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

In the Matter of the Claim of:
Raynard Darrett

Proposed Decision
(Penal Code § 4900 et seq.)

Introduction

A telephonic hearing on Raynard Darrett's claim for compensation as an erroneously convicted person was conducted on July 24, 2012. Kyle Hedum was assigned to hear this matter by the Executive Officer of the California Victim Compensation and Government Claims Board. Darrett appeared in pro per. The California Department of Justice, Office of the Attorney General (AG), was represented by Jennifer Poe. The record remained open until August 31, 2012, to allow the claimant to provide additional evidence in support of his claim. Nothing further was received and the record was closed.

After considering all the evidence, it is determined that Darrett has not proven by a preponderance of the evidence that he did not, by any act or omission on his part, intentionally contribute to the bringing about of his arrest or conviction for the crime. Therefore, it is recommended that Darrett's claim for compensation pursuant to Penal Code section 4900 et seq. be denied.

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1 **Background¹**

2 On May 15, 1990, Darrett was convicted of violating section 288(a) (lewd act upon a child), a
3 felony requiring lifetime sex offender registration. Darrett was required to register annually within five
4 days of his birthday (May 31).² In addition to the annual registration requirement, Darrett was also
5 required to register every 30 days if he did not have a permanent address.³

6 Beginning in 1993 and continuing until February 2005, Darrett registered using either his
7 mother's address in Fresno, California, or his sister's address in Highland, California. On December
8 21, 2004, Darrett registered at the sheriff's station in Highland, California (Highland Station) and
9 provided both his sister's address in Highland and his mother's address in Fresno. Darrett
10 subsequently registered at the Highland Station with only his sister's address on January 26, 2005,
11 and February 10, 2005.

12 In February 2005, Darrett obtained employment as a truck driver. His truck yard was in
13 Bloomington, California, which is approximately 10 miles from the Highland Station. On May 5, 2005,
14 Darrett registered as a transient at the Highland Station and acknowledged the requirement that as a
15 transient he was required to register monthly even if he was travelling out of state. He also
16 acknowledged the requirement that he had to register annually within five working days of his
17 birthday whether or not he was a transient or had a California residence.

18 On June 2, 2005, the sex offender registration clerk for the Highland Station asked a sheriff's
19 deputy to contact Darrett to remind him that he needed to complete his annual registration and, if he
20 was still transient, his monthly registration. The deputy contacted the director of the company that
21 employed Darrett. Darrett was apparently on the road, so the director sent Darrett a message to
22 have him contact the registration clerk.

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24 ¹ The background is based on claim-related documents provided by the claimant and the AG, including
25 an appellate opinion and transcripts.

26 ² This five-day period included five working days before and after Darrett's birthday, for a total of 10
27 working days.

28 ³ The 30-day registration is termed a transient registration and did not have a grace period attached.

1 Darrett called the registration clerk on Friday, June 3, 2005, and said that he would not be
2 able to register because he was in Montana. The clerk told him that if he failed to register, an arrest
3 warrant would be issued. She also told Darrett that he could register wherever he was located.
4 Darrett called the police department in Bozeman, Montana and was told that Montana did not register
5 transients. Darrett then called the Montana Attorney General's Office to see if there was another
6 location where he could register. Darrett was informed that the Bozeman Police Department could
7 not refuse his request to register. That same day (June 3, 2005), Darrett went to the Bozeman Police
8 Department and an officer told him that he could not register Darrett at that time and asked him to
9 return on Thursday, June 9, 2005. Darrett did not return to the Bozeman Police Department until the
10 late afternoon on Friday, June 10. A Bozeman Deputy Chief assisted Darrett and instructed him on
11 how to register. Darrett told the deputy chief that he was staying at a local motel and the deputy chief
12 told Darrett that he would need a permanent address to register. Darrett told him that all he had was
13 a motel room for the night since he was a truck driver. The deputy chief advised Darrett to contact
14 the detective who typically handled registrations and provide him with a permanent address;
15 otherwise, Darrett would not be in compliance with Montana law. Darrett told the deputy chief that he
16 wanted to find a residence in Montana. He completed the fingerprint and photographing process, but
17 never provided a permanent address.

