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

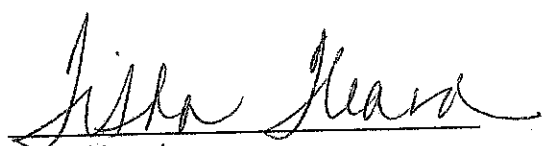
In the Matter of the Claim of:

Joe Lea

Notice of Decision

On January 17, 2013, 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: January 17, 2013


Tisha Heard
Board Liaison
California Victim Compensation and
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:

Joe Lea

**Proposed Decision
(Penal Code § 4900)**

Introduction

An in-person hearing on this claim was held on October 24, 2012, in Sacramento, California, by Kevin Kwong, Hearing Officer, California Victim Compensation and Government Claims Board. The claimant, Joe Lea, appeared at the hearing and was represented by Robert Depillis. The California Attorney General's Office was represented by Huy Luong, Deputy Attorney General (AG).

As explained below, Lea has not met the statutory requirements to receive compensation under Penal Code section 4900 because he failed to prove by a preponderance of the evidence that he did not commit the crimes with which he was charged.

Procedural Background

On September 17, 1999, Vanessa Pina arranged for her two-and-one-half-year old son Isaiah to spend the night at Isaiah's grandmother's home. Claimant Lea is Vanessa's cousin and he was 25- years-old at the time of the incident. The following day, Isaiah told Vanessa that Lea had put his "ninny" in his "booty." Isaiah also said that Lea forced his penis into Isaiah's mouth. Vanessa took Isaiah to the hospital the next day where a sexual assault examiner found that Isaiah had bruising in

1 his mouth and lacerations around his anal area. Later that evening, Lea was arrested and then
2 charged by the Solano County District Attorney's Office.

3 At Lea's trial, evidence of a prior allegation that Lea sexually assaulted Vanessa's older son
4 years prior to this incident was admitted into evidence. At the end of the trial, on March 10, 2000,
5 Lea was convicted of oral copulation of a child under the age of 14, sodomy of a child under the age
6 of 14, and two counts of committing a lewd act on a child under the age of 14. On November 19,
7 2001, the Court of Appeal for the First District affirmed Lea's convictions and rejected his arguments
8 that the admission of a prior sexual assault and the related jury instruction deprived him of due
9 process. On February 13, 2002, the California Supreme Court denied Lea's petition for review.

10 Lea then filed a federal habeas corpus petition. On April 19, 2004, the district court denied
11 Lea's petition. On November 15, 2005, the Ninth Circuit Court of Appeals reversed the district court's
12 ruling and remanded the case back to the trial court based on jury instructional error.

13 On March 22, 2006, the Solano County District Attorney's Office recharged Lea with the
14 sexual offenses against Isaiah. On April 19, 2006, Lea pled *nolo contendere* to two counts of
15 committing a lewd act against a child under the age of 14. Lea accepted a prison term of eight years
16 for each count, to run consecutively. However, on June 18, 2007, Lea filed a habeas corpus petition
17 based on a number of grounds including ineffective assistance of counsel. Namely, Lea stated that
18 his attorney did not inform him of the consequences of his plea and that he did not know that he
19 would have to register as a sex offender. The trial court denied this petition. Lea then appealed to
20 the Court of Appeals. On October 24, 2008, the Court of Appeals allowed Lea to withdraw his plea.

21 The District Attorney's Office once again recharged Lea with the same crimes after his plea
22 was withdrawn. However, on April 24, 2009, the trial court excluded many of Isaiah's prior
23 statements based on the confrontation clause and witness competency issues. Without these
24 statements, the District Attorney's Office was unprepared to proceed and the case was dismissed.

25 Lea submitted his claim to the Board on April 20, 2011, and alleges that he was improperly
26 imprisoned for 3,332 days and is entitled to \$333,200 in compensation.

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Summary of Evidence

I. Evidence Presented at Trial

On September 17, 1999, Vanessa Pina arranged for her two-and-one-half-year old son Isaiah to spend the night at Isaiah's grandmother's home. That evening, Lea was at Theresa Lloyd's house at approximately 8:00 p.m. or 9:00 p.m. to sell stolen merchandise. Lloyd lives next door to Isaiah's grandmother. Lloyd stated that she saw Lea enter the grandmother's home, and that at about 10:00 p.m. she was outside smoking and heard a "blood curdling cry" and screaming coming from the smokehouse at the grandmother's house. Lloyd said that the screaming varied in intensity as if a person were muffling his face. About an hour and a half later, Lloyd saw Isaiah being taken inside the house from the smokehouse by two female individuals.¹

The following day Vanessa picked Isaiah up from his grandmother's home. According to Vanessa's testimony, Isaiah said that he never wanted to go back to his grandmother's house again. He said that Lea "put his ninny in my booty" and that this occurred behind the smokehouse in the sandbox. Lea also put his penis into Isaiah's mouth. Isaiah said that he cried during the incident and that Lea grabbed his face to prevent him from screaming.

