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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 **Kenneth Faulkner**

11 Claim No. G 539298

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

12 A hearing on this claim was held on December 7, 2004, in Sacramento, California, by Julia  
13 V. Johnson, Hearing Officer, who was assigned to hear this matter by the Executive Officer of the  
14 Victim Compensation and Government Claims Board (Board).

15 The claimant, Kenneth Faulkner, was present and was represented by Ellen Ellison,  
16 Attorney.

17 The Attorney General's Office was present and was represented by Deputy Attorney  
18 General Jennifer Poe.

19 **Evidence Presented**

20 1. On May 8, 2000, Kenneth Faulkner was convicted of attempting to kidnap for the purpose  
21 of committing lewd and lascivious acts and falsely imprisoning Brandon M. (date of birth: August 30,  
22 1994) on November 25, 1999.<sup>1</sup> (Pen. Code, §§ 664 and 207, subd. (b).). Because the court found  
23 that Mr. Faulkner suffered prior strike convictions<sup>2</sup>, the court sentenced Mr. Faulkner to a total of  
24 thirty years to life in state prison.

25  
26 <sup>1</sup> Mr. Faulkner was also charged with, but found not guilty of, attempting to kidnap and falsely imprisoning Samantha S. (date  
of birth: December 17, 1990).

27 <sup>2</sup> The appellate court which overturned Mr. Faulkner's convictions in the instant case indicated that Mr. Faulkner's prior  
28 convictions included: 1) kidnapping and forced oral copulation, kidnapping "apparently with the intent to commit forced oral  
29 copulation," false imprisonment and assault which were committed in 1979; and 2) a "class 5 felony" for enticing two minors  
(ages sixteen and seventeen) to a motel room, attempting to get them intoxicated, and refusing to let the girls leave the motel  
room when they refused to have sex with him in 1993.

2 On April 10, 2003, the Fifth District Court of Appeal reversed Mr. Faulkner's conviction and  
3 remanded Mr. Faulkner to the Superior Court of Kern County for retrial based upon its finding that  
4 three witnesses on whom the People relied to prove the convictions lied at trial. The Court held that  
5 the lies by the witnesses undermined its confidence in the outcome of the trial. Mr. Faulkner was not  
6 re-tried for the offenses and was released from state prison on July 17, 2003. He was, therefore,  
7 incarcerated for a total of 1,165 days.

8 3. At Mr. Faulkner's May 2000 trial, half-sisters Samantha S. (date of birth: December 17,  
9 1990) and Breanna B. (date of birth: February 20, 1991) testified that they were playing in a parking  
10 lot together on November 25, 1999, when Mr. Faulkner approached them on his bicycle and offered  
11 them twenty dollars if they would come with him. Samantha S. also testified that Mr. Faulkner asked  
12 the girls their names and ages. Samantha S. and Breanna B. testified that Mr. Faulkner grabbed  
13 and/or picked Samantha S. up and put her on the handlebars of his bicycle. The testimony provided  
14 by Samantha S. and Breanna B. about what occurred after this point diverged.

15 4. Samantha S. testified at trial that she jumped off the bicycle and that she, Breanna B. and  
16 a friend, Tiffany G. (date of birth: December 9, 1989), ran to Breanna B.'s mother's house to tell her  
17 what occurred. Samantha S. further testified that Mr. Faulkner did not touch Tiffany G. or Breanna  
18 B., but picked up a boy, Brandon M., by the waist.

19 5. Breanna B. testified at trial that she and Samantha S. walked over to Tiffany G., who was  
20 playing with Brandon M. Breanna B. also testified that Mr. Faulkner offered Tiffany G. twenty dollars  
21 to accompany him to the store. Breanna B. further testified that Mr. Faulkner grabbed Brandon M. by  
22 the hand and Breanna B. and Samantha S. went to Breanna B.'s apartment and told her mother what  
23 happened.

24 6. Tiffany G. testified at trial that Mr. Faulkner approached her, Samantha S., Breanna B.,  
25 and Brandon M. in the parking lot, told them they were cute and asked them their names, ages, and  
26 if they wanted to go home with him. In addition, Tiffany G. testified that Mr. Faulkner picked up  
27 Samantha S. by her waist and put her on the handlebars of his bicycle. Tiffany G. also testified that  
28 Mr. Faulkner told Brandon M. that he liked Brandon M. and told Tiffany G. and Brandon M. that he  
29 wanted to take them home. Tiffany G. further testified that Mr. Faulkner grabbed Brandon M. by the  
arm and that Brandon M. started to scream.