18 On June 22, 2005, a detective from the San Bernardino Sheriff's Department contacted
19 Darrett's employer and was told that Darrett was assigned to a specific truck number and that each
20 truck had Global Positioning Satellite technology. The detective was told that Darrett and his truck
21 had been at the truck yard in Bloomington, California on May 25 through May 27, 2005. Thus, Darrett
22 was within approximately 10 miles of the Highland Station during those dates.

23 The detective contacted Darrett at the Bloomington truck yard on June 28, 2005. At first,
24 Darrett told the detective he had registered as a sex offender in Bozeman, but he could not recall his
25 exact address there. Darrett then admitted that he did not complete the registration process because
26 he was a transient and Montana did not accept transients. Darrett told the detective that he left a
27 voicemail for the registration clerk on May 30 or May 31, 2005, informing her that he was going to
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1 move. The detective asked Darrett why he did not register and Darrett said that he had already
2 decided he was going to move to Las Vegas or Fresno. The detective asked Darrett why he went to
3 Bozeman to register and Darrett said he did so because Michelle J. told him that she would issue a
4 warrant for his arrest if failed to register. Darrett then said that he was thinking of moving to
5 Bozeman. The detective arrested Darrett for not complying with his sex offender registration
6 requirement.

7 At trial, an employee of Darrett's employer testified that he was in charge of all computer and
8 satellite communications with the trucks. He testified that according to his records, Darrett was in
9 Bloomington on May 27, 2005; Fresno on May 28 and 29; and Weed, California, on May 30, 2005.
10 Darrett then drove his truck to Oregon, Washington, and Montana.

11 Darrett testified at trial that he was aware of his obligation to register every year within five
12 working days of his birthday. He also testified that he knew that he had to register every 30 days if he
13 was a transient. He further testified that although the Bozeman Police Department instructed him to
14 return on Thursday, June 9, he did not return that day. He claimed that a Bozeman police officer
15 called him on June 8 and said that if he could not make it to the station on June 9, the officer would
16 leave a couple of detectives at the station on June 10 to register him.

17 Darrett admitted that he was in the Bloomington truck yard May 25 through May 27, 2005, and
18 that he knew that he could have registered during this period of time in order to be in compliance with
19 his annual registration requirement.⁴ He also admitted that he knew that because he was a transient,
20 he also had to register every 30 days.⁵

21 Darrett also testified that in May and June 2005, he did not have a home address. He slept in
22 his truck since he was on the road almost every day. He left Bloomington on May 27 and drove to
23 Fresno and stayed at his mother's house until May 29. When questioned why he did not register
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25 ⁴ Since Darrett's birthday was on May 31, he had five working days before and five working days after
26 his birthday to timely register.

27 ⁵ Darrett originally registered as a transient on May 5, 2005, so his monthly transient registration was
28 due no later than June 4, 2005.

1 before he left the Highland Station/Bloomington area on May 27, Darrett said there was "no really
2 significant reason why [he] didn't go in." Darrett said that he had decided that 30 days was "just too
3 much for [him] to keep [going] back to California to register." Darrett also claimed that he told the
4 registration clerk that he was either going to move back to Fresno or out of state.

5 A jury found Darrett guilty of failing to register as a transient sex offender⁶ and for failing to
6 update his annual sex offender registration.⁷ Darrett subsequently admitted that he had a prior strike
7 conviction for committing a lewd act upon a child in violation of section 288(a) and stipulated that this
8 conviction required lifetime sex offender registration. The trial court sentenced him to a total term of
9 four years in state prison, which consisted of two years on count two, doubled because of the strike
10 conviction, plus a 180-day county jail term on count one, which the court ordered to run concurrent to
11 the term on count two.

12 The appellate court subsequently held that Darrett's felony conviction for failing to update his
13 annual sex offender registration should be reversed because the annual sex registration requirement
14 applied to sex offenders who had an address in California at which they regularly resided. The court
15 determined that the prosecutor had not produced sufficient evidence that Darrett regularly resided at
16 an address in California at the time he filed his transient registration.

