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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 Application of:

12 **Adam Riojas**

13 Application No. G550541

**Proposed Decision**

**(Penal Code § 4900 et seq.)**

14 **Introduction**

15 A hearing on this claim for compensation as a result of an erroneous conviction was heard on  
16 October 3, 2007, by Kyle Hedum, Hearing Officer, who was assigned to hear this matter by the  
17 Executive Officer of the Victim Compensation and Government Claims Board (Board).

18 Justin Brooks and Jeffrey Chinn, Attorneys at Law, represented claimant Adam Riojas. Adam  
19 Riojas appeared at the hearing and testified under oath.

20 Sharon Loughner, Deputy Attorney General (AG), represented the California Department of  
21 Justice, Office of the Attorney General.

22 After considering all the evidence, it is determined that Adam Riojas failed to prove by a  
23 preponderance of the evidence that he did not commit the crime for which he was incarcerated.  
24 Therefore, it is recommended that Adam Riojas' claim for compensation pursuant to Penal Code  
25 4900 et seq. be denied.

26 **Background**

27 At about noon on December 8, 1989, Jose Rodarte was shot and killed in the vicinity of South  
28 Rowan Avenue and Townsend Boulevard in Los Angeles. Various witnesses described seeing a

1 beige van with a brown stripe leaving the area where Jose Rodarte was lying on the sidewalk,  
2 bleeding from two or three gunshot wounds. Jose Rodarte told law enforcement, with the aid of a  
3 Spanish-speaking bystander, that "two guys had shot him" and left in a yellow or beige van. Jose  
4 Rodarte died about an hour after being shot. Following a lengthy investigation, Adam Riojas and co-  
5 defendant Vidal Rodriguez were arrested on or about September 1990.

6 The prosecution's theory at trial was that Adam Riojas was the driver of the beige van and that  
7 co-defendant Vidal Rodriguez was the person who shot and killed Jose Rodarte. Adam Riojas did  
8 not testify on his own behalf, and his attorney argued that Riojas was not in Los Angeles the day of  
9 the murder. Adam Riojas was convicted of second degree murder on August 12, 1991, and was  
10 sentenced to a prison term of 17 years to life.<sup>1</sup> In 1993, the Court of Appeals affirmed Adam Riojas's  
11 conviction, but reduced his sentence to 16 years to life. In 1996, the California Supreme Court  
12 denied Adam Riojas's writ of habeas corpus. In 1997, the United States District Court dismissed  
13 Adam Riojas's writ of habeas corpus with prejudice. In 2002, the Board of Prison Terms  
14 recommended that Adam Riojas be granted parole, but that recommendation was denied by  
15 Governor Davis. In 2004, Governor Schwarzenegger granted Adam Riojas's parole. On April 26,  
16 2004, Adam Riojas was released from imprisonment on parole.

17 In his timely claim for compensation pursuant to Penal Code sections 4900-4906, Adam  
18 Riojas argued that he was erroneously convicted because he was not in Los Angeles on December  
19 8, 1989. He also argued that he was mistaken for his father, Riojas Sr., who told several family  
20 members that it was he, and not his son, that was responsible for the killing of Jose Rodarte.

### 21 **Criminal Trial Testimony**

#### 22 **A. Yolanda Sanchez testified at the trial that:**

- 23 1. She had known Jose Rodarte for four years and was pregnant with Jose Rodarte's child at  
24 the time of the murder;
- 25 2. She and Jose Rodarte did not reside in the same household;
- 26 3. Her home is located in the vicinity of Union Pacific Avenue in Los Angeles.<sup>2</sup>

27 <sup>1</sup> Co-defendant Vidal Rodriguez was also convicted of 2<sup>nd</sup> degree murder.

28 <sup>2</sup> Yolanda Sanchez's home is located within 1 mile of the site of the murder.

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4. On December 8, 1989, between 11:30 a.m. and noon, she was in her home when she saw Adam Riojas and Vidal Rodriguez park a beige van in front of her house;
  5. She saw Vidal Rodriguez get out of the van and walk into a bar across the street from her home, and a few minutes later she saw him return to the van and leave with Adam Riojas;
  6. She knew Adam Riojas and Vidal Rodriguez because they had visited Jose Rodarte at her house a few days earlier on December 3<sup>rd</sup> and December 5<sup>th</sup>.