1 7. Brandon M. testified at trial that he was playing in the parking lot when Mr. Faulkner  
2 approached him and asked him his name. Brandon M. also testified that Mr. Faulkner grabbed  
3 Brandon M.'s wrist and pulled him a short distance, and that Brandon M. threw a rock at Mr.  
4 Faulkner, causing Mr. Faulkner to release him.

5 8. Breanna B.'s mother, Carol P., testified at trial that, on November 25, 1999, Breanna B.  
6 and Samantha S. came into her apartment screaming that someone tried to kidnap them. Carol P.  
7 further testified that she followed Mr. Faulkner as he rode his bicycle away from the parking lot, that  
8 he stopped briefly at a religious revival, and that he rode to the house where he was staying. Carol  
9 P. also testified that her father talked to Mr. Faulkner when he reached the house where he was  
10 staying.

11 9. At trial, Sheriff's Deputy Eric Fennell testified that, upon being told that he was under  
12 arrest, Mr. Faulkner told him, "I didn't do anything." Deputy Fennell also testified that, when he told  
13 Mr. Faulkner he was going to be booked on three counts of kidnapping a child for sex crimes<sup>3</sup>, Mr.  
14 Faulkner asked if the children were going to court and whether the children said that he grabbed  
15 them. Additionally, Deputy Fennell testified that, at another point, Mr. Faulkner asked Deputy Fennell  
16 what he was being arrested for, and Deputy Fennell responded that he was being arrested for three  
17 counts of kidnapping a child for sex crimes. Deputy Fennell testified that Mr. Faulkner responded, "I  
18 had no sexual gratification [sic], so it didn't happen."

19 10. Samantha S., Breanna B., Tiffany G., and Brandon M. also testified that Mr. Faulkner  
20 was wearing different clothes when he rode into the parking lot than when he was arrested later that  
21 afternoon. The District Attorney argued at trial that Mr. Faulkner changed clothes when he went back  
22 to the house where he was staying because he was attempting to conceal evidence that would  
23 implicate him in the crimes.

24 11. According to a report by an investigator in the District Attorney's Office, Carol P. informed  
25 the investigator on September 26, 2000, that she had received a letter that Mr. Faulkner had sent to  
26 her and Brandon M.'s mom, Edie K. On September 26, 2000, Carol P. also informed the investigator  
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28 <sup>3</sup>Initially, Tiffany G. reported that Mr. Faulkner grabbed her hand. Law enforcement, therefore, arrested Mr. Faulkner for  
29 grabbing Tiffany G., Samantha S., and Breanna B. Nevertheless, the District Attorney later dropped the criminal charges  
related to Mr. Faulkner grabbing Tiffany G.

1 that Breanna B. had recanted the statements she made at trial. On September 27, 2000, and  
2 October 25, 2000, Breanna B. and Samantha S., respectively, recanted some of the statements they  
3 made at trial in interviews with the same investigator.

4 12. According to the Department of Justice transcriptions of its interview with Breanna B. on  
5 February 4, 2002, Breanna B. stated that someone had talked with her about letters that Mr.  
6 Faulkner had sent from prison.

7 13. On June 21, 2001, Mr. Faulkner filed a petition for writ of habeas corpus alleging that he  
8 was improperly incarcerated because at least some of the child witnesses had lied at his trial. Mr.  
9 Faulkner based his assertions that the child witnesses lied on the recantations of Breanna B. and  
10 Samantha S., as well as Mr. Faulkner's private investigator's assertion that Brandon M. told the  
11 investigator that Mr. Faulkner grabbed Brandon M. by the wrist because he was angry at Brandon M.  
12 for throwing rocks at him. The Kern County Superior Court held an evidentiary hearing on June 17,  
13 and 18, 2002.

14 14. At the evidentiary hearing, Samantha S. testified that Mr. Faulkner offered her and  
15 Breanna B. twenty dollars to go with him. Samantha S. also testified that Mr. Faulkner did not touch  
16 her. Samantha S. further testified that Brandon M. was throwing rocks toward Mr. Faulkner, and that  
17 Mr. Faulkner grabbed Brandon M. by the wrist.