17 The court did not disturb the misdemeanor conviction for failing to register as a transient sex
18 offender. The court determined that Darrett willfully failed to fulfill his 30-day sex offender registration
19 requirement because he knew that he was required to register by June 4, 2005. When Darrett
20 registered as a transient, he initialed the portion of the form indicating that he read the registration
21 requirements. In doing so, he acknowledged the requirement that he had to update his transient
22 registration information "at least once every 30 days." Because Darrett last registered as a transient
23 at the Highland Station on May 5, 2005, he was required to reregister by June 4. The court noted
24 that at trial Darrett was asked why he did not register before he left the Highland Station/Bloomington
25 area on May 27, knowing that his 30-day registration was due on June 4. Darrett testified that there

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27 ⁶ Count 1: Pen. Code, § 290(a)(1)(C)(i), a misdemeanor.

28 ⁷ Count 2: Pen. Code, § 290(a)(1)(D), a felony.

1 was no really significant reason why he didn't go in. He also left a voicemail message for the
2 registration clerk on May 31 telling her that he was not going into the Highland Station to register
3 because he had decided that 30 days was just too much for him to keep going back to California to
4 register.

5 Hearing Testimony

6 Darrett testified to the following information at his hearing. Darrett argued that the court's
7 order acquitting him of count two was sufficient proof that he did not commit the crime with which he
8 was charged and convicted. He also argued that even though he was convicted of a misdemeanor
9 for failing to timely register as a transient, that does not mean that he intentionally contributed to his
10 arrest or conviction. He argued that he was in communication with the registration clerk and that she
11 advised him to register where he was located. Since he was attempting to register, he should not be
12 found to have failed to register.

13 Darrett also testified that he should not be liable for the mistakes a prosecutor made when she
14 charged him with a felony count of failing to timely complete his annual registration as a resident
15 instead of charging him with failing to timely complete his annual registration as a transient.⁸

16 Since the court ultimately determined that he had only committed a misdemeanor for failing to
17 update his transient registration, Darrett argued that he should be compensated in the amount of
18 \$64,100.00 for the 641 days he was incarcerated in a California state prison.⁹

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23 ⁸ This argument recognizes the fact that in addition to registering monthly if he was a transient, Darrett
was also required to register annually as either a resident or as a transient.

24 ⁹ Assuming Darrett was eligible for compensation, his calculation of pecuniary damages is incorrect.
25 Darrett contends that he spent 641 days in prison as a result of his conviction for count two, from April
26 30, 2007, to his date of discharge, January 21, 2009. However, the number of days from April 30, 2007
27 to January 21, 2009 is 632 days. Also, claimant was released on parole on May 29, 2008, only to be
28 returned to prison on July 18, 2008. It then appears he was transferred into local custody on January
13, 2009, and discharged entirely on January 21, 2009, for a total of 574 days.

1 **AG's Response**

2 The AG's office provided the following information at Darrett's hearing. Darrett's acquittal
3 along with the appellate court's reversal on grounds of insufficient evidence established only that the
4 evidence was not sufficient to sustain a conviction beyond a reasonable doubt. He was not
5 determined to be factually innocent of the crime for which he was incarcerated in a state prison. In
6 addition, the acquittal and reversal did not provide sufficient evidence that the claimant did not
7 intentionally contribute to the bringing about of his or her arrest or conviction for the crime.

8 In fact, the testimony at trial demonstrated just the opposite. Darrett did not register at
9 Highland Station or any other location when he had the opportunity to do so prior to the expiration of
10 the 30-day transient registration period and prior to the expiration of the annual registration period.
11 This failure to register was not accidental or beyond Darrett's control. Darrett called the registration
12 clerk and left a voicemail saying that he was not going into the Highland Station to register, that 30
13 days was "just too much for [him] to keep [going] back to California to register," and that he was
14 moving to Fresno or out of state.

15 Although there is evidence that Darrett attempted to register as a sex offender in Montana, the
16 fact remains that he did not do so. As pointed out by the court of appeal, "claimant never made the
17 effort to complete the registration process in Montana." The court of appeal also noted that even if he
18 had returned with a permanent address, "it would have been long past the due date of June 4."

