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

Proposed Decision
(Penal Code § 4900 et seq.)

10 **Richard James Goolsby**

11 Claim Number: 16-ECO-07

12 **INTRODUCTION**

13 Richard James Goolsby (Goolsby) submitted his Penal Code section 4900 application on
14 September 14, 2016. Andrea Konstad was assigned to hear this matter by the Executive Officer of the
15 California Victim Compensation Board (CalVCB).

16 The claimant was represented by Moises A. Aviles, Esq. and the California Department of
17 Justice, Office of the Attorney General (AG), was represented by Jessica C. Leal. Both counsel
18 submitted on the basis of their briefing and agreed to a hearing on the written record.

19 After considering all of the evidence in the record, it is determined that Goolsby has met the
20 statutory requirements to receive compensation pursuant to Penal Code section 4900, et seq.

21 **CRIMINAL PROCEEDINGS**

22 On February 1, 2010, the San Bernardino County District Attorney's Office (DA) filed a first
23 amended information charging Goolsby with one count of arson of an inhabited structure, in violation of
24 Penal Code section 451, subdivision (b) (Count 1),¹ with a multiple structure enhancement (§ 452.1,
25 subd. (a)); and one count of attempted murder, in violation of section 664/187, subdivision (a) (Count
26 2). It was further alleged that Goolsby had suffered three prior violent or serious felony strike

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28 ¹ All further statutory references will be the Penal Code unless otherwise indicated.

1 convictions, within the meaning of sections 1170.12, subdivisions (a) through (d), and 667, subdivisions
2 (b) through (i) (Three Strikes Law); three prior serious felony convictions, within the meaning of section
3 667, subdivision (a)(1); and served three prior prison terms within the meaning of section 667.5,
4 subdivision (b).²

5 On June 29, 2010, Goolsby was found guilty by way of jury trial of count 1 only - arson of an
6 inhabited structure.³ The jury also found true the enhancing allegation that he caused more than one
7 structure to burn. Subsequently, the court found true the “strike” priors and sentenced him to an
8 indeterminate term of 25 years to life plus a consecutive determinate term of 23 years.⁴

9 Goolsby appealed his conviction, contending that his conviction was invalid because his motor
10 home did not constitute a structure within the meaning of section 451.⁵

11 On February 14, 2013, in an unpublished opinion, the Fourth District Court of Appeal (Court of
12 Appeal) agreed with Goolsby and found that the evidence did not support either the jury’s verdict
13 finding him guilty of arson of an inhabited structure or the jury’s true finding on the multiple structure
14 enhancement.⁶ Nonetheless, the Court of Appeal concluded the evidence was sufficient support a
15 conviction for the lesser offense of arson, based on the jury’s implied finding that Goolsby acted with
16 malice in burning the motor homes, and exercised its discretion to modify his conviction to what the
17 court believed was the “lesser included offense of arson of property,” in violation of section 451,
18 subdivision (d).

21 ² The felony complaint filed on December 1, 2009, included a charge for aggravated arson (count 2 of
22 that document) and described the offense charged in count 1 as arson of an “inhabited structure or
23 property.”

24 ³ Goolsby was found not guilty of count 2 – attempted murder.

25 ⁴ Because the rest of Goolsby’s prior convictions are not relevant to this proceeding, they will not be
26 further discussed.

27 ⁵ A structure is defined as any building, or commercial or public tent, bridge, tunnel, or power plant.
28 (§ 450, subd. (a).)

⁶ *People v. Goolsby* (February 14, 2013 E502297).

1 Following the Court of Appeal's decision, Goolsby filed a petition for rehearing on the issue of
2 whether arson of property is a lesser included offense of arson of an inhabited structure such that the
3 appellate court could properly exercise its discretion under section 1181, subdivision 6, and reduce his
4 conviction from the greater offense of arson of an inhabited structure to the lesser offense of arson of
5 property.

6 On April 30, 2013, the Court of Appeal reversed the judgment based on insufficiency of the
7 evidence and directed the trial court to dismiss the charge and all enhancements. The appellate court
8 found that, while arson of property is a lesser *related* offense, it is not a lesser *included* offense of the
9 crime of arson of an inhabited structure.⁷ Accordingly, the appellate court stated it lacked the authority
10 to exercise discretion under section 1181, subdivision 6, to modify the judgement by reducing
11 Goolsby's conviction. In addition, the appellate court noted that, while the AG urged that the matter be
12 remanded for a new trial, the appellate court stated that a retrial was prohibited because the
13 prosecution had failed, as a matter of law, to prove its case. Therefore, a retrial would constitute a
14 violation of the protections against double jeopardy.

