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

12 **Rick Wilson**
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Notice of Decision

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15 On January 17, 2013, the California Victim Compensation and Government Claims Board
16 adopted the attached Proposed Decision of the Hearing Officer as its Decision in the above-referenced
17 matter.
18

19 Date: January 17, 2013
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21 Tisha Heard
22 Board Liaison
23 California Victim Compensation and
24 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:
Rick Wilson

Proposed Decision
(Penal Code § 4900 et seq.)

Introduction

An in-person hearing on Rick Wilson's claim for compensation as an erroneously convicted person was conducted on October 2, 2012. Kyle Hedum was assigned to hear this matter by the Executive Officer of the California Victim Compensation and Government Claims Board. Wilson appeared in pro per. The California Department of Justice, Office of the Attorney General (AG), was represented by Michael Farrell.

After considering all the evidence,¹ it is determined that Wilson has not proven by a preponderance of the evidence that the crime with which he was charged was either not committed at all, or, if committed, was not committed by him. Therefore, it is recommended that Wilson's claim for compensation pursuant to Penal Code section 4900 et seq. be denied.

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¹ In support of his claim for compensation, Wilson submitted the following documentary evidence: transcripts of the preliminary hearing, court trial, and sentencing; abstract of judgment; appellate decision; National Guard discharge; sentencing information and written argument. The AG submitted copies of a published and an unpublished appellate decision together with their initial opposition brief.

Background

Wilson was convicted by a jury on January 27, 2000, of driving under the influence of alcohol with a prior felony conviction.² The record shows that Wilson's trial in 2000 was bifurcated and that the jury was not provided information about his prior felony convictions for gross vehicular manslaughter and for causing bodily injury in 1993. Thus, after the jury's determination of guilt, the court determined that Wilson's prior felony convictions in 1993 elevated the 2000 driving under the influence conviction to a felony. The court also determined that the two prior felony convictions qualified as strikes.³ Because the felony conviction in 2000 was Wilson's third strike, the court sentenced Wilson to imprisonment for 25 years-to-life.⁴

The California Court of Appeal affirmed Wilson's sentence. The California Supreme Court denied Wilson's petition for review on the merits. Wilson then sought federal habeas relief. The federal district court denied his petition and the appeal proceeded to the Ninth Circuit Court of Appeals.

On April 1, 2011, the Ninth Circuit Court of Appeals determined that there was not sufficient evidence that Wilson was guilty of the strike prior conviction that alleged that he inflicted great bodily injury in the incident in 1993. However, the gross vehicular manslaughter strike prior conviction alleged was left undisturbed. Accordingly, the judgment was reversed and remanded for resentencing.

² In 1993, Wilson pled no contest to gross vehicular manslaughter while driving under the influence of alcohol in violation of California Penal Code § 191.5(a), and to proximately causing bodily injury while driving under the influence of alcohol in violation of California Vehicle Code § 23153(b). Wilson served one year in an addiction treatment residence. Both convictions resulted from a single accident. Wilson and his girlfriend drove from Reno, Nevada into California. Wilson's girlfriend asked Wilson to drive her car after which they picked up a hitchhiker. Wilson had been drinking and drove at a high rate of speed. According to a witness, Wilson's car veered off the road and flipped over. The hitchhiker was killed and Wilson's girlfriend was injured.

³ Penal Code, § 667(a)(1),(2).

⁴ Penal Code, § 667(e)(2).

1 Following remand, the prosecutor dismissed the strike prior conviction that Wilson inflicted
2 great bodily injury. The court declined Wilson's request to dismiss the strike prior conviction alleged
3 that was based on his conviction for gross vehicular manslaughter. Wilson was re-sentenced to
4 imprisonment for six years.⁵ Wilson was released from prison on July 25, 2011. He served 4,197
5 days in state prison from his conviction date and 4,096 days from the date of his sentencing.

6 **Hearing Testimony**

7 Wilson initially argued that he was only convicted of misdemeanor driving under the influence
8 of alcohol in 2000.⁶ Since he should only have received a maximum of one year in county jail for that
9 conviction, he believed that he should receive compensation for the additional 11 years he was
10 incarcerated in state prison.

11 Wilson also argued that even if his conviction for driving under the influence of alcohol in 2000
12 was a valid felony conviction, he should still be compensated for the time he spent in prison in excess
13 of the six years he was sentenced to on remand.⁷ Wilson also stated that he actually would have
14 served less than six years because he would have received credit for good conduct and other
15 reasons.

16 In its essence, Wilson's argument is not that he was erroneously convicted in 2000 for driving
17 under the influence of alcohol. Rather, it is that he was erroneously or improperly sentenced.

18 The AG's office provided the following information at Wilson's hearing. Wilson was properly
19 convicted in 2000 of a felony count of driving under the influence of alcohol because he had prior
20 felony convictions. The court then determined that Wilson's sentence should be enhanced by two
21 prior strikes. This resulted in the 25-years-to-life sentence.

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23
24 ⁵ The aggravated term of three years was doubled based on the prior gross vehicular manslaughter
25 felony strike pursuant to Penal Code, § 667(e)(1).

