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

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9 In the Matter of the Claim of:

10 **Charles Holmes III**

Proposed Decision

(Penal Code § 4900 et seq.)

11 **Introduction**

12 This claim for compensation as an erroneously convicted person was decided based on the
13 written record by considering all the evidence submitted to date and without the necessity of a
14 telephonic or in-person hearing. Kyle Hedum was assigned to hear this matter by the Executive
15 Officer of the California Victim Compensation and Government Claims Board. Mr. Holmes III
16 (Claimant) was represented by Robert C. Schlein, attorney at law. The California Department of
17 Justice, Office of the Attorney General (AG), was represented by Larenda Delaini.

18 After considering all the evidence, it is determined that the Claimant has proven by a
19 preponderance of the evidence that the crime with which he was charged was not committed. It is
20 also determined the Claimant has proven by a preponderance of the evidence that he sustained
21 pecuniary injury as a result of this conviction. Therefore, it is recommended that the Claimant
22 receive compensation pursuant to Penal Code section 4900 et seq. in the amount of \$215,200.

23 **Rhode Island Arrest and Conviction**

24 In February 1991, Claimant, who was then 27-years old, stayed with Michele's¹ parents for a
25 few days, just "until he got his check." Claimant slept on the couch. Michele was seven years old at
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28 ¹ Last name excluded for privacy.

1 the time. On February 6, 1991, after Michele went to sleep, Claimant entered her bedroom and pulled
2 down her pants. Michele woke-up and asked Claimant what he was doing. Claimant told Michele that
3 he came in her bedroom to cover her up. When Michele asked Claimant how he knew she needed to
4 be covered up, he said that he noticed that she needed to be covered up while he was walking to the
5 bathroom. According to Michele, Claimant then inserted his finger into her vagina and it hurt.
6 Claimant told Michele not to tell her parents and then left the room. He continued to check on Michele
7 throughout the night. At some point, Claimant asked Michele if he could sleep with her and Michele
8 said no. Claimant did not touch her again. Michele eventually went into her mother's bedroom to
9 sleep.

10 The next morning, Michele told her mother that Claimant pulled down her pants while she was
11 sleeping. Michele's mother confronted Claimant and he denied the charge, claiming that he simply
12 entered the room to cover her up. Later that same day, while at the laundromat, Michele told her
13 mother that Claimant had put his finger inside her vagina. Michele's mother called her aunt, and her
14 aunt called the police. Officers from the Providence Police Department arrested² Claimant and took
15 Michele to Rhode Island Hospital for an examination.

16 On January 28, 1992, Claimant pleaded no contest to second degree child molestation. The
17 trial court sentenced Claimant to a full term of ten years, with seven years of that term being
18 suspended. Claimant was not required to register as a sex offender under Rhode Island law because
19 his conviction occurred before the effective date of Rhode Island's Sexual Offender Registration and
20 Community Notification Act.³

21 California Arrest and Convictions

22 On March 31, 2005, Claimant was released from state prison after having served a sentence of
23 four years for residential burglary. The next day, Claimant went to the San Diego Police Department
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25 ² Claimant was also wanted by the Woonsocket Police Department for Larceny.

26 ³ Effective July 24, 1996, the Rhode Island General Laws provide that a person convicted of second
27 degree child molestation must register as a sex offender for a period of ten years from the expiration of
28 sentence. Prior to July 24, 1996, Rhode Island had sexual offender registration laws that applied to a
limited class of persons convicted after July 1, 1992. Claimant's conviction occurred on January 28,
1992, before the effective date of either Rhode Island statute.

1 and registered as a sex offender pursuant to Penal Code section 290. Section 290 requires certain
2 sex offenders to register with law enforcement within five days of changing residencies. The criminal
3 conviction that supposedly mandated sex offender registration was the offense that occurred in Rhode
4 Island in 1991. Claimant listed his address as Faith House in San Diego. Claimant was told that he
5 must re-register within five days of becoming transient.

6 On April 3, 2005, Claimant absconded from Faith House and did not re-register within five days
7 pursuant to Penal Code section 290. On May 9, 2005, Officer Gregory Minter observed Claimant
8 pushing a shopping cart down the street. Claimant said that his name was Carl Hansen and that he
9 was born on January 19, 1964. Claimant explained that he lived on the streets and normally slept in
10 Balboa Park. He claimed to have been homeless for about six months. Based on his observations of
11 the Claimant, Officer Minter opined that appellant was under the influence of a controlled substance.
12 Claimant's blood tested positive for methamphetamine and amphetamine.

