

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

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

In the matter of the Application of:  
**Richard Hendrix**

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

**Introduction**

A hearing on this claim for compensation as an erroneously convicted person was conducted on February 11, 2014, by James Reinmiller, the Hearing Officer assigned to hear this matter by the Executive Officer of the Victim Compensation and Government Claims Board. Claimant Richard Hendrix (Hendrix), requests payment of \$113,600.00 as compensation for the 1,136 days he served in prison from the day of his conviction on January 26, 2010, until his release from prison on March 7, 2013. Hendrix appeared and testified at the hearing and was represented by attorney James Joseph Lynch, Jr. Deputy Attorney General (AG) Larenda R. Delaini represented the California Department of Justice, Office of the Attorney General.

After considering all the evidence, it is determined that Hendrix has failed to prove by a preponderance of the evidence that the crime with which he was charged was not committed by him. Therefore, it is recommended that Hendrix's claim for compensation pursuant to Penal Code section 4900 et seq. be denied.

1 **Summary of Procedure and Evidence**<sup>1</sup>

2 Prior to the night of the qualifying crime, Justin McCall (McCall) was assigned to the  
3 Country Wood Apartments (complex) as an armed security guard.<sup>2</sup> McCall wore a black  
4 uniform that had patches on each shoulder. McCall's uniform also had a badge on the chest  
5 and a utility belt, which included a baton and pepper spray. McCall also carried a handgun.

6 On the night of March 21, 2009, McCall was the only security guard on duty at the  
7 complex. At approximately 8:00 p.m., McCall was driving around the complex when he  
8 noticed Hendrix sitting in a parked car in the parking lot. McCall drove to the end of the  
9 parking lot, turned around, and angled his vehicle so that the vehicle's lights were shining into  
10 Hendrix's parked vehicle. Hendrix exited his car, approached McCall's vehicle, and screamed  
11 obscenities at McCall.<sup>3</sup> McCall told Hendrix to leave the complex or go inside of his  
12 apartment. Hendrix balled up his fists and continued to yell at McCall. McCall exited his  
13 vehicle, approached Hendrix, and told him again to leave the complex or enter his apartment.  
14 Hendrix bumped McCall with his shoulder. McCall pushed Hendrix and then pepper-sprayed  
15 him in the face. Hendrix rubbed his eyes and walked away. McCall called his security  
16 company for back-up and then walked around the complex looking for Hendrix. McCall found  
17 Hendrix rubbing his eyes, walking around, yelling, and cursing. When Hendrix noticed McCall,  
18 he ran toward McCall and threatened to "kick [McCall's] ass." McCall told Hendrix to stop and  
19 get down on the ground. Hendrix ignored McCall's directives. Instead, Hendrix jumped in the  
20 air and kicked McCall in the lower leg. McCall then punched Hendrix. A physical altercation  
21 occurred between the men during which McCall pepper-sprayed Hendrix a second time.  
22 Eventually, McCall pushed Hendrix down on the ground. When Hendrix got up, he threatened  
23 to kill McCall. McCall pulled out his gun and shot at Hendrix. Hendrix ran away. About five

24  
25 <sup>1</sup> The summary is based on a published appellate opinion, hearing testimony, and claim-related  
documents provided by Hendrix and the AG.

26 <sup>2</sup> The complex had significant issues with domestic violence, drugs, fights, and shootings. To  
27 address some of the problems, the complex established a "no loitering" rule, which prohibited  
28 tenants from loitering outside after 10:00 p.m. The complex sent out fliers and posted signs  
advising tenants of the "no loitering" rule.

1 <sup>3</sup> Hendrix said that he was going to kick McCall's "ass."

1 minutes later, another security guard arrived. McCall and the other security guard briefly  
2 patrolled the complex looking for Hendrix. They eventually decided to wait for law enforcement  
3 that had been called to the scene to arrive before continuing the search.