B. Sara Samora testified at the trial that:

1. She lived with Jose Rodarte at the time of his murder;
2. The home she shared with Jose Rodarte is located in the vicinity of South Rowan Avenue in Los Angeles.<sup>3</sup>
3. At about 11:45 a.m. on December 8, 1989, she walked outside her home to tell Jose Rodarte that his lunch was ready;
4. Raul Serrano, who was helping Jose Rodarte move a car into the garage, told her that Jose Rodarte had just left with some friends.

C. Raul Serrano testified at the trial that:

1. He lived in an apartment behind Jose Rodarte's house, located in the vicinity of South Rowan Avenue in Los Angeles;
2. At about 11:45 a.m. on December 8, 1989, he was helping Jose Rodarte move a car into the garage when a beige van arrived at Jose Rodarte's home;
3. He recognized Adam Riojas as one of the men from the van because he had met Adam Riojas the previous week at a barbecue at Jose Rodarte's house;
4. He did not know the other person that was with Adam Riojas;
5. He saw Jose Rodarte speak with Adam Riojas and the other person from the van, and then all three got into the van and left.

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<sup>3</sup> Sara Samora's home is located within 1 mile of the site of the murder and within 10 blocks of Yolanda Sanchez's home.

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D. Antonio Olvera testified at the trial that:

1. He was working in an automotive body shop in Los Angeles on December 8, 1989;
2. He was in the shop at about noon when Jose Rodarte and another man entered and asked for Alfredo Ramos;
3. When Jose Rodarte was told that Alfredo Ramos was not there, Jose Rodarte and the other man left the shop.
4. He had met Jose Rodarte about six months earlier.

E. Alma Deliflores testified at the trial that:

1. She and Sandra Vasquez were on their lunch break, from 11:30 a.m. to noon, on December 8, 1989, and both were standing in front of the employer's business, located in the vicinity of South Rowan and Townsend Boulevard in Los Angeles;
2. She was about to return to work when she saw a beige van pull up and park across the street;
3. The driver of the van stared at them;
5. The driver of the van was "kind of cute" and "handsome;"
6. The driver was Latin or Hispanic;
7. She was unable to identify Adam Riojas at a live-lineup;
8. She believes that Adam Riojas resembles the man that was driving the van that parked in front of her employer's business at about noon on December 8, 1989.
9. She was inside the business when the murder occurred.

F. Sandra Vasquez testified at the trial that:

1. She was on her lunch break with Alma Deliflores when a beige van pulled up outside the business in Los Angeles and parked;
2. The driver of the van stared at her;
3. The driver was Latino or Hispanic;
4. Two other men got out of the van and walked across the street;
5. She was inside the business when the murder occurred;
6. She was unable to identify Adam Riojas at a live-lineup;

1 7. She believes, but is not 100 percent sure, that Adam Riojas was the person driving the  
2 van that parked in front of her employer's business at about noon on December 8, 1989.

3 G. Vasana Wilson testified at the trial that:

- 4 1. She was engaged to Adam Riojas when he was arrested for the murder of Jose Rodarte;  
5 2. She broke off the engagement when Adam Riojas was arrested;  
6 3. She was with Adam Riojas at his home in Carlsbad, California, the evening of December  
7 7, 1989;  
8 4. Vidal Rodriguez was also present at Adam Riojas's home the evening of December 7,  
9 1989;  
10 5. Vidal Rodriguez slept on Adam Riojas's couch the evening of December 7, 1989;  
11 6. She woke up at about noon on December 8, 1989;  
12 7. Adam Riojas was present in the home when she awoke;  
13 8. Vidal Rodriguez was not present in the home when she awoke;  
14 9. Vidal Rodriguez returned to Adam Riojas's home at 2:00 p.m. or 3:00 p.m. on December  
15 8, 1989;  
16 10. She and Adam Riojas remained in the home until late afternoon, at which time she, Adam  
17 Riojas, and Vidal Rodriguez went to a shopping mall and then to dinner in San Diego;  
18 11. She was unemployed at the time of the murder and she received financial assistance  
19 from Adam Riojas for daily living expenses.