13 On September 29, 2005, the San Diego District Attorney filed an information charging Claimant
14 with one count of failing to register as a sex offender (a felony),⁴ one count of being under the
15 influence of a controlled substance (a misdemeanor),⁵ and one count of giving false identifying
16 information to a police officer (a misdemeanor).⁶ The information further alleged that Claimant had
17 suffered two prior convictions for offenses within the meaning of California's "Three Strikes Law"⁷ and
18 had served three prior terms in state prison.⁸ On November 16, 2005, claimant pleaded guilty to all
19 counts and admitted that he had suffered two prior "strike" convictions and had served three prior
20 terms in state prison. The December 16, 2005, probation report noted that Claimant said that he had
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23 ⁴ Pen. Code, § 290, subd. (g)(2).

24 ⁵ Health & Saf. Code, § 11550, subd. (a).

25 ⁶ Pen. Code, § 148.9, subd. (a).

26 ⁷ Pen. Code, §§ 667, subd. (b)-(i), 1170.12.

27 ⁸ Pen. Code, § 667.5, subd. (b).
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1 "no income," "was collecting cans and bottles to recycle for money," and had not worked since 2002.
2 The probation department recommended that the Claimant receive a 25-years-to-life sentence.

3 On December 19, 2005, after dismissing one prior "strike" conviction, the trial court sentenced
4 Claimant to an aggregate term of nine years in state prison. The trial court awarded claimant 144
5 days of credit for time served, including actual days and conduct credits.

6 **Post Conviction and Penal Code Section 4900 Claim**

7 Claimant timely filed a notice of appeal and on July 25, 2006, the Court of Appeal affirmed the
8 judgment in an unpublished decision. Claimant was released from prison on November 6, 2012, after
9 serving 2,517 days of incarceration.

10 Upon his release from prison, the San Diego County Sheriff's Office arrested Claimant for
11 being in possession and under the influence of a controlled substance.⁹ On February 4, 2013,
12 Claimant was sentenced to one year in county jail.

13 On April 10, 2013, Claimant sent a letter to the Department of Justice's Sex Offender Tracking
14 Program requesting that the Program review his registration status. Claimant stated that he planned
15 to return to Rhode Island and did not want to register as a sex offender pursuant to the Interstate
16 Compact. On April 18, 2013, the Department of Justice's Sex Offender Tracking Program sent a letter
17 to Claimant indicating that he was "no longer required to register as a sex offender in the State of
18 California for [his] 1992 conviction in the State of Rhode Island for [c]hild molestation in the second
19 degree."

20 Claimant then timely filed his application for compensation as an erroneously convicted person
21 on August 30, 2013. He claimed that he was erroneously convicted because he was not required to
22 register as a sex offender.¹⁰ He also claimed that he had suffered pecuniary injury because he was
23 gainfully employed prior to his conviction, making approximately \$8.00 to \$9.00 an hour at Christie's
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25 ⁹ Health & Saf. Code, §§ 11377, subd. (a); 11550, subd. (a).

26 ¹⁰ Claimant acknowledged in his claim that he likely would have been incarcerated for 365 days as a
27 result of the two misdemeanor counts that were resolved with the felony count of failing to register as a
28 sex offender. Therefore, he reduced his request from \$251,700 (2,517 days) to \$215,200 (2,152 days).

1 Restaurant in Newport, Rhode Island. He also claimed that he was currently employed as a cook in a
2 diner located in Woonsocket, Rhode Island.

3 **Determination of Issues**

4 In order to be successful on such a claim, a claimant must prove the following by a
5 preponderance of the evidence:

6 (1) that the crime with which he was charged was either not committed at all, or, if committed,
7 was not committed by him; and

8 (2) that he sustained a pecuniary injury through his erroneous conviction and imprisonment.¹¹

9 This is a demanding standard, and a claimant must prove his innocence by a preponderance
10 of the evidence.¹² Preponderance of the evidence means evidence that has more convincing force
11 than that opposed to it.¹³

12 In reaching its determination of the merits of the claim, the Board may consider the claimant's
13 mere denial of commission of the crime for which he was convicted, reversal of the judgment of
14 conviction on appeal, acquittal of the claimant on retrial, or the failure of the prosecuting authority to
15 retry the claimant for the crime. However, those factors will not be deemed sufficient evidence to
16 warrant the Board's recommendation that a claimant be indemnified in the absence of substantial
17 independent corroborating evidence that the claimant is innocent of the crime charged.¹⁴ The Board
18 may also consider as substantive evidence testimony of witnesses that the claimant had an
19 opportunity to cross-examine, and evidence to which the claimant had an opportunity to object,
20 admitted in prior proceedings relating to the claimant and the crime with which he was charged. All
21 relevant evidence is admissible, irrespective of whether it would be admitted at a criminal jury trial or

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23 ¹¹ Pen. Code, § 4903; *Tennison v. Victim Compensation and Government Claims Board* (2006) 152
24 Cal. App. 4th 1164.