18 15. At the same hearing, Breanna B. testified that Mr. Faulkner did not touch any of the  
19 children besides Brandon M. Breanna B. also testified that Brandon M. was throwing rocks around  
20 and that Mr. Faulkner grabbed his wrist.

21 16. Samantha S.'s mother, Bernice C., and Samantha S.'s grandmother, Maryann B.,  
22 testified at the evidentiary hearing that Samantha S. had exhibited behavioral problems in the past  
23 and that she had lied to law enforcement by telling them that her parents had abused her, which  
24 caused her to be removed from her parents' care until authorities determined that her report was  
25 false.

26 17. Tiffany G. testified at the evidentiary hearing that two older boys were throwing rocks at  
27 Mr. Faulkner, calling him names, and pulling his hair, but that Brandon M. was not throwing rocks at  
28 Mr. Faulkner. Tiffany G. also testified that Mr. Faulkner told her and Brandon M. that they were cute  
29

1 and asked if they wanted to go home with him. Tiffany G. further testified that Mr. Faulkner tried to  
2 put Samantha S. on his handlebars and that he grabbed Brandon M. by the wrist.

3 18. Brandon M. testified at the evidentiary hearing that Mr. Faulkner asked him and other  
4 children for their names and ages. Brandon M. also testified that Mr. Faulkner grabbed his wrist, and  
5 that he threw a rock at Mr. Faulkner when Mr. Faulkner grabbed his wrist. Brandon M. further  
6 testified that he did not throw any rocks at Mr. Faulkner before Mr. Faulkner grabbed him.

7 19. During the evidentiary hearing, Samantha S., Breanna B., and Tiffany G. all testified that  
8 Mr. Faulkner was wearing different clothes when he rode into the parking lot than when he was  
9 arrested later that afternoon. Brandon M. was not asked whether Mr. Faulkner had changed his  
10 clothes.

11 20. Also during the evidentiary hearing, Brandon M.'s mom, Edie K., testified that she  
12 received letters from Mr. Faulkner after he was sentenced for the crimes at issue. One of the letters  
13 was addressed to Edie K. and Carol P., Breanna B.'s mother, so Edie K. shared the letter with Carol  
14 P. Several letters sent by Mr. Faulkner to Edie K. and one letter sent by Mr. Faulkner to Carol P.  
15 were entered into evidence at the evidentiary hearing. In general, the letters to Edie K. consist of Mr.  
16 Faulkner stating that the children's testimony was false, appealing to Edie K.'s guilt about sending a  
17 man to prison and his death, and asking Edie K. to convince Brandon M. to tell the truth about what  
18 happened on November 25, 1999. In the letter to Carol P. and Edie K., Mr. Faulkner states that  
19 "maybe Sam & Breanna started it all b'cuz I asked them if they even knew what a virgin was & Sam  
20 said, 'it's a girl who hasn't had a baby yet['] & I corrected her & Breanna said, [']ooh, you're not a  
21 virgin anymore! Remember what that boy did to you?'" In the same letter to Edie K. and Carol P.,  
22 Mr. Faulkner states that if he receives a new trial, he "will have absolutely nothing to lose and ...  
23 intend[s] to totally destroy & traumatize those little amoral liars." In addition, two of the letters to Edie  
24 K. contain offers by Mr. Faulkner to provide Brandon M. and Edie K. with things (including a bicycle,  
25 a house, a car, and half of the money he will receive from the Board as an erroneously convicted  
26 felon) in exchange for Brandon M. admitting that he lied at trial.

27 21. After the evidentiary hearing, on April 10, 2003, the Fifth District Court of Appeal reversed  
28 Mr. Faulkner's conviction and remanded Mr. Faulkner for retrial, but the District Attorney's Office  
29 declined to re-try the case.