On September 19, 1999, Isaiah refused to bathe and refused to be touched. He stated that his bottom felt itchy and funny. Vanessa then called the police. In his interview with the police, Isaiah, alone with the officer, repeated his statements that he had previously made to Vanessa about being sodomized and forced to orally copulate Lea in the sandbox. Vanessa then took Isaiah to the hospital where he was examined by nurse and sexual assault examiner Doreen Racioulet. She found bruising in Isaiah's mouth and some lacerations near his anus. She stated that the wounds were starting to heal, which would be normal since the incident occurred two days prior. She concluded that the injuries were consistent with a penis being forced into his rectum and his mouth being held tightly by an adult. She also determined that the injuries occurred within 72 hours of the exam.

The prosecution also presented evidence that Lea committed sexual offenses against Isaiah's older brother, Robert, sometime between September 1987 and April 1988. Robert told his mother

¹ It is unclear if these individuals resided at the same home as Isaiah's grandmother.

1 that Lea had put his penis into his behind and tried to put it into his mouth. A police report was filed,
2 however no charges or an arrest occurred for this alleged incident.

3 Isaiah also testified at trial. His statements were consistent with his statements to Vanessa
4 and law enforcement in the days following the incident. He stated that Lea sodomized him and that
5 Lea placed his penis in his mouth.

6 At the time of his arrest, Lea told officers that he resided at Isaiah's grandmother's home.
7 However, two of Lea's aunts testified that Lea was living at a girl named Tosha's house and that he
8 was not living with Isaiah's grandmother. Lea's mother also testified that Lea was not living with
9 Isaiah's grandmother and that Lea and Isaiah were not together at all during the weekend of the
10 incident. Lea also presented an expert witness on child psychology who testified about the
11 suggestibility of children.

12 Lea testified that although he was at Lloyd's home the night of the incident, he did not enter
13 Isaiah's grandmother's home that night, and was never at the house with Isaiah all weekend. He
14 denied committing any offenses against Isaiah or Robert. He also testified that he lived with his
15 girlfriend named Latasha.

16 On March 10, 2000, the jury returned a verdict and convicted Lea of oral copulation of a child
17 under the age of 14, sodomy of a child under the age of 14, and two counts of committing a lewd act
18 on a child under the age of 14.

19 **II. Post-Trial Proceedings**

20 On November 19, 2001, the Court of Appeal for the First District affirmed Lea's convictions
21 and rejected his arguments that the admission of a prior sexual assault and the related jury
22 instruction deprived him of due process. Further, the court stated that there was sufficient evidence
23 of guilt and any possible instructional error was harmless. Isaiah's statements to Vanessa, to law
24 enforcement, and at trial were consistent. His behavior was also consistent with having been
25 assaulted, and medical evidence corroborated that an assault occurred. Lloyd's testimony also
26 corroborated Isaiah's testimony and placed Lea at the scene of the incident.

27 On February 13, 2002, the California Supreme Court denied Lea's petition for review. Lea
28 then filed a federal habeas corpus petition. On April 19, 2004, the district court denied Lea's petition.
29 On November 15, 2005, the Ninth Circuit Court of Appeals reversed the district court's ruling and

1 remanded the case back to trial based on jury instructional error. It stated that the jury instruction on
2 the admissibility of prior sex offenses was not permissible and violated Lea's right to due process.

3 **III. Re-Trial and Plea**

4 The Solano County District Attorney's Office re-charged Lea on March 22, 2006, and a plea
5 bargain was offered to Lea on April 5, 2006. The offer was that if Lea pled *nolo contendere* to two
6 counts of committing a lewd act against a child under 14, he would receive two consecutive eight-
7 year sentences. On April 19, 2006, Lea accepted the plea agreement.

8 On June 18, 2007, Lea filed a habeas corpus petition based on a number of grounds
9 including ineffective assistance of counsel. Namely, Lea stated that his attorney did not inform him of
10 the consequences of his plea and that he did not know that he would have to register as a sex
11 offender upon release. The trial court denied this petition. Lea then appealed to the Court of
12 Appeals. On October 24, 2008, the Court of Appeals allowed Lea to withdraw his plea and
13 remanded the matter back to trial.