4 Police Officers Khang, Mosley, and Landberg arrived in marked police cars<sup>4</sup> and were  
5 wearing their full police uniforms, described as "navy blue uniform with a...marked badge,  
6 waist duty belt equipped with [a] gun...handcuffs and a badge." Officers Khang, Mosley, and  
7 Landberg, as well as McCall, walked around the complex searching for Hendrix. Eventually,  
8 McCall saw Hendrix walking towards a dumpster enclosure and said, "That's the guy, that's  
9 the guy I was fighting with." Officer Mosley instructed McCall to not go any farther and then  
10 the three officers approached the dumpster enclosure.<sup>5</sup>

11 Officers Khang, Mosley, and Landberg triangulated themselves near the entrance of  
12 the dumpster enclosure with their firearms drawn. Hendrix was instructed to come out.<sup>6</sup>  
13 Hendrix left the dumpster enclosure. He appeared extremely agitated, paced back and forth  
14 in circles in front of the enclosure's opening, flailed his arms, stuck out his chest, and yelled  
15 incoherent gibberish. Law enforcement commanded Hendrix to stop what he was doing and  
16 get down on the ground.<sup>7</sup> Hendrix looked at the officers for a couple of seconds, said "Fuck  
17 y'all," and ran down the sidewalk. Officers Khang, Mosley, and Landberg ran after Hendrix.  
18 McCall and the other security guard chased after Hendrix taking a different path than law  
19 enforcement.

20 As Hendrix ran away from law enforcement, he stumbled and fell. Officer Mosley was  
21 approximately 10 feet from Hendrix when Hendrix began to get up. As Hendrix sat up, Officer

---

22  
23 <sup>4</sup> The emergency lights on law enforcement patrol cars were not flashing and their sirens were  
24 not on when they arrived.

25 <sup>5</sup> Although it was nighttime and the enclosure did not have overhead lights, the crime report  
26 noted that area was well lit from surrounding light sources.

27 <sup>6</sup> The three officers could not remember if they identified themselves as law enforcement during  
28 the encounter.

<sup>7</sup> Law enforcement reported that Hendrix was not rubbing his eyes and there was no apparent  
indication that he had a problem seeing.

1 Mosley told Hendrix, "Stay where you're at, get down on the ground." Hendrix appeared to  
2 take a fighting stance and brought his arms up in a "defensive manner." Officer Mosley ran at  
3 Hendrix at full speed, and both Hendrix and Officer Mosley slammed into a parked car.<sup>8</sup>  
4 Officer Mosley tried to place Hendrix in a control-hold, but Hendrix grabbed Officer Mosley by  
5 his windpipe and choked him, causing Officer Mosley to experience a shortness of breath.  
6 Officer Mosley was able to remove Hendrix's hand from his throat and roll him to the ground.  
7 Then, Officer Landberg laid on Hendrix's back. Finally, Officers Mosley and Landberg rolled  
8 Hendrix over and placed him in handcuffs.

9 On April 20, 2009, the Sacramento County District Attorney charged Hendrix with  
10 attempting by means of threats and violence to deter an officer from performing his duties.<sup>9</sup> In  
11 addition, the District Attorney alleged that Hendrix had suffered a prior strike conviction within  
12 the meaning of California's Three Strikes Law.<sup>10</sup> Hendrix pled not guilty and requested a jury  
13 trial. On August 13, 2009, Hendrix's first jury trial ended in a mistrial because the jury  
14 deadlocked and could not reach a verdict.

15 On January 11, 2010, a second trial commenced. Evidence that Hendrix had resisted  
16 or obstructed law enforcement on two prior occasions was allowed to be introduced over  
17 Hendrix's attorney's objections. On January 26, 2010, the jury found Hendrix guilty of  
18 attempting to deter an officer from performing his duties by means of threats and violence.

19 On February 23, 2010, Hendrix's sentencing hearing was held. During the hearing,  
20 Hendrix provided testimony regarding the events of March 21, 2009.<sup>11</sup> Hendrix's testimony  
21 was consistent with prior testimony provided by other witnesses during Hendrix's two criminal  
22 trials. Hendrix also testified that although his vision was blurry after being pepper-sprayed, he  
23 could see a little bit. In addition, Hendrix testified that after he emerged from the dumpster

24 <sup>8</sup> Officer Mosley noticed a strong odor of alcoholic beverage coming from Hendrix. Hendrix also  
25 had bloodshot and watery eyes. Officer Mosley believed that Hendrix was under the influence,  
26 and therefore unpredictable.

27 <sup>9</sup> California Penal Code section 69.

28 <sup>10</sup> This law applies to the involved police officers, not Justin McCall, the security guard.

<sup>11</sup> Hendrix did not testify at either trial.

1 area, he saw that someone had a gun pointed at him. However, he was not able to determine  
2 if it was law enforcement or McCall. Hendrix was sentenced to a term of six years in state  
3 prison.