20 H. Vidal Rodriguez testified on his own behalf at the trial that:

- 21 1. He spent the evening of December 7, 1989, with Adam Riojas and Vasana Wilson in  
22 Adam Riojas' home in Carlsbad, California;  
23 2. He was awakened by Ruben Garcia the morning of December 8, 1989;  
24 3. Ruben Garcia was an acquaintance of his and came to Adam Riojas' home to seek  
25 assistance in getting to Los Angeles;  
26 4. He borrowed Adam Riojas' beige van and he and Ruben Garcia drove to Los Angeles;  
27 5. While in Los Angeles, he went to a bar to try and locate Adam Riojas' estranged father,  
28 Riojas Sr., but was unsuccessful in finding him;

- 1 6. Ruben Garcia dropped him off at a McDonald's restaurant so he could eat;
- 2 7. Ruben Garcia returned about thirty minutes later;
- 3 8. He dropped Ruben Garcia off at the train station and he drove the van back to Adam
- 4 Riojas' home.

### 5 **Hearing for Compensation under Penal Code Section 4900 et seq.**

#### 6 I. Hearing Testimony of Alicia Riojas

7 Alicia Riojas testified at the hearing, with the aid of a Spanish interpreter, that she is Adam  
8 Riojas' aunt and Riojas Sr.'s sister. Riojas Sr. told her in 2000 that he had shot and killed a man  
9 named Ramon and that this was the man that his son was convicted of murdering. She did not  
10 believe him, and she did not tell anyone else because she was afraid of her brother because he  
11 always had a weapon. She eventually told Adam Riojas' mother about what Riojas Sr. had told her,  
12 but she does not know if Riojas Sr. told anyone else. She never visited Adam Riojas while he was  
13 incarcerated and she never told Adam Riojas what his father had disclosed to her.

14 When questioned by the AG, Alicia Riojas admitted that she was unsure of the date that  
15 Riojas Sr. first told her that he had killed a man. When the AG showed Alicia Riojas a copy of a  
16 declaration in support of Adam Riojas' claim for compensation that she signed in 2003, Alicia Riojas  
17 confirmed that the declaration was authored by her and was prepared to assist Adam Riojas's claim  
18 for compensation. Alicia Riojas also confirmed that she stated in the declaration that Riojas Sr.  
19 admitted the murder to her about six or seven years prior to signing the declaration, which would  
20 have been in 1996 or 1997.

#### 21 II. Hearing Testimony of Vasana Wilson

22 Vasana Wilson testified at the hearing that she met Adam Riojas in 1987 in Hawaii shortly  
23 after she graduated from high school. She and Adam Riojas were engaged to be married, but after  
24 he was charged with the murder of Jose Rodarte, she broke off the engagement. She did not visit  
25 Adam Riojas during his incarceration, and they are only friends now.

26 She was living in Hawaii in 1989 and she flew to California to spend time with Adam Riojas  
27 and to celebrate his birthday on December 8, 1989. The night before the murder, she was with Adam  
28 Riojas, Vidal Rodriguez and Adam Riojas' sister at Adam Riojas' apartment in Carlsbad, California.

1 She and the others watched a boxing match on television. After the match finished, she went to bed  
2 around midnight and only Adam Riojas and Vidal Rodriguez remained in the apartment.

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4 When she woke up the next day at about noon and came into the living room, Adam Riojas  
5 was watching television. Vidal Rodriguez was not present. She and Adam Riojas remained in the  
6 apartment until Vidal Rodriguez returned about 2:00 p.m. or 3:00 p.m. The three remained in the  
7 apartment until they went out to celebrate Adam Riojas' birthday by shopping, dancing and having  
8 dinner.

### 9 III. Hearing Testimony of Adam Riojas

10 Adam Riojas testified at the hearing that he loaned his van to Vidal Rodriguez the morning of  
11 December 8, 1989, so that Vidal Rodriguez could take Ruben Garcia to Los Angeles. He did not  
12 know Ruben Garcia prior to the morning of December 8, 1989. He also did not know how Ruben  
13 Garcia knew where he lived nor did he know how Ruben Garcia got to his apartment in Carlsbad the  
14 morning of December 8, 1989.