25 ¹² *Diola v. State Board of Control* (1982) 135 Cal.App.3d 580, 588 fn. 7.

26 ¹³ *People v. Miller* (1916) 171 Cal. 649, 652; *Diola, supra*.

27 ¹⁴ Cal. Code Regs., tit. 2, § 641; *Tennison v. Victim Compensation and Government Claims Board*
28 (2006) 152 Cal. App. 4th 1164.

1 in a civil or administrative proceeding, so long as the evidence is probative to the claimant's assertion
2 that he is innocent.¹⁵ The formal hearing rules of the Administrative Procedures Act are not
3 applicable.¹⁶

4 Penal Code section 4903 previously provided that a claimant was not entitled to compensation
5 unless he could prove by a preponderance of the evidence that he did not "intentionally contribute to
6 the bringing about of his...conviction for the crime with which he...was charged." This meant that a
7 claimant who pleaded guilty to a felony offense and accepted a prison sentence could not later seek
8 compensation as an erroneously convicted offender. Senate Bill 618 amended Penal Code section
9 4903 to remove the contribution component, thereby making a claimant eligible for compensation
10 even when he served time in state prison following entry of a guilty or no-contest plea.

11 If a claimant meets his burden of proof, the Board shall recommend to the legislature that an
12 appropriation of \$100.00 be made for each day of incarceration in prison served subsequent to the
13 claimant's conviction.¹⁷

14 **Second Degree Child Molestation**

15 Claimant contends that he is entitled to compensation because he was convicted and served
16 prison time for a crime that, as a matter of law, he did not commit. Claimant alleges, in relevant part,
17 that he was not required to register as a sex offender in California because the elements of the Rhode
18 Island offense are not the same as the elements of any offense listed in Penal Code section 290.

19 In California, a violation of Penal Code section 288 requires proof of the following elements:

- 20 1. The defendant willfully touched any part of a child's body either on the bare skin or
21 through the clothing;
- 22 2. The defendant committed the act with the intent of arousing, appealing to, or
23 gratifying the lust, passions, or sexual desires of himself or the child;

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25 ¹⁵ Cal. Code Regs., tit. 2, § 641.

26 ¹⁶ Cal. Code Regs., tit. 2, § 615.1.

27 ¹⁷ Pen. Code, § 4904.
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1 3. The child was under the age of 14 years at the time of the act.

2 In Rhode Island, a violation of second degree child molestation requires proof of the
3 following elements:

- 4 1. The defendant willfully touched the victim's intimate parts either on the bare skin or
5 through the clothing;
- 6 2. The defendant committed the act for the purpose of sexual arousal, gratification, or
7 assault;
- 8 3. The victim was under the age of 14 years at the time of the act.

9 Although the elements of second degree child molestation in Rhode Island appear to be the
10 same as the elements of a lewd and lascivious act on a child under the age of 14 in violation of
11 California Penal Code section 288, subdivision (a), there is a critical difference: the Rhode Island
12 statute can be violated if the defendant committed the act for the purpose of "sexual assault." In
13 California, on the other hand, a sexual act accomplished for assaultive or sadistic purposes does not
14 satisfy the "intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of
15 himself" element of Penal Code section 288.¹⁸

16 Because Claimant did not make any admissions regarding his intent to law enforcement at his
17 arrest or at the time he entered a plea, pursuant to California case law and statute,¹⁹ it is determined
18 that there is not a preponderance of the evidence that Claimant committed the crime of second degree
19 child molestation in Rhode Island with the intent required for a lewd and lascivious act in violation of
20 Penal Code section 288. Therefore, he was not required to register as a sex offender at the time that
21 he was convicted and served time in prison. He thus was erroneously convicted.

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¹⁸ *People v. Pearson* (1986) 42 Cal.3d 351, 356; *People v. Griffin* (1988) 46 Cal.3d 1011, 1030.

26 ¹⁹ See *People v. Pearson, supra*, 42 Cal.3d at p. 356; see also Pen. Code, § 290.005, subd. (a) [when
27 determining if an out-of-state conviction qualifies, consider "the elements of the convicted offense or
28 facts admitted by the person or found true by the trier of fact."].

1 **Pecuniary Injury**

2 Claimant states that he was gainfully employed at Christie's Restaurant in Newport, Rhode
3 Island prior to his conviction. He currently claims to be employed as a cook in a diner located in
4 Woonsocket, Rhode Island, being paid \$9.00 an hour with a potential to receive a raise to \$12.00 to
5 \$13.00 per hour.

6 The AG argued that given the Claimant's extensive criminal history and unemployment status
7 at the time of his arrest, he has not demonstrated that he suffered any pecuniary loss as a result of his
8 incarceration.²⁰ Therefore, the AG argues that this claim should be denied.

