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

9 In the Matter of the Claim of:

10 **Michael Cox**

11 Claim No. G 517216

Proposed Decision
(Penal Code § 4900 et seq.)

12 A hearing on this claim was held on October 28, 2002, in Sacramento, California, by
13 Judith A. Kopec, Hearing Officer, who was assigned to hear this matter by the Executive Officer of the
14 California Victim Compensation and Government Claims Board (Board).

15 The claimant, Michael Cox, was present.

16 The Attorney General was represented by Deputy Attorney General Michael Farrell.

17 **Findings of Fact**

18 1. Michael Cox was convicted of possessing methamphetamine for sale [Health and
19 Safety Code, section 11378] and possession of narcotics paraphernalia [Health and Safety Code,
20 section 11364], two felonies. On November 1, 1999, Mr. Cox was sentenced to six years in prison:
21 two years for the drug possession count, a three year enhancement for a prior narcotics conviction, and
22 a one year enhancement for a prior prison term. On November 1, 2000, the Court of Appeal, Fourth
23 Appellate District, reversed the conviction and remanded the case for a new trial. On February 13,
24 2001, the charges were dropped and on February 17, 2001, Mr. Cox was released from prison.
25 Mr. Cox filed this claim on July 23, 2001.

26 2. The Court of Appeal reversed the conviction and remanded the case for a new trial
27 because the prosecution failed to disclose the identity of a confidential informant that was determined
28 to be a material witness.
29

1 3. According to the Deputy District Attorney who originally prosecuted the case, the
2 District Attorney decided not to re-try Mr. Cox for several reasons. Mr. Cox's co-defendant had
3 already served her time and it did not make sense to try her again.¹ The confidential informant was in
4 a rehabilitation program and her parole agent was not going to reveal her whereabouts. And, it was
5 likely that the confidential informant was not going to cooperate with a new trial.

6 4. In the afternoon of June 4, 1999, a parole agent searched the room that Mr. Cox shared
7 with his girlfriend, Julie Richardson. They had moved into the house several days earlier. Their
8 housemate, Linda Slack, was the only one present at the time of the search. The officers found
9 4.95 grams of methamphetamine, 49 plastic baggies, a pipe, a portable torch tip, two scales, and a
10 razor blade in their room.

11 5. Mr. Cox testified that the drugs and drug paraphernalia found during the search were
12 not his. He said that they were not in his room when he left that morning between 7:30 and 8:30 a.m.
13 There was evidence at trial challenging Mr. Cox's story that he and his girlfriend left the house early
14 that morning. Ms. Slack testified that they left shortly before law enforcement arrived. A law
15 enforcement officer conducting the search testified that he saw Mr. Cox's truck at the house between
16 11:00 a.m. and 12:30 p.m. before the search.² The defense attempted to show at trial that the drugs
17 and paraphernalia belonged to Ms. Slack.

18 6. Mr. Cox testified that he and his girlfriend moved into the bedroom previously
19 occupied by Sandy Russell, who was also on parole. Ms. Russell was the confidential informant who
20 told her parole agent that drugs were at the house. Although Ms. Russell had been told to move out of
21 the house, some of her clothing was still in Mr. Cox's bedroom and she sometimes slept in another
22 room in the house. Ms. Russell was at the house the evening before the search, but Mr. Cox did not
23 see her before he left the house the morning of the bust. Mr. Cox denied seeing Ms. Russell use
24 methamphetamine while he lived in the house. He said that his girlfriend admitted using
25 methamphetamine with Ms. Russell on one occasion, but Mr. Cox did not see it.

26
27 ¹ Ms. Richardson was convicted of the same two offenses as Mr. Cox. She was placed on probation for three years
conditioned on serving one year in local custody.

28 ² The law enforcement officer's testimony about Mr. Cox's truck is cited in the unpublished appellate court decision. It was
29 stricken by the trial court because it touched upon the issue of the confidential informant's identity, an issue which is not
pertinent to this proceeding.

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In the Matter of the Claim of:
Michael Cox
Claim No. G 517216

Notice of Decision

On November 22, 2002, 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. The Decision became effective on November 22, 2002.

Date: November ____, 2002

CATHERINE CLOSE
Chief Counsel
California Victim Compensation
and Government Claims Board