26 ⁶ This argument is premised on Wilson's belief that his underlying felony convictions from 1993 were
27 improperly used as strikes to elevate what was a misdemeanor to a felony.

28 ⁷ This argument implicitly acknowledges that the strike for gross vehicular manslaughter was properly
29 applied to elevate the 2000 driving under the influence conviction to a felony.

1 This sentence was subsequently overturned by the Ninth Circuit Court of Appeals. The
2 underlying conviction for driving under the influence of alcohol was not disturbed. Upon remand, the
3 trial court used the gross vehicular manslaughter strike to re-sentence Wilson to six years in state
4 prison. The use of this strike was consistent with the findings of the Ninth Circuit Court of Appeals.

5 Since there is no proof that Wilson's felony conviction in 2000 was erroneous, his claim for
6 compensation must fail. There is no provision within Penal Code section 4900 et seq. to allow
7 compensation to be granted to a person who was erroneously sentenced.

8 **Determination of Issues**

9 Penal Code section 4903 establishes the requirements for a successful claim for those
10 individuals who contend that they have been imprisoned as a result of an erroneous conviction. In
11 order to be successful on such a claim, a claimant must prove the following by a preponderance of
12 the evidence:

- 13 (1) that the crime with which he was charged was either not committed at all, or, if committed,
14 was not committed by him;
15 (2) that he did not by any act or omission on his part, intentionally contribute to the bringing
16 about of his or her arrest or conviction for the crime; and
17 (3) that he sustained a pecuniary injury through his erroneous conviction and imprisonment.⁸

18 "Preponderance of the evidence" means evidence that has more convincing force than that
19 opposed to it.⁹ If a claimant meets his burden of proof, the Board shall recommend to the legislature
20 that an appropriation of \$100.00 be made for each day of incarceration in prison served subsequent
21 to the claimant's conviction.¹⁰

24 ⁸ Pen. Code, § 4903, *Tennison v. Victim Compensation and Government Claims Board* (2006) 152 Cal.
25 App. 4th 1164.

26 ⁹ *People v. Miller* (1916) 171 Cal. 649, 652; (*Diola v. State Board of Control* (1982) 135 Cal.App.3d
580, 588 fn. 7.)

27 ¹⁰ Pen. Code, § 4904.
28

1 In reaching its determination of the merits of the claim, the Board may consider the claimant's
2 mere denial of commission of the crime for which he was convicted, reversal of the judgment of
3 conviction on appeal, acquittal of the claimant on retrial, or the failure of the prosecuting authority to
4 retry claimant for the crime. However, those factors will not be deemed sufficient evidence to warrant
5 the Board's recommendation that a claimant be indemnified in the absence of substantial independent
6 corroborating evidence that the claimant is innocent of the crime charged.¹¹ The Board may also
7 consider as substantive evidence testimony of witnesses the claimant had an opportunity to cross-
8 examine, and evidence to which the claimant had an opportunity to object, admitted in prior
9 proceedings relating to the claimant and the crime with which he was charged. Finally, the Board may
10 also consider any information that it may deem relevant to the issue before it.¹²

11 It is determined that Wilson has not met his burden in proving by a preponderance of the
12 evidence that the crime with which he was charged was either not committed at all, or, if committed,
13 was not committed by him. The evidence showed that Wilson's conviction in 2000 for driving under
14 the influence of alcohol was not erroneous.¹³ Once the jury returned with a guilty verdict, the trial
15 judge subsequently determined that Wilson had two prior strike convictions. Wilson was thus
16 sentenced to 25-years-to-life.

17 The evidence also showed that Wilson's gross vehicular manslaughter conviction and strike
18 from 1993 was not disturbed by the Ninth Circuit Court of Appeals decision. After remand, Wilson was
19 re-sentenced to six years in state prison. This sentence consisted of an aggravated term of three
20 years that was doubled due to the 1993 gross vehicular manslaughter strike. This sentence is
21 consistent with the findings of the Ninth Circuit Court of Appeals decision.

22 Wilson was properly convicted by a jury of driving under the influence of alcohol in 2000. This
23 felony conviction resulted in a sentence to state prison. Although Wilson might have spent excessive

24 ¹¹ Cal. Code Regs., tit. 2, § 641; *Tennison v. Victim Compensation and Government Claims Board*
25 (2006) 152 Cal. App. 4th 1164.

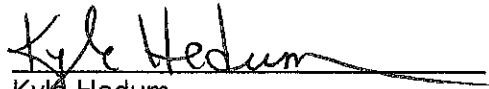
26 ¹² Cal. Code Regs., tit. 2, § 641.

27 ¹³ It is therefore not necessary to determine if Wilson suffered a pecuniary injury.
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1 time in prison due to a sentencing error, Penal Code section 4900 et seq. does not allow
2 compensation to be paid to a person who is improperly sentenced.

3 Wilson's claim is denied.

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5 Date: December 4, 2012

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7 Kyle Hedum
8 Hearing Officer
9 California Victim Compensation and
10 Government Claims Board
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