15 He adamantly denied being in Los Angeles on December 8, 1989, and argued that the people  
16 who told the police that he was in Los Angeles on December 8, 1989, were mistaken. He believes  
17 that his father was involved in the killing of Jose R. and that he was mistaken for his father.

18 Adam Riojas also introduced evidence consisting of two partial parole hearing transcripts in  
19 which his attorney attempted to raise the issue of his innocence by arguing that he was misidentified.  
20 However, the Board of Prison Terms properly limited the hearings to Adam Riojas' suitability for  
21 parole.

22 Adam Riojas also submitted declarations in support of his claim for compensation from his  
23 uncle, Carlos Riojas and his sister, Blanca Riojas. Carlos Riojas declared, on February 14, 2003, that  
24 during a conversation between them in the summer of 2000, Riojas Sr. told him that he had been  
25 involved in a deal that had "gone sour." Carlos Riojas stated in this declaration that a few days  
26 before his death, Riojas Sr. said "I should be in jail with my son."

27 Blanca Riojas stated in her declaration, dated February 14, 2003, that her father, Riojas Sr.  
28 told her in 1989 that he had just killed a guy in Los Angeles because this guy was "trying to act smart,  
but he was not smart." Blanca Riojas stated that Riojas Sr. confessed to killing the man his son was

1 on trial for killing." Blanca Riojas also stated that her father "accompanied my mother and me to  
2 Adam's trial at the beginning."

### 3 Findings

4 A preponderance of the evidence supports the following findings:

- 5 1. At about noon on December 8, 1989, Jose Rodarte was murdered in the vicinity of South  
6 Rowan and Townsend Boulevard in Los Angeles by Vidal Rodriguez.
- 7 2. Adam Riojas was present at the scene when Jose R. was murdered.
- 8 3. Adam Riojas was incarcerated 4,611 days subsequent to conviction.
- 9 4. Adam Riojas second-degree murder conviction was never overturned or reversed.
- 10 5. Adam Riojas's hearing testimony was not credible.
- 11 6. Vasana Wilson's hearing testimony was not credible.

### 12 Determination of Issues

13 Penal Code section 4903 establishes the requirements for a successful claim for an  
14 erroneously convicted felon. A person convicted and imprisoned for a felony may submit a claim to  
15 the Board for pecuniary injury sustained as a result of his erroneous conviction and imprisonment.<sup>4</sup>

16 In order to be successful, the claimant must prove: (1) that the crime with which he was  
17 charged was either not committed at all, or, if committed, was not committed by him; (2) that he did  
18 not by any act or omission on his part, either intentionally or negligently, contribute to the bringing  
19 about of the arrest or conviction for the crime; and (3) that he sustained a pecuniary injury through his  
20 erroneous conviction and imprisonment.<sup>5</sup> If the claimant meets his burden of proof, the Board shall  
21 recommend to the legislature that an appropriation of \$100 be made for the claimant for each day of  
22 incarceration served subsequent to the claimant's conviction.<sup>6</sup> The claimant has the burden of  
23 proving the necessary elements of his claim by a preponderance of the evidence.<sup>7</sup>

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25 <sup>4</sup> Pen. Code, § 4900.

26 <sup>5</sup> Pen. Code, § 4903.

27 <sup>6</sup> Pen. Code, § 4904.

28 <sup>7</sup> *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. 4<sup>th</sup> 1164.



1 Preponderance of the evidence means evidence that has more convincing force than that  
2 opposed to it.<sup>8</sup> In reaching its determination of the merits of the claim, the Board may consider the  
3 following, but the following will not be deemed sufficient evidence to warrant the Board's  
4 recommendation that the claimant be indemnified in the absence of substantial independent  
5 corroborating evidence that the claimant is innocent of the crime charged: (1) claimant's mere denial  
6 of commission of the crime for which he was convicted; (2) reversal of the judgment of conviction on  
7 appeal; (3) acquittal of claimant on retrial; or (4) the failure of the prosecuting authority to retry  
8 claimant for the crime.<sup>9</sup>

9 Testimony of witnesses claimant had an opportunity to cross-examine, and evidence to which  
10 claimant had an opportunity to object, admitted in prior proceedings relating to the claimant and the  
11 crime with which he was charged, may be considered by the Board as substantive evidence. The  
12 Board may also consider any information that it may deem relevant to the issue before it.<sup>10</sup>