4 Hendrix filed a timely Notice of Appeal. On March 7, 2013, the Third Appellate District  
5 reversed Hendrix's conviction because it was found the trial court erred in allowing the jury to  
6 hear evidence of Hendrix's prior offenses. The appellate court determined the prior resisting  
7 arrest offenses were inadmissible to establish Hendrix's knowledge that the arresting officers  
8 were law enforcement. In addition, the court found that the probability of undue prejudice  
9 substantially outweighed any probative value of the prior crimes evidence and the error in  
10 allowing the erroneous admission of the prior crimes evidence was not harmless.

11 The Sacramento County District Attorney's office decided not to re-try the case and  
12 Hendrix was released from incarceration.

### 13 **PC 4900 Hearing Testimony and Arguments**

#### 14 **A. PC 4900 Testimony of Richard Hendrix**

15 At the hearing, Hendrix denied that he resisted arrest. Specifically, Hendrix testified  
16 that on the night of the crime he had an altercation with the security guard, McCall, but he did  
17 not know law enforcement was present at the complex until he was being placed in a patrol  
18 car. Hendrix believed he was in conflict with the security guard at the dumpster, not an actual  
19 police officer. Hendrix also testified that he had many past interactions with law enforcement  
20 and he admitted that he knew what a law enforcement officer's uniform looked like. He also  
21 confirmed that he had been arrested 10 times prior to the March 21, 2009, crime.

22 Additionally, Hendrix testified that he was unemployed at the time of the qualifying  
23 crime. However, he was half-way through HVAC<sup>12</sup> training and was receiving Social Security  
24 benefits. Hendrix testified that as a result of his arrest and incarceration, he suffered  
25 pecuniary loss in the form of his loss of personal valuables and court fees. Further, while he  
26 was incarcerated, his wife and son relocated to Colorado. While in Colorado, Hendrix's wife

---

27  
28 <sup>12</sup> HVAC (Heating, ventilation, and air conditioning) is the technology of indoor and vehicular  
environmental comfort.

1 became addicted to drugs and his son was made a ward of the State of Colorado. He also  
2 incurred costs associated with his unpaid child support to Colorado as well as the travel costs  
3 associated with his trips to Colorado.<sup>13</sup> Finally, Hendrix testified that he has not worked since  
4 he has been released from prison.

5 B. PC 4900 Argument of Richard Hendrix

6 Hendrix argued at his PC 4900 hearing that he has been deemed innocent of resisting  
7 arrest because he was not retried after the appellate court reversed his conviction; consequently  
8 the doctrine of collateral estoppel applies. Therefore, Hendrix would like the Board to consider  
9 the reversal to be determinative of the issue of his innocence and thus require the Board to  
10 grant his claim for compensation.

11 Hendrix also claimed he is innocent of the crime of which he was convicted. Hendrix  
12 claims he could not tell that the police were present at the scene and believed he was still  
13 dealing with security guards.

14 C. PC 4900 Argument of the Attorney General

15 The AG argued that the evidence shows that Hendrix knew that Officer Mosley was a  
16 law enforcement officer engaged in the performance of his duties when Hendrix resisted arrest.  
17 The offense of resisting arrest<sup>14</sup> requires proof that (1) Hendrix unlawfully used force or violence  
18 to resist Officer Mosley; (2) when Hendrix acted, Officer Mosley was performing his lawful duty;  
19 and (3) when Hendrix acted, he knew Officer Mosley was performing his duty.

20 Here, the AG argues the evidence is clear that Hendrix used force or violence to resist  
21 Officer Mosley. When Officer Mosley tried to place Hendrix in a control hold, Hendrix began to  
22 choke Officer Mosley by the throat causing Officer Mosley to experience a shortness of breath.

23 Additionally, the evidence proves that Officer Mosley was performing his lawful duties at  
24 the time of Hendrix's arrest. Officer Mosley had been dispatched to the complex where he  
25 encountered McCall. McCall explained that he had been in a fight and that he fired his

---

26  
27 <sup>13</sup> The Attorney General expressed their concern regarding the relevance of this testimony  
28 during the hearing.

<sup>14</sup> Penal code section 69.

1 handgun. Officer Mosley contacted Hendrix and rather than allow Officer Mosley to question  
2 him about the incident in order to determine whether Hendrix was involved in criminal activity,  
3 Hendrix became aggressive and yelled at the officers.