19 Darrett also knew that if he moved out of state, which on several occasions he told law
20 enforcement he was going to do, he was required to notify law enforcement within five working days
21 by providing his planned destination, residence or location and any plans to return to California.¹⁰

22 Looking at the statutory scheme governing registered sex offenders, it is important to note that
23 there is a felony statute that requires transients to register annually in addition to monthly. Penal
24 Code section 290(a)(1)(C)(iii) requires an offender to update his registration within five working days
25 of his birthday, but applies to those "living as a transient in California" rather than those residing in
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28 ¹⁰ Pen. Code, § 290, subd. (a)(1)(C)(vi).

1 California.¹¹ Darrett admitted at trial that he was transient and had registered as such on May 5,
2 2005. The remaining elements, knowing of his duty to register and willfully failing to update his
3 annual registration, were the same for both residents and transients, and in Darrett's case, were
4 found beyond a reasonable doubt and upheld on appeal for count one. Thus, a rational jury could
5 have concluded that Darrett failed to complete his annual registration as a transient. While he was
6 not guilty of violating Penal Code section 290(a)(1)(D), Darrett clearly could have been successfully
7 prosecuted under Penal Code section 290(a)(1)(C)(iii). Whether Darrett had a residence or was a
8 transient is meaningless for purposes of this analysis; the culpability remains the same. At most, the
9 record reveals a charging error. Darrett should not recover a windfall as a result.

10 **Determination of Issues**

11 Penal Code section 4903 establishes the requirements for a successful claim for those
12 individuals who contend that they have been imprisoned as a result of an erroneous conviction. In
13 order to be successful on such a claim, a claimant must prove the following by a preponderance of
14 the evidence:

- 15 (1) that the crime with which he was charged was either not committed at all, or, if committed,
16 was not committed by him;
- 17 (2) that he did not by any act or omission on his part, intentionally contribute to the bringing
18 about of his or her arrest or conviction for the crime; and
- 19 (3) that he sustained a pecuniary injury through his erroneous conviction and imprisonment.¹²

20 "Preponderance of the evidence" means evidence that has more convincing force than that
21 opposed to it.¹³ If a claimant meets his burden of proof, the Board shall recommend to the legislature
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24 ¹¹ Pen. Code, § 290, subd. (a)(1)(C).

25 ¹² Pen. Code, § 4903, *Tennison v. Victim Compensation and Government Claims Board* (2006) 152
26 Cal. App. 4th 1164.

27 ¹³ *People v. Miller* (1916) 171 Cal. 649, 652; (*Diola v. State Board of Control* (1982) 135 Cal.App.3d
28 580, 588 fn. 7).

1 that an appropriation of \$100.00 be made for each day of incarceration in prison served subsequent
2 to the claimant's conviction.¹⁴

3 In reaching its determination of the merits of the claim, the Board may consider the claimant's
4 mere denial of commission of the crime for which he was convicted, reversal of the judgment of
5 conviction on appeal, acquittal of the claimant on retrial, or the failure of the prosecuting authority to
6 retry claimant for the crime. However, those factors will not be deemed sufficient evidence to warrant
7 the Board's recommendation that a claimant be indemnified in the absence of substantial independent
8 corroborating evidence that the claimant is innocent of the crime charged.¹⁵ The Board may also
9 consider as substantive evidence testimony of witnesses the claimant had an opportunity to cross-
10 examine, and evidence to which the claimant had an opportunity to object, admitted in prior
11 proceedings relating to the claimant and the crime with which he was charged. Finally, the Board may
12 also consider any information that it may deem relevant to the issue before it.¹⁶

13 The evidence showed that Darrett began his attempt to update his registration only after the
14 registration clerk contacted him on June 3, 2005, to tell him he had to register or else an arrest
15 warrant would be issued. Darrett told her he would not be able to come in to register because he was
16 in Montana, so he was instructed to register wherever he was located. The Bozeman police initially
17 told Darrett on the telephone that they did not register transients; however, when he went to the
18 station in person, they said they could register him but that he would have to register on Thursday,
19 June 9, between 1:00 p.m. and 3:00 p.m. Darrett failed to return on June 9, apparently because he
20 was traveling that day. He returned the following day to start the registration process. The deputy
21 chief testified that he instructed Darrett to provide a permanent address in Montana or else he would
22 not be in compliance with the law. Darrett did not give a permanent address that day nor did he
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25 ¹⁴ Pen. Code, § 4904.