1 22. During the Board's hearing, Mr. Faulkner testified that, on November 25, 1999, he rode  
2 his bicycle in the parking lot where the children were playing at approximately 1:40 p.m. He testified  
3 that two girls (later identified as Samantha S. and Breanna B.) ran up to him in the parking lot,  
4 screaming that they wanted twenty dollars from him. Mr. Faulkner also testified that he asked  
5 Samantha S. and Breanna B. why he should give them twenty dollars, and that Samantha S.  
6 responded, "we'll do anything you want for twenty dollars." Mr. Faulkner testified that he asked the  
7 girls how old they were and that Samantha S. said fifteen and Breanna B. said sixteen, but he knew  
8 that they were lying. Mr. Faulkner testified that he asked the girls, "Do you know what you are  
9 saying?" In response to his testimony on this point, Ms. Poe asked Mr. Faulkner why he said that, to  
10 which Mr. Faulkner responded that when a woman tells him that she will do anything he wants, he  
11 understands it to be of a sexual nature. Mr. Faulkner also testified that he considered the girls'  
12 statement that they would do anything he wanted for twenty dollars to be a sexual proposition, but  
13 that the girls might not have understood that.

14 23. Mr. Faulkner initially testified that he did not have a conversation with Samantha S. or  
15 Breanna B. concerning virgins. Nevertheless, after Mr. Faulkner was confronted with the letter that  
16 he wrote to Brandon M.'s mother stating that he talked to the girls about the meaning of the word  
17 "virgin," Mr. Faulkner changed his testimony. Mr. Faulkner testified that he asked the girls whether  
18 they were virgins, and that they said yes. Mr. Faulkner also testified that he asked Samantha S. and  
19 Breanna B. if they knew what a virgin was, and that Samantha S. responded that it was a girl who  
20 has not had a baby yet, and that Mr. Faulkner replied, "No, it's not. It's a girl who hasn't had sex yet."  
21 Mr. Faulkner testified that Breanna B. said, "ooh, Sam, you're not a virgin anymore. Remember what  
22 that boy did to you."

23 24. Mr. Faulkner further testified that Samantha S. told him that she and Breanna B. wanted  
24 him to take off his clothes and they would take off their clothes. Mr. Faulkner also testified that  
25 Samantha S. told him that the girls would dance naked and orally copulate him.

26 25. In addition, Mr. Faulkner testified that Brandon M. ran up to him in the parking lot,  
27 grabbed the tire of Mr. Faulkner's bicycle, and told Mr. Faulkner to give Brandon M. his bicycle. Mr.  
28 Faulkner testified that he told Brandon M., "no," and that Brandon M. responded, "what if I just take  
29

1 it?" Mr. Faulkner also testified that he had no further conversation with Brandon M. and that he did  
2 not grab Brandon M. by the wrist or arm.

3 26. Mr. Faulkner testified that he did not see any children in the parking lot playing with  
4 rocks, that, to his knowledge, Brandon M. did not throw rocks at him, that he did not ask the children  
5 for their names, that he did not tell the children they were cute, and that he did not offer any of the  
6 children twenty dollars to go with him.

7 27. Mr. Faulkner testified that, after leaving the parking lot, he rode his bike leisurely,  
8 stopping for five minutes at a holiday gathering, and riding back to his grandmother's house. He also  
9 testified that, when he arrived at his grandmother's house a man told him that law enforcement was  
10 going to want to talk to him. Mr. Faulkner further testified that he was at his grandmother's house for  
11 fifteen minutes before law enforcement came to the house. Additionally, Mr. Faulkner testified that  
12 he did not change his clothes at his grandmother's house.

13 28. Mr. Faulkner testified that the law enforcement officers who investigated the reported  
14 November 25, 1999 crime lied in the crime report. Mr. Faulkner further testified that he was never  
15 advised of his *Miranda* rights and that the only thing he said to the officers when they arrested him  
16 was, "I didn't do anything."

17 29. Mr. Faulkner testified that he wrote the letters to Edie K. and Carol P. that were entered  
18 into evidence in the evidentiary hearing associated with Mr. Faulkner's petition for writ of habeas  
19 corpus.

20 30. Mr. Faulkner testified that he was convicted on kidnapping, forced oral copulation, false  
21 imprisonment and assault with a deadly weapon in 1979. Mr. Faulkner also testified that he was not  
22 convicted of the "class five felony" that the appellate court referenced as one of his prior strike  
23 convictions. Instead, Mr. Faulkner testified that he pled guilty to a charge of contributing to the  
24 delinquency of a minor, which he later found out was a misdemeanor and for which he later was  
25 released early from a six-year prison term.