14 **IV. Dismissal of the Charges against Lea**

15 Charges against Lea were dismissed on April 24, 2009. The judge excluded Isaiah's prior
16 testimony from the 2000 trial because his current testimony differed. Isaiah could not recall the
17 events of the night of the incident and provided no details of the sodomy or oral copulation other than
18 being forced to touch Lea's penis. The judge stated that since Lea was charged with sodomy and
19 oral copulation, and Isaiah could not testify to either of those crimes, Isaiah was not competent to
20 testify and that his prior statements from the first trial were inadmissible due to the confrontation
21 clause. Without being able to use Isaiah's statements, all charges against Lea were dropped.

22 **V. Penal Code Section 4900 Hearing**

23 On October 24, 2012, a hearing was held to determine if Lea is eligible for compensation
24 under Penal Code Section 4900. Lea appeared at the hearing but declined to testify. Lea's
25 representative Robert DiPillis, who is not an attorney, presented arguments on his behalf.

26 Lea argued that Isaiah gave false testimony that led to his conviction. At the 2009
27 proceeding, Isaiah was determined by the judge to be not competent to testify. This was based on
28 his pre-trial testimony being different than his 2000 trial testimony. Isaiah did not testify that Lea
29 committed any crimes against him. He could only state that he was forced to touch Lea's penis.

1 Isaiah was also unable to identify Lea in the court room. Thus, Isaiah's 2000 testimony that was
2 used to convict Lea was false. Lea never committed any crimes against Isaiah.

3 Lea also argues that Vanessa improperly influenced Isaiah's testimony at trial which caused
4 Isaiah to give his false testimony. This is based on the 2009 trial court judge stating that Vanessa
5 improperly coached Isaiah. In 2008, there was a state habeas corpus proceeding whereby it was
6 stipulated that in preparation for the 2000 trial, Vanessa "worked with her son over a period of three
7 months to teach him how to testify about the differences between the truth and a lie and how to tell
8 the jury what happened to him." Lea states that this shows that Isaiah's testimony is not to be
9 believed since he was coached by Vanessa.

10 Lea stated that Vanessa's testimony is not credible either. Vanessa testified at the hearing
11 that she drank beer before picking up Isaiah, and another witness stated that Vanessa had used
12 crack. Vanessa also testified to having previously been abducted by UFO's. Finally, Vanessa has a
13 criminal record and previously pled guilty to fraud and forgery which casts doubt on her honesty.
14 Additionally, Lloyd also has a criminal history which casts doubt on her credibility as well.

15 A 2009 statement from James Crawford, M.D., was submitted. Dr. Crawford is currently the
16 medical director of a children's hospital in Oakland, California. Lea stated that Crawford is qualified
17 to make sexual abuse determinations while Racioulet is not. Dr. Crawford examined the medical
18 evidence and photographs of Isaiah when he underwent his sexual assault examination in 1999. He
19 concluded that the anal area of Isaiah is entirely within normal limits and that there are no lacerations
20 or bruising as was described by Racioulet. He also stated that Isaiah's injuries to his mouth are
21 consistent with what would occur if a cheek or lip compressed against teeth. There was no external
22 bruising of the cheek that would prove external compression, and injuries associated with forced oral
23 copulation are not present.

24 In regards to his plea of *nolo contendere*, Lea stated that his attorney² was not prepared for
25 defending his case and that he had difficulty contacting his attorney to discuss his case and the plea
26 offer. Lea was not able to speak with his attorney from April 5, 2006, after the plea offer was made,
27 until April 18, 2006, the night before the offer was to be revoked due to the beginning of trial

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29 ² The same attorney represented Lea in his 2000 and 2006 criminal proceedings.

1 proceedings. When they spoke it was only for 20 minutes. Lea felt that his attorney had not done
2 any preparation for the trial and that he strongly recommended that Lea take the plea offer. His
3 attorney also never stated that Lea would have to register as a sex offender for the rest of his life
4 after release from prison.