4 Finally, the AG states there is sufficient evidence that Hendrix knew that Officer Mosley  
5 was an officer engaged in the performance of his duties. Although the officers could not recall if  
6 they identified themselves as law enforcement, they were all wearing full police uniforms. The  
7 inference that Hendrix could not determine if Officer Mosley was a police officer because he had  
8 been pepper sprayed is unpersuasive. Hendrix was not rubbing his eyes, crying, or sniffing  
9 when Officers Mosley, Khang, and Landberg first contacted him. Moreover, Hendrix was not  
10 rubbing his eyes, tearing up, or squinting when officers finally arrested him. Claimant's prior  
11 experience with law enforcement suggests that he knew the difference between a security  
12 guard's uniform and Officer Mosley's police uniform. Moreover, Hendrix's pattern of resisting  
13 arrest makes his assertion that he was falsely accused and convicted even more specious.  
14 Specifically, between 1985 and 2005, Hendrix was arrested or convicted for ten offenses, at  
15 least three of which involved violence against law enforcement.

5  
**Determination of Issues**

17 Penal Code section 4903 establishes the requirements for a successful claim for those  
18 individuals who claim to have been imprisoned as a result of an erroneous conviction. In  
19 order to be successful on such a claim, a claimant must prove, by a preponderance of the  
20 evidence, that the crime with which he was charged was either not committed at all, or, if  
21 committed, was not committed by him and that he sustained a pecuniary injury through his  
22 erroneous conviction and imprisonment.<sup>15</sup> "Preponderance of the evidence" means evidence  
23 that has more convincing force than that opposed to it.<sup>16</sup>

24 In reaching its determination of the merits of the claim, the Board may consider the  
25 claimant's mere denial of the commission of the crime for which he was convicted, the reversal

26  
27 <sup>15</sup> Pen. Code, § 4903, *Diola v. Board of Control* (1982) 135 Cal.App.3d 580, 588, fn 7; *Tennison*  
*v. Victim Compensation and Government Claims Board* (2006) 152 Cal. App. 4<sup>th</sup> 1164.

28 <sup>16</sup> *People v. Miller* (1916) 171 Cal. 649, 652.

1 of the judgment of conviction on appeal, the acquittal of the claimant on retrial, or the failure of  
2 the prosecuting authority to re-try the claimant for the crime. However, those factors will not be  
3 deemed sufficient evidence to warrant the Board's recommendation that a claimant be  
4 indemnified in the absence of substantial independent corroborating evidence that the claimant  
5 is innocent of the crime charged.<sup>17</sup> The Board may also consider as substantive evidence  
6 testimony of witnesses the claimant had an opportunity to cross-examine, and evidence to  
7 which the claimant had an opportunity to object, admitted in prior proceedings relating to the  
8 claimant and the crime with which he was charged. Finally, the Board may also consider any  
9 information that it may deem relevant to the issue before it.<sup>18</sup>

10 Finally, if the evidence shows that the crime with which the claimant was charged was  
11 either not committed at all, or, if committed, was not committed by the claimant, and that the  
12 claimant has sustained pecuniary injury through his or her erroneous conviction and  
13 imprisonment, the California Victim Compensation and Government Claims Board shall report  
14 the facts of the case and its conclusions to the next Legislature, with a recommendation that an  
15 appropriation be made by the Legislature for the purpose of indemnifying the claimant for the  
16 pecuniary injury. The amount of the appropriation recommended shall be a sum equivalent to  
17 one hundred dollars (\$100) per day of incarceration served subsequent to the claimant's  
18 conviction and that appropriation shall not be treated as gross income to the recipient under the  
19 Revenue and Taxation Code.<sup>19</sup>

20 A. Collateral Estoppel

21 The doctrine of collateral estoppel holds that an earlier decision rendered by a court in a  
22 lawsuit between the parties is conclusive and the issues cannot be re-litigated in later  
23 proceedings. Traditionally, courts have applied the doctrine only if several threshold  
24 requirements are fulfilled. First and foremost, the issue and decision sought to be precluded

25 \_\_\_\_\_  
26 <sup>17</sup> Cal. Code Regs., tit. 2, § 641.

27 <sup>18</sup> Cal. Code Regs., tit. 2, § 641.

28 <sup>19</sup> Pen. Code, § 4904.