26 31. Mr. Faulkner testified that, as a result of his wrongful incarceration, he suffered from  
27 symptoms related to Post Traumatic Stress Disorder (PTSD), he became afraid of people,  
28 particularly children and police, he was denied insurance, and he had items from his house stolen  
29 from his house, which had been damaged by a fire in May 1999. Nevertheless, Mr. Faulkner also

1 testified on cross-examination that he is not seeking damages for the items stolen from his house as  
2 a part of his claim in the instant case. Additionally, Mr. Faulkner further testified that, as of  
3 November 25, 1999, he was disabled and unemployed, he lived with his grandmother, and he did not  
4 own a car.

5 32. Ms. Ellison also argued that the letters that Mr. Faulkner sent from prison, including one  
6 indicating that he had gotten in a fight with an individual who was HIV positive, showed that he had  
7 suffered pecuniary injury.

8 33. Mr. Faulkner's testimony was not credible. Portions of Mr. Faulkner's testimony  
9 regarding the chain of events on November 25, 1999 were inconsistent with other portions of Mr.  
10 Faulkner's testimony regarding the same subject matter. Additionally, portions of Mr. Faulkner's  
11 testimony, including testimony regarding his interactions with Brandon M., Breanna B., and  
12 Samantha S. on November 25, 1999, were inherently improbable.

### 13 Findings of Fact

14 Based on the testimony of Kenneth Faulkner during the hearing and on the documentary  
15 evidence contained in the Board's file, substantial evidence supports each of the following findings of  
16 fact:

17 1. On November 25, 1999, Mr. Faulkner rode in on his bicycle to a parking lot, where he  
18 approached several minors, including eight-year-old Samantha S., eight-year-old Breanna B., nine-  
19 year-old Tiffany G., and five-year-old Brandon M., and asked them questions. In the parking lot, Mr.  
20 Faulkner also grabbed Brandon M. by the wrist, but Brandon M. broke free of Mr. Faulkner by using a  
21 rock to injure Mr. Faulkner.

22 2. Upon being told by a sheriff's deputy that he was going to be booked on three counts of  
23 kidnapping a child for sex crimes based upon his actions in the parking lot, Mr. Faulkner asked the  
24 deputy if the children were going to court and whether the children said that he grabbed them. Mr.  
25 Faulkner also asked the deputy what he was being arrested for. When the deputy responded that he  
26 was being arrested for three counts of kidnapping a child for sex crimes, Mr. Faulkner responded, "I  
27 had no sexual gratification [sic], so it didn't happen."

28 3. Mr. Faulkner was wearing different clothes when he rode into the parking lot than when he  
29 was arrested later in the afternoon of November 25, 1999.

1 4. During Mr. Faulkner's trial, Samantha S. and Breanna B. testified that Mr. Faulkner.  
2 grabbed Samantha S.

3 5. On May 8, 2000, Mr. Faulkner was convicted of attempting to kidnap for the purpose of  
4 committing lewd and lascivious acts and falsely imprisoning Brandon M., but was found not guilty of  
5 attempting to kidnap for the purpose of committing lewd and lascivious acts and falsely imprisoning  
6 Samantha S.

7 6. After the trial, Mr. Faulkner sent multiple letters to Brandon M.'s mother and at least one  
8 letter to Brandon M.'s mother and Breanna B.'s mother. In the letter to the mothers of Brandon M.  
9 and Breanna B., Mr. Faulkner stated that if he received a new trial, he "will have absolutely nothing to  
10 lose and ... intend[s] to totally destroy & traumatize those little amoral liars." In the letters to Brandon  
11 M.'s mother, Mr. Faulkner promised Brandon M. and his mother gifts in exchange for Brandon M.  
12 admitting he lied at trial.

13 7. After the trial, Samantha S. and Breanna B. recanted much of their testimony, including  
14 their testimony that Mr. Faulkner grabbed Samantha S.

15 8. On April 10, 2003, the Fifth District Court of Appeal reversed Mr. Faulkner's conviction and  
16 remanded Mr. Faulkner for retrial based upon its finding that Breanna B., Samantha S., and Tiffany G.,  
17 on whom the People relied to prove the convictions, lied at trial. Faulkner was not re-tried for the  
18 offenses and was released from state prison on July 17, 2003. Mr. Faulkner was, therefore,  
19 incarcerated for a total of 1,165 days.

20 9. As of November 25, 1999, Mr. Faulkner was unemployed.