13 Adam Riojas claimed at the hearing that he was not in Los Angeles on December 8, 1989, the  
14 day of Jose Rodarte's murder. His fiancée, Vasana Wilson, testified at the hearing that she was with  
15 Adam Riojas at his home in Carlsbad on December 8, 1989. However, Yolanda Sanchez identified  
16 Adam Riojas as the passenger in the van that parked in front of her home in Los Angeles on  
17 December 8, 1989. Raul Serrano identified Adam Riojas as one of the men who got out of the van  
18 when it arrived at Jose Rodarte's house in Los Angeles on December 8, 1989. Although these two  
19 witnesses did not see the actual crime, each positively identified Adam Riojas as being at separate  
20 locations in Los Angeles at or about noon on December 8, 1989. These two positive identifications  
21 placed Adam Riojas within one mile of the scene of the murder at or about noon on December 8,  
22 1989. There is no evidence in the trial record or hearing record that would impute any doubt to these  
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25 <sup>8</sup> *People v. Miller* (1916) 171 Cal. 649, 652.

26 <sup>9</sup> Cal. Code Regs., tit. 2, § 641.

27 <sup>10</sup> Cal. Code Regs., tit. 2, § 641.  
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1 two positive identifications. Therefore, it is determined that Yolanda Sanchez and Raul Serrano  
2 testified credibly at Adam Riojas' criminal trial that each saw Adam Riojas at or about noon on  
3 December 8, 1989, in different locations in Los Angeles but near the scene of the murder.

4 The same cannot be said of Vasana Wilson's testimony. By the very nature of her  
5 relationship with Adam Riojas, her testimony must be viewed with caution. She testified at Adam  
6 Riojas' criminal trial, and later at Adam Riojas' hearing on this claim, that when she woke up at about  
7 noon on December 8, 1989, Adam Riojas was in the home watching television. She and Adam  
8 Riojas spent the day in his home in Carlsbad and later that evening, she, Adam Riojas, and Vidal  
9 Rodriguez went shopping and then had dinner and went dancing. Her testimony supports Adam  
10 Riojas' alibi that he was not in Los Angeles the day of the murder. Because it has previously been  
11 determined that Yolanda Sanchez and Raul Serrano testified credibly that each separately saw Adam  
12 Riojas at or about noon on December 8, 1989, in two locations less than one mile from the scene of  
13 the murder, it is determined that Vasana Wilson's hearing testimony is not supported by the evidence  
14 and thus must be determined to be not credible.

15 Adam Riojas' claim that his father killed Jose Rodarte is determined to be extraneous and not  
16 supported by any credible evidence. Riojas Sr.'s purported confession occurred after his son was  
17 convicted of the murder and contained detailed information concerning the events of the crime that  
18 could easily have been obtained during the time Riojas Sr. sat watching his son's trial. Even though  
19 multiple people had allegedly been told by Riojas Sr. that he was responsible for Jose Rodarte's  
20 murder, there was no evidence presented at the hearing that this crucial information was ever  
21 provided to Adam Riojas or his attorneys prior to his release on parole. And, notwithstanding Adam  
22 Riojas's attorney's attempts to turn two parole hearings into innocence determinations, the Board of  
23 Prison Terms did not make any determination regarding the assertion of Adam Riojas that he did not  
24 commit the crime for which he was imprisoned.

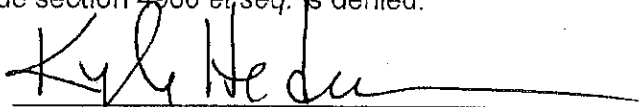
25 Therefore, it is determined that Adam Riojas has not proven by a preponderance of the  
26 evidence that he did not commit second degree murder and that he did not, either intentionally or  
27 negligently, contribute to his arrest or conviction for those offenses. Because Adam Riojas was not  
28 erroneously convicted, the issue of whether he sustained pecuniary injury is rendered moot.

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**Recommendation**

Adam Riojas' claim under Penal Code section 4900 *et seq.* is denied.

Date: December 31, 2007



Kyle Hedum  
Hearing Officer  
Victim Compensation and  
Government Claims Board