consenting adults
19 were no longer required to register and could remove their name from the sex offender registry by
20 following a specific procedure. However, Barrett name still appeared on the sex offender registry, and
21 he did not present any evidence that he took steps to have his name removed. He should have
22 continued to register or he should have taken steps to address the sex offender registration
23 requirement. Following his arrest in 2004, Barrett questioned his attorney's representation and yet he
24 pled guilty. Instead of accepting a plea bargain, Barrett could and should have proceeded to trial.

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26 ⁸ *People v. Miller* (1916) 171 Cal. 649, 652.

27 ⁹ Cal. Code Regs., tit. 2, § 641.

28 ¹⁰ Cal. Code Regs., tit. 2, § 641.

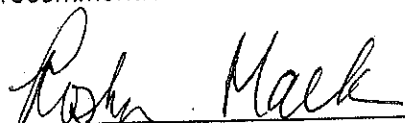
29 ¹¹ Pen. Code, § 4904.

1 Therefore, it is also determined that Barrett did not prove by a preponderance of the evidence that he
2 did not, either intentionally or negligently, contribute to his arrest for that offense.¹²

3 **Recommendation**

4 Because it is determined that Barrett was not imprisoned in state prison as the result of an
5 erroneous conviction and that he contributed to his arrest, Barrett is not eligible for compensation
6 under Penal Code section 4900 et seq. Thus, it is recommended that his claim be denied

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8 Date: March 26, 2010

9 
10 Roslyn Mack
11 Hearing Officer
12 California Victim Compensation and
13 Government Claims Board

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28 ¹² The Attorney General further argues that the time that Barrett served in prison as a result of parole
29 violations was not time served pursuant to a conviction. However, because Barrett failed to meet his
burden, this issue is rendered moot.