21 10. Mr. Faulkner's testimony was not credible.

#### 22 **Determination of Issues**

23 1. In a Penal Code section 4900 claim, the claimant must prove: 1) that the crime with which  
24 he was charged was either not committed at all, or, if committed, was not committed by him; 2) that  
25 he did not by any act or omission on his part, either intentionally or negligently, contribute to the  
26 bringing about of the arrest or conviction for the crime; and 3) the pecuniary injury sustained through  
27 his erroneous conviction and imprisonment. (Pen. Code, § 4903.) If the claimant meets his burden  
28 of proof, the Board shall recommend to the legislature that an appropriation of \$100.00 per day of  
29 incarceration be made for the claimant. (Pen. Code, § 4904.)

1 2. "Pecuniary" is defined as monetary or relating to money. (See Black's Law Dict. (6<sup>th</sup> ed.  
2 1990) p. 1131, col.1.) "Pecuniary injury" is not defined in Penal Code sections 4900 *et seq.* and has  
3 not been defined in case law interpreting such statutes. It is assumed that anyone who has been  
4 incarcerated has suffered some type of injury. The fact that the injury that is required to be proved is  
5 "pecuniary" suggests that the injury must be based upon monetary damages.

6 3. In 2000, the erroneously convicted felons' rate of compensation was changed to \$100.00  
7 per day, which was based upon the amount of compensation that the California Department of  
8 Corrections (CDC) pays when it is unable to release a prisoner on his scheduled release date.  
9 (Assem. Com. On Public Safety, Analysis of Assem. Bill No. 1799 (1999-2000 Reg. Sess.) Feb. 29,  
10 2000, p.2.) Despite the fact that the legislature changed its rate of compensation to be based on the  
11 CDC rate (which does not require a showing of pecuniary loss), the legislature did not modify the  
12 requirement in Penal Code section 4903 that the claimant demonstrate that he suffered pecuniary  
13 injury. A reasonable conclusion to be drawn from the foregoing is that the pecuniary injury set forth  
14 in Penal Code section 4903 is not presumed and is based solely on monetary damages.

15 4. The claimant has the burden of proving his innocence by a preponderance of the  
16 evidence. (*Diola v. Board of Control* (1982) 135 Cal.App.3d 580, 588, fn 7.)

17 5. A habeas corpus proceeding is not a determination of innocence and the granting of the  
18 writ does not constitute an acquittal. (*In re Cruz* (2003) 104 Cal.App.4<sup>th</sup> 1339, 1246.) In reaching its  
19 determination of the merits of the claim, the Board may consider the following, but the following will  
20 not be deemed sufficient evidence to warrant the Board's recommendation that the claimant be  
21 indemnified in the absence of substantial independent corroborating evidence that the claimant is  
22 innocent of the crime charged: 1) claimant's mere denial of commission of the crime for which he  
23 was convicted; 2) reversal of the judgment of conviction on appeal; 3) acquittal of claimant on retrial;  
24 or, 4) the failure of the prosecuting authority to retry claimant for the crime. (Cal. Code Regs., tit. 2,  
25 § 641.4)

26 6. Testimony of witnesses claimant had an opportunity to cross-examine, and evidence to  
27 which claimant had an opportunity to object, admitted in prior proceedings relating to the claimant

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29 <sup>4</sup> All citations to regulations are to California Code of Regulations, title 2.

1 and the crime with which he was charged, may be considered by the Board as substantive evidence.  
2 The Board may also consider any information that it may deem relevant to the Issue before it. (Reg.,  
3 § 641.)

4 7. Penal Code section 207(b) prohibits every person who, for the purpose of committing any  
5 act defined in Penal Code section 288, hires, persuades, entices, decoys, or seduces by false  
6 promises, misrepresentations, or the like, any child under the age of fourteen years to go out of the  
7 country, state, or county, or into another part of the same county. Section 288 pertains to lewd and  
8 lascivious acts willfully committed against a child under the age of fourteen with the intent of  
9 arousing, appealing to, or gratifying the lust, passions, or sexual desires of that person or the child.

10 8. Penal Code section 664 prohibits persons from attempting to commit crimes that fail or are  
11 prevented or intercepted.

12 9. Penal Code section 236 defines false imprisonment as the unlawful violation of the  
13 personal liberty of another.