5 After the meeting on April 18, 2006, Lea was unable to speak with family members or his
6 attorney again to discuss his options. Since the plea offer was to be revoked if not accepted that
7 day, and there was no mention of an extension, Lea reluctantly accepted the plea offer so that he
8 would be assured of someday being released and being able to move on with his life. Neither the
9 judge, nor any of the documents Lea signed indicated that he would have to register as a sex
10 offender. In a declaration, Lea stated that if he had any reason to believe that he would have a better
11 chance than he had in 2000 of being acquitted, he would not have taken the plea offer. He also
12 stated that had he known that he would have to register as a sex offender he would have been even
13 more forcefully dissuaded from accepting the offer. Lea also stated that he wrote a letter to the judge
the following day asking to withdraw his plea.³

15 According to a declaration from Lea's attorney, Lea was reluctant to accept the plea offer.
16 The attorney told Lea that he was not ready to go to trial at this time, but he believed that he would
17 be allowed a continuance if Lea did not accept the plea. He also stated that he never told Lea about
18 the sex offender registration requirement, nor was it documented in the plea documents signed by
19 Lea. Finally, he stated that he believed that Lea was innocent, but he also believed that during the
20 2000 trial.

21 The AG argued that Isaiah's testimony is credible and was not improperly influenced. He was
22 found competent to testify at the 2000 trial and his testimony was consistent with his statements to
23 Vanessa and his statements to law enforcement. The 2009 court's exclusion of this testimony and
24 Isaiah as witness does not mean that Isaiah's previous testimony was not credible or that Lea is
25 innocent, it only related to Isaiah's competency. Further, Lea is incorrect that the 2008 stipulation
26 shows that Vanessa coached Isaiah and told him to lie. Nothing in the stipulation says that Vanessa

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29 ³ Although there is evidence that a letter was written, it is unclear when it was written.

1 told Isaiah to lie or that she improperly influenced him. The stipulation only says that Vanessa told
2 Isaiah to tell the jury what happened and the differences between a truth and a lie.

3 Dr. Crawford's findings in his letter are inconclusive and do not prove Lea's innocence.
4 Nowhere in the report does he say that a sexual assault did not occur. Dr. Crawford stated that a
5 normal exam could be consistent with the possibility of sexual abuse, but it also could be consistent
6 with no sexual abuse. Thus, the report does not conclude that Lea is innocence or that Isaiah was
7 not assaulted. Most importantly, his findings are not based on first hand evidence since he never
8 directly examined Isaiah. Dr. Crawford's findings are based on notes and medical records. The
9 report by Racioullet was based on her direct examination of Isaiah, two days after the incident
10 occurred. Thus, her report is more accurate and reliable.

11 The decisions by the various courts and counties also do not prove Lea's innocence. The
12 Ninth Circuit Court of Appeals overturned Lea's conviction based on jury instructional error. It also
13 remanded the case back to trial, and Lea was recharged with the offenses. The decision by the
14 Ninth Circuit does not speak to Lea's innocence. In 2009, charges against Lea were dropped by the
15 District Attorney's Office. However, this was due to the exclusion of Isaiah's testimony and its
16 inability to proceed without it. Charges were not dropped based on a finding that Lea was innocent.

17 Finally, the great weight of the evidence shows that Lea is guilty of the crimes with which he
18 was charged. Isaiah's statements to Vanessa, law enforcement, and at trial all show that he was
19 sexually assaulted by Lea. Lloyd saw Lea enter the house the night of the incident and also heard
20 screams. The physical evidence from the medical results also corroborate Isaiah's testimony. Lea
21 committed similar child sexual assaults against Isaiah's brother. Finally, a jury concluded that Lea
22 was guilty and that verdict was only overturned due to jury instructional error.

23 The AG also argued that Lea contributed to his own conviction by pleading *nolo contendere*
24 and would not be eligible for compensation starting from the date of his plea on April 19, 2006, if his
25 claim were to be approved. Lea's argument that his plea was involuntary is not supported by the
26 evidence. Lea had 14 days to consider the plea offer. During this time Lea had the opportunity to
27 speak with both his attorney and family members. Even though the plea was not found to have met
28 the legal requirements, there is no evidence that Lea was coerced or forced to make a plea.
29

Determination of Issues

A person erroneously convicted and imprisoned for a felony may submit a claim to the Board for pecuniary injury sustained as a result of his erroneous conviction and imprisonment.⁴ Penal Code section 4903 provides that in order to state a successful claim for compensation, the claimant must prove the following by a preponderance of the evidence:⁵

1. That the crime with which he was charged was either not committed at all, or, if committed, was not committed by him;
2. That he did not by any act or omission on his part, intentionally contribute to the bringing about of the arrest or conviction for the crime; and
3. That he sustained a pecuniary injury through his erroneous conviction and imprisonment.