26 ¹⁵ Cal. Code Regs., tit. 2, § 641; *Tennison v. Victim Compensation and Government Claims Board*
27 (2006) 152 Cal. App. 4th 1164.

28 ¹⁶ Cal. Code Regs., tit. 2, § 641.

1 return to provide one. Thus, although Darrett did make some efforts to register, he never completed
2 the registration process in Montana.

3 Additionally, the GPS records indicated that Darrett was within 10 miles of the Highland
4 Station on May 25 through May 27, 2005. He left Montana on June 3, 2005, and then made various
5 stops in Indiana, Michigan, Illinois, and Minnesota before returning to Montana on June 10. Yet there
6 was no evidence that he tried to register in any of those states in order to meet his registration
7 requirements.

8 The Legislature has found and declared that sex offenders pose a high risk of recidivism and
9 keeping track of their whereabouts is necessary to protect the public.¹⁷ Tracking the whereabouts of
10 sex offenders is not easy because it is common for them to lead a transitory lifestyle or deliberately
11 attempt to keep their movements secret.¹⁸ Thus, the Legislature enacted Penal Code section 290 to
12 assure that persons convicted of the enumerated sex crimes be available for police surveillance at all
13 times because they are likely to commit similar offenses in the future.

14 The necessity of such a law is understood when looking at Darrett's choice of employment.
15 He was a truck driver who was on the road much of each month. Some of his travels included going
16 to the states of Washington, Oregon, and Montana. Due to the high risk of recidivism, law
17 enforcement had a vested interest in knowing Darrett's whereabouts. Thus, his failure to complete
18 the registration process in Montana, coupled with his actions in leaving the State of California and
19 communicating to law enforcement both his desire to move out of state, all contributed to his
20 investigation and ultimate arrest and conviction for failing to register as a sex offender.

21 It is therefore determined that the evidence is sufficient to prove that Darrett intentionally failed
22 to register as a transient. Even though his felony conviction was reversed, it is determined that his
23 actions clearly contributed to his arrest and conviction. He could have registered prior to leaving
24 California. He could have registered in Montana or a number of other states. However, he chose to
25 ignore his duty to register.

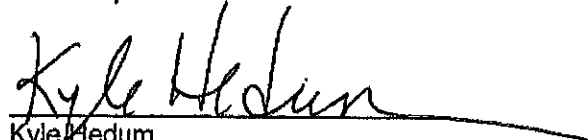
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27 ¹⁷ Stats.1996, ch. 908, § 1, pp. 5105-5106; see *Wright v. Superior Court* (1997) 15 Cal.4th 521, 527.

28 ¹⁸ *Wright v. Superior Court, supra*, 15 Cal.4th at p. 529.

1 Since Penal Code section 4900 et seq. provides compensation to those individuals who are
2 truly innocent of the crime or crimes for which they were incarcerated, Darrett's claim must fail. He
3 would not have been arrested and convicted had he obeyed the law. Instead, he went outside the
4 state of California after being warned that he would be arrested if he did not timely register. He made
5 an attempt to register in Montana, but never completed the process. During all this time, law
6 enforcement did not know his location and thus became concerned due to the nature of the
7 underlying crime. Therefore, it is determined that Darrett has not met his burden in proving by a
8 preponderance of the evidence that he did not, by any act or omission on his part, intentionally
9 contribute to the bringing about of the arrest or conviction for the crime with which he was charged.¹⁹

10 Darrett's claim under Penal Code section 4900 et seq. is denied.

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12 Date: September 27, 2012

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14 Kyle Hedum
15 Hearing Officer
16 California Victim Compensation and
17 Government Claims Board

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27 ¹⁹ It is therefore not necessary to determine if Darrett suffered a pecuniary injury.
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**BEFORE THE VICTIM COMPENSATION AND GOVERNMENT CLAIMS BOARD
OF THE STATE OF CALIFORNIA**

In the Matter of the Claim of:

Raynard Darrett

Notice of Decision

On December 13, 2012, 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: December 14, 2012



**Tisha Heard
Board Liaison
California Victim Compensation and
Government Claims Board**