14 10. In the instant case, Mr. Faulkner did not prove that he did not falsely imprison or  
15 attempt to kidnap Brandon M. with the intent of arousing, appealing to, or gratifying the lust,  
16 passions, or sexual desires of Mr. Faulkner or Brandon M. Brandon M.'s testimony that Mr. Faulkner  
17 grabbed him remained consistent before and after his trial and is credible. On the other hand, Mr.  
18 Faulkner's testimony regarding what occurred on November 25, 1999, in the parking lot was not  
19 credible. Additionally, Finding of Fact number 2 supports that Mr. Faulkner grabbed Brandon M. for  
20 the purpose of committing lewd and lascivious acts against Brandon M.

21 11. The offer of a witness after a trial to retract his or her own sworn testimony is always  
22 viewed with suspicion. (*In re Weber* (1974) 11 Cal.3d 703, 724.) Breanna B.'s and Samantha S.'s  
23 testimony during and after Mr. Faulkner's trial was inconsistent. Nevertheless, based upon the letter  
24 that Mr. Faulkner sent to Breanna B.'s mother and the nature of child recantations, it is not known  
25 when Breanna B. and Samantha S. testified truthfully and when they did not.

26 12. For the same reasons that Mr. Faulkner did not prove that he did not falsely imprison or  
27 attempt to kidnap Brandon M., Mr. Faulkner did not prove that he did not by any act or omission on  
28 his part, either intentionally or negligently, contribute to the bringing about of his arrest or conviction  
29 of attempted kidnapping and false imprisonment. To be sure, the finding that Mr. Faulkner grabbed

1 Brandon M. is, in itself, sufficient to establish that he intentionally or negligently contributed to the  
2 bringing about of his arrest or conviction. The fact that Mr. Faulkner was unable to prove either that  
3 the crimes with which he was charged were not committed at all or, if committed, were not committed  
4 by him or that he did not intentionally or negligently or contribute to the bringing about of his arrest or  
5 conviction provides sufficient grounds upon which to deny Mr. Faulkner's claim under section 4900.

6 13. Additionally, Mr. Faulkner failed to prove that he sustained pecuniary injury through his  
7 erroneous conviction and imprisonment. First, the monetary damages that Mr. Faulkner claimed to  
8 have suffered from his erroneous conviction and imprisonment included denial of insurance and  
9 stolen items from his house. Nevertheless, Mr. Faulkner provided insufficient evidence that he was  
10 denied insurance or that items were stolen from his house, let alone that any such damages were  
11 caused by his erroneous conviction. Furthermore, Mr. Faulkner testified on cross-examination that  
12 he is not making a claim for damages for the items stolen from his house as part of this claim.  
13 Second, even if it were determined that the phrase "pecuniary injury" was meant to include other than  
14 monetary damages, there is no credible evidence that Mr. Faulkner suffered from symptoms related  
15 to PTSD or that he became afraid of people. Additionally, even if he had proved that he suffered  
16 from those conditions, Mr. Faulkner did not establish the link between those conditions and the  
17 crimes with which he was convicted in the instant case.

18 14. After careful evaluation of all of the evidence, there is insufficient evidence that Mr.  
19 Faulkner filed a sufficient claim pursuant to Penal Code sections 4900 *et seq.* and there is insufficient  
20 evidence that: 1) he did not commit a violation of Penal Code sections 664 and 207(b) and 236;  
21 2) he did not, either intentionally or negligently, contribute to his arrest or conviction for those  
22 offenses; and 3) he sustained pecuniary injury through his erroneous conviction and imprisonment.

23 **Order**

24 Mr. Faulkner's claim under Penal Code sections 4900 *et seq.* is denied.

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27 Date: May 19, 2005

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JULIA V. JOHNSON  
Hearing Officer

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5 BEFORE THE VICTIM COMPENSATION AND GOVERNMENT CLAIMS BOARD  
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**Notice of Decision**

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12 On July 21, 2005, the California Victim Compensation and Government Claims Board  
13 adopted the attached Proposed Decision as its Decision in the above-referenced matter. The  
14 Decision became effective on July 21, 2005.

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16  
17 Date: July \_\_\_\_, 2005

18 KATHLEEN ANDLEMAN  
19 Chief Counsel  
20 California Victim Compensation  
21 and Government Claims Board  
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