If the claimant meets his burden of proof, the Board shall recommend to the legislature that an appropriation of \$100.00 per day of incarceration served subsequent to conviction be made for the claimant.⁶ A claimant's mere denial of the commission of the crime, or reversal of the judgment of conviction on appeal may be considered by the Board, but it will not be sufficient evidence to carry the claimant's burden in the absence of substantial independent corroborating evidence that the claimant is innocent of the crime charged.⁷ Here, Lea's claim must be denied because he failed to prove by a preponderance of the evidence that he did not commit the crime with which he was charged.

Working against Lea's declaration of innocence is his admission of guilt when he pled *nolo contendere* to two counts of committing a lewd act against Isaiah. Even though it was determined that this plea did not meet the legal requirements, Lea's admission of guilt cannot be ignored in this proceeding. The court determined that Lea could revoke his plea because he was not informed of the

⁴ Pen. Code, § 4900.

⁵ *Diola v. Board of Control* (1982) 135 Cal.App.3d 580, 588, fn 7; *Tennison v. Victim Compensation and Government Claims Board* (2000) 152 Cal. App. 4th 1164. Preponderance of the evidence means "evidence that has more convincing force than that opposed to it." (*People v. Miller* (1916) 171 Cal. 649, 652.)

⁶ Pen. Code, § 4904.

⁷ Cal. Code of Regs., title 2, § 641. All regulations citations are to California Code of Regulations, title 2.

1 full penalty of his plea. There was no finding that Lea was coerced, forced, of unsound mind, or unduly
2 influenced in any other manner when taking the plea. Lea was given 14 days to think about the plea
3 agreement. During this time he had a chance to speak with his attorney and family members. Lea had
4 gone through the 2000 trial so he knew the evidence to be presented as well as the strengths and
5 weaknesses of his case. While it is understandable that Lea faced a difficult life decision and
6 accepting or declining the plea had potential risks, there is no evidence that his decision to plea was
7 forced or coerced.

8 Even without Lea's admission, he still has failed to meet his burden of proving his innocence.
9 There is substantial evidence pointing to Lea as being the perpetrator. Isaiah's testimony at trial was
10 consistent with both his statements to Vanessa and his statements to law enforcement. His
11 statements were also corroborated by the medical determinations by Racioullet who examined Isaiah
12 two days after the incident. Lloyd placed Lea at the scene of the crime and also heard Isaiah
13 screaming from the smokehouse. A jury weighed this evidence and convicted Lea of the crime. The
14 California Court of Appeal and a Federal District Court upheld the convictions against Lea with the
15 Court of Appeals stating that there was sufficient evidence of guilt even without the improper jury
16 instruction. The conviction was eventually reversed based on jury instructional error and not due to the
17 weight of the evidence. After reversal, the District Attorney's Office still believed in Lea's guilt and
18 retried him.


19 Although Isaiah was not found competent to testify in 2009, this alone does not prove Lea's
20 innocence. Isaiah was found incompetent almost 10 years after the crime occurred. It is reasonable to
21 assume Isaiah could no longer remember details due to the passage of time. Although this fact is
22 troubling, it does not prove that Isaiah's 2000 trial testimony was false or incorrect. Isaiah never
23 recanted his statement about Lea committing the crimes or stated that his previous testimony was a lie.
24 Isaiah's incompetency only means that in 2009 he could no longer remember what happened to him in
25 1999.

26 Additionally, there is no evidence to support that Isaiah's 2000 testimony was improperly
27 influenced by Vanessa. The 2008 stipulation does not state that Vanessa told Isaiah to lie to the jury.
28 Isaiah's 2000 testimony was very consistent to his statements to law enforcement and corroborated
29 the Racioullet's medical findings.

1 Finally, the medical report by Dr. Crawford is not persuasive when compared to the report by
2 Racioullet. Racioullet directly examined Isaiah two days after the incident. Dr. Crawford did not
3 examine Isaiah and based his conclusions from medical records and photographs. Although his
4 conclusions differed than those of Racioullet, he only concluded that Isaiah's examination was normal
5 and that it may or may not be indicative of a sexual assault. Additionally, there is no evidence to
6 support Lea's allegations that Racioullet was unqualified to examine Isaiah.

7 Lea has not met his burden of proving his innocence by a preponderance of the evidence. His
8 admission, by way of his plea bargain, undercuts his declaration of innocence. Additionally, Isaiah
9 being incompetent to testify in 2009 does not prove Lea's innocence in light of Isaiah's previous
10 consistent testimony at Lea's 2000 criminal trial and medical findings that corroborate this testimony.
11 Thus, Lea's claim is denied.

12
13 Dated: December 17, 2012



Kevin D. Kwong
Hearing Officer
California Victim Compensation and
Government Claims Board