1 from re-litigation must be identical to that decided in a former proceeding. Also, this issue must  
2 have been litigated, decided by the court, and be final on the merits in the former proceeding.  
3 Finally, the party against whom preclusion is sought must be the same as, or in privity with, the  
4 party to the former proceeding.<sup>20</sup>

5 The party asserting collateral estoppel bears the burden of establishing these  
6 requirements.<sup>21</sup> Furthermore, even if these threshold requirements are satisfied, the doctrine will  
7 not be applied if such application would not serve its underlying fundamental principles.<sup>22</sup>

8 Hendrix's argument that the Board is estopped from determining whether he committed  
9 the charged crime because the appellate court held that his conviction was wrongful, and that  
10 no retrial occurred, is not persuasive.

11 The appellate court found Hendrix's conviction to be in error because the trial court  
12 allowed the jury to hear evidence of Hendrix's prior arrests. That is not the issue in the current  
13 hearing. Here the issue is whether Hendrix can prove his innocence by a preponderance of the  
14 evidence. If the appellate court would have made a finding of factual innocence in Hendrix's  
15 case, that decision would indeed likely require the Board to approve this claim. However, simply  
16 finding that the trial court made an evidentiary error, does not lead to a successful estoppel  
17 argument. The evidentiary error is not relevant to the finding of Hendrix's innocence, only to his  
18 conviction.

19 Therefore, the doctrine of collateral estoppel does not apply under these circumstances.

20 B. Hendrix's Innocence of the Crime

21 There is a preponderance of the evidence that Hendrix knew that law enforcement was  
22 attempting to place him under arrest when he exited the dumpster enclosure. Hendrix clearly  
23 knew that law enforcement was attempting to arrest him at the dumpster area. It was no longer  
24 just one security officer, but multiple law enforcement officers in uniform. Although Hendrix's  
25

---

26 <sup>20</sup> *Gikas v. Zolin* (1993) 6 Cal.4<sup>th</sup> 841, 848-849.

27 <sup>21</sup> *Pacific Lumber Co. v. State Water Resources Control Bd.* (2006) 37 Cal.4<sup>th</sup> 921, 943.

28 <sup>22</sup> *Gikas v. Zolin* (1993) 6 Cal.4<sup>th</sup> 841, 849.

1 vision was affected after initially being pepper-sprayed by McCall, it is clear that Hendrix's vision  
2 was better later when Hendrix met McCall the second time because Hendrix saw McCall and  
3 then attacked him. In addition, there is insufficient evidence to conclude that McCall's attempt  
4 to pepper-spray Hendrix during their second altercation was successful because Hendrix did not  
5 rub his eyes, or have any other physical symptoms of being pepper-sprayed; instead, Hendrix  
6 continued to attack McCall resulting in McCall attempting to shoot Hendrix. Further, the area  
7 around the dumpster was well-lit; consequently Hendrix could see that the individuals  
8 attempting to subdue him were wearing uniforms that were different from McCall's uniform.  
9 Finally, as Hendrix testified at his sentencing hearing, when he emerged from the dumpster  
10 enclosure, he could not determine if the individuals standing there were law enforcement or  
11 McCall. By admitting that he was uncertain if he was being given orders by law enforcement or  
12 by McCall, Hendrix acknowledged that it was possible that he was being ordered to lie on the  
13 ground by law enforcement. Based on his prior experiences with law enforcement, it is  
14 determined that Hendrix knew that he was being addressed by law enforcement.

15 Hendrix also has not proven by a preponderance of the evidence that he did not  
16 unlawfully use force to resist Officer Mosley who was performing his lawful duty. Specifically,  
17 when Officer Mosley tried to place Hendrix in a control hold, Hendrix immediately choked Officer  
18 Mosley by the throat, causing Officer Mosley to experience a shortness of breath. Additionally,  
19 Officer Mosley was performing his lawful duties at the time of Hendrix's arrest because Officer  
20 Mosley had been dispatched to the complex where he encountered McCall.

21 After careful evaluation of all the evidence and based on the above analysis, it is  
22 determined that Hendrix has failed to prove by a preponderance of the evidence that he is  
23 innocent of the crime of resisting arrest.

24 Richard Hendrix's claim under Penal Code section 4900 et seq. is recommended for  
25 denial.

26  
27 Date: July 28, 2014

28  
\_\_\_\_\_  
James Reinmiller  
Hearing Officer  
Victim Compensation and  
Government Claims Board

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

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

In the matter of the Application of:

**Richard Hendrix**

**Notice of Decision**

On December 11, 2014, 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 12, 2014



Tisha Heard  
Board Liaison  
Victim Compensation and  
Government Claims Board