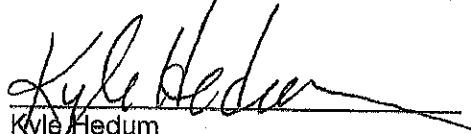
9 Based on the evidence, it is determined that the Claimant has provided sufficient proof to find
10 that he has suffered a pecuniary loss due to his incarceration. Although he may not have been
11 employed for a number of months or years prior to his conviction failing to register as a sex offender,
12 his statement regarding his employment history that accompanied his claim and that was submitted
13 under penalty of perjury provides a preponderance of evidence that he was at one time employed and
14 that he likely would have obtained other employment if not for his erroneous conviction.

15 Claimant was incarcerated for 2,517 days. However, this total confinement period must be
16 reduced by the time he would have been incarcerated for the two misdemeanor convictions of being
17 under the influence of a controlled substance and for giving false identifying information to a police
18 officer. Based on the Claimant's extensive criminal history, it is determined that he likely would have
19 received 365 days in local custody for these misdemeanor violations. This determination is consistent
20 with the Claimant's own computation.

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27 ²⁰ Claimant's criminal history spans 31 years, with the first of 19 convictions occurring in 1982 and the
28 most recent occurring in 2013.

1 Claimant was incarcerated for 2,152 days. It is recommended to the Legislature that an
2 appropriation be made to pay the claim of Charles Holmes III in the sum of \$215,200.

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4 Date: March 19, 2014


5 Kyle Hedum
6 Hearing Officer
7 California Victim Compensation and
8 Government Claims Board
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**BEFORE THE VICTIM COMPENSATION AND GOVERNMENT CLAIMS BOARD
OF THE STATE OF CALIFORNIA**

In the Matter of the Claim of:

Notice of Decision

Charles Holmes III

On May 15, 2014, the California Victim Compensation and Government Claims Board denied the Proposed Decision of the Hearing Officer by a 2-1 vote in the above-referenced matter (see attached Decision and Proposed Decision).

Date: May 22, 2014



Tisha Heard
Board Liaison
California Victim Compensation and
Government Claims Board

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6 **BEFORE THE VICTIM COMPENSATION AND GOVERNMENT CLAIMS BOARD**
7 **OF THE STATE OF CALIFORNIA**
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9 In the Matter of the Claim of:

Decision

10 **Charles Holmes III**

(Penal Code § 4900 et seq.)

11 **Introduction**

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13 This claim for compensation as an erroneously convicted person came before the Victim
14 Compensation and Government Claims Board (Board) on May 15, 2014. The Board's Executive
15 Officer assigned Kyle Hedum to hear this matter and his proposed decision was based on the written
16 record by considering all the evidence submitted to date and without the necessity of a telephonic or
17 in-person hearing. The proposed decision recommended the Board approve the claim (see
18 attached). At the Board Meeting on May 15, 2014, Board members Marybel Batjer (Chairperson),
19 Michael Ramos, and Richard Chivaro (proxy for State Controller John Chiang) were present.
20 Mr. Holmes III (Holmes) was represented in person by Robert C. Schlein, attorney at law. The
21 California Department of Justice, Office of the Attorney General (AG), was represented in person by
22 Larenda Delaini.


23 In order to be successful on an erroneous conviction claim pursuant to Penal Code sections
24 4900-4906, a claimant must prove the following by a preponderance of the evidence:

- 25 (1) That the crime with which he was charged was either not committed at all, or , if
26 committed, was not committed by him; and
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1 (2) That claimant sustained a pecuniary injury through his erroneous conviction and
2 imprisonment.¹

3 After considering all the evidence, including the proposed decision dated March 19, 2014,
4 and listening to argument from both parties, the Board votes 2-1 (Chairperson Batjer dissented) to
5 reject the proposed decision and deny Holmes' claim. It is the decision of the Board that Holmes
6 failed to show he sustained pecuniary injury through his erroneous conviction and imprisonment
7 pursuant to Penal Code section 4904. The evidence presented included the fact that Holmes was
8 unemployed, recently out of prison, and homeless at the time of his arrest. Evidence also included
9 the fact that Holmes worked for a short time after his incarceration as a cook in Rhode Island but was
10 laid off. According to his attorney, Holmes is currently unemployed but collects cans for recycling to
11 make income. The Board concludes that given Holmes' extensive criminal history and unemployment
12 status at the time of his arrest and currently, he has not demonstrated that he suffered any pecuniary
13 loss as a result of his incarceration.

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15 Date: May 22, 2014



Julie Nauman
Executive Officer
California Victim Compensation and
Government Claims Board

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27 ¹ Penal Code § 4903; *Tennison v. Victim Compensation and Government Claims Board* (2006) 152 Cal.App.4th
28 1164.