

1
2
3
4
5
6
7
8 **BEFORE THE VICTIM COMPENSATION AND GOVERNMENT CLAIMS BOARD**
9 **OF THE STATE OF CALIFORNIA**
10

11 In the Matter of the Claim of:

12 **Myron Howard**

13 Claim No. G556681

Proposed Decision

(Penal Code § 4900 et seq.)

14
15 **Introduction**

16 A telephonic hearing on this claim was held on September 7, 2006, in Sacramento, California,
17 by Edward R. Carrillo, Hearing Officer, who was assigned to hear this matter by the Executive Officer
18 of the Victim Compensation and Government Claims Board (Board). The Claimant, Myron Howard
19 (Howard), represented himself. Deputy Attorney General Melissa Lipon represented the California
20 Department of Justice, Office of the Attorney General (Attorney General). The Attorney General
21 recommended that the claim be denied.

22 **Procedural History**

23 On January 14, 1998, the Los Angeles County District Attorney (DA) charged Howard with four
24 counts of child molestation,¹ one count of kidnapping, one count of failing to register as a sex offender,²
25 and one count of giving false information to a police officer.

26 A jury convicted Howard on three counts of child molestation, one count of kidnapping a child
27 under 14, and one count of giving false information to a police officer. After Howard's conviction, the
28

29 ¹ Penal Code section 288(a).

² Howard had previously been convicted of two counts of residential burglary and one count of forcible rape.

1 the abandoned house and that he had only been in the house a few minutes before the police entered.
2 He admitted to giving a false name to police due to the fact that he was registered as a sex offender in
3 another county and was not permitted to travel outside that county. Howard further asserted that the
4 circumstances of Eric O.'s identifications of him were suggestive and unfair. Howard also testified that
5 he entered a plea of no contest in the second criminal proceeding because his counsel advised him
6 that was the only way to get out of jail.

7 Findings

8 A preponderance of the evidence supports the following findings:

- 9 1. Eric O. was the victim of child molestation, which occurred on September 24, 1997.
- 10 2. Eric O. immediately and positively identified Howard as the perpetrator.
- 11 3. Howard was convicted of three counts of child molestation and one count of
12 kidnapping a child under 14 and on February 10, 1999, Howard was sentenced to 85
13 years to life.
- 14 4. Based on post conviction DNA testing, on July 29, 2004, the court granted Howard's
15 habeas corpus petition, set aside his conviction and vacated the judgment, while
16 simultaneously re-arraigning Howard on the same charges filed by the DA in 1998.
- 17 5. Howard pled no contest to one charge of child molestation in exchange for a stipulated
18 six-year prison sentence.
- 19 6. Howard was properly advised of the nature of a plea of no contest as well as its
20 consequences.
- 21 7. The court gave Howard credit for time served and released him on December 1, 2004,
22 without parole.

23 Determination of Issues

24 Penal Code section 4900 provides that any person erroneously convicted of any felony and
25 sentenced to prison may present a claim to the Board for the pecuniary injury sustained as a result of
26 the erroneous conviction.

27 Penal Code section 4903 establishes the requirements for a successful claim for an
28 erroneously convicted felon. Howard must prove each of the following: (1) that the crime with which
29 he was charged was either not committed at all, or, if committed, was not committed by him; (2) that