15 Thereafter, the AG petitioned for rehearing.

16 On January 14, 2014, the Court of Appeal issued a third opinion and again ordered the
17 judgment reversed and the matter remanded to the trial court with directions to dismiss the charge and
18 all enhancements. Rather than basis its decision on the prohibition against double jeopardy, the
19 appellate court stated that a retrial would violate the prohibition against multiple prosecutions for the
20 same act.⁸ The court explained that, because the prosecutor did not charge Goolsby with the lesser
21 related offense arson of property, the jury did not render or attempt to render a verdict on that crime.
22 Consequently, there was no unresolved or pending charge on which to remand the matter to the trial
23

24 ⁷ A lesser included offense is a crime for which all of the elements necessary to impose liability are also
25 elements found in the greater offense. In other words, the greater offense cannot be committed without
26 also committing the lesser because all of the elements of the lesser are included in the elements of the
27 greater. Because arson of property includes arson of everything but a structure, it is not a lesser
28 included offense of arson of a structure.

⁸ § 654.

1 **DETERMINATION OF ISSUES**

2 **I. Penal Code Section 4900, et seq.**

3 Penal Code section 4900 provides that an innocent person who has been erroneously convicted
4 of, and imprisoned for, a felony can apply for compensation from the state for every day he was
5 imprisoned, for injury he sustained as a result of the erroneous conviction and imprisonment. In order
6 to establish a successful claim for relief, a claimant must prove, by a preponderance of the evidence,
7 that the crime with which he was charged was either not committed at all, or, if committed, was not
8 committed by him and that he sustained an injury through his erroneous conviction and imprisonment.¹¹
9 “Preponderance of the evidence” means evidence that has more convincing force than that opposed to
10 it.¹²

11 In reaching its determination of the merits of a Penal Code section 4900 claim, the Board may
12 consider the claimant’s mere denial of commission of the crime for which he was convicted, reversal of
13 the judgment of conviction on appeal, acquittal of the claimant on retrial, or the failure of the
14 prosecuting authority to retry the claimant for the crime.¹³ However, those factors will not be deemed
15 sufficient evidence to warrant the Board’s recommendation that a claimant be indemnified in the
16 absence of substantial independent corroborating evidence that the claimant is innocent of the crime
17 charged.¹⁴ The Board may also consider as substantive evidence the prior testimony of witnesses the
18 claimant had an opportunity to cross-examine, and evidence admitted in prior proceedings relating to
19 the claimant and the crime with which he was charged to which the claimant had an opportunity to
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24 ¹¹ *Tennison v. Victim Compensation and Government Claims Board* (2006) 152 Cal. App. 4th 1164.

25 ¹² § 4903; *People v. Miller* (1916) 171 Cal. 649.

26 ¹³ Cal. Code Regs., tit. 2, § 641, subd. (a).

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

1 object.¹⁵ Finally, the Board may also consider any information that it may deem relevant to the issue
2 before it.¹⁶

3 Because the purpose of these administrative hearings is to determine whether the claimant has
4 met his burden of proving he is innocent of the crime for which he was convicted and incarcerated, all
5 relevant evidence is admissible, irrespective of whether it would be admitted at a criminal jury trial, or in
6 a civil or administrative proceeding, so long as the evidence is probative to the claimant's assertion that
7 he is innocent.¹⁷ The formal hearing rules of the Administrative Procedures Act are not applicable.¹⁸

8 If a claimant meets his burden of proof, the Board shall recommend to the legislature that an
9 appropriation of \$140.00 be made for each day of incarceration served in prison or jail subsequent to
10 the conviction.¹⁹

11 **II. Arson**

12 Section 451, which defines the crime of arson, states in relevant part:

13 A person is guilty of arson when he or she willfully and maliciously
14 sets fire to or burns or causes to be burned or who aids, counsels,
or procures the burning of, any structure, forest land, or property.

15 (a) Arson that causes great bodily injury is a felony punishable by
16 imprisonment in the state prison for five, seven, or nine years.

17 (b) Arson that causes an inhabited structure or inhabited property
18 to burn is a felony punishable by imprisonment in the state prison
for three, five, or eight years.

19 (c) Arson of a structure or forest land is a felony punishable by
20 imprisonment in the state prison for two, four, or six years.

21 (d) Arson of property is a felony punishable by imprisonment in the
22 state prison for 16 months, two, or three years. For purposes of

23 ¹⁵ Cal. Code Regs., tit. 2, § 641, subd. (b).

24 ¹⁶ Cal. Code Regs., tit. 2, § 641, subds. (c), (d), and (f).

25 ¹⁷ Cal. Code Regs., tit. 2, § 641, subd. (d).

26 ¹⁸ Cal. Code Regs., tit. 2, § 615.1.

27 ¹⁹ Pen. Code, § 4904.
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1 this paragraph, arson of property does not include one burning or
2 causing to be burned his or her own personal property unless
3 there is an intent to defraud or there is injury to another person or
4 another person's structure, forest land, or property.

5 Section 450, which defines the terms for the crime of arson states, in
6 relevant part:

7 (a) "Structure" means any building, or commercial or public tent,
8 bridge, tunnel, or powerplant.

9 (b) "Forest land" means any brush covered land, cut-over land,
10 forest, grasslands, or woods.

11 (c) "Property" means real property or personal property, other
12 than a structure or forest land.

13

14 (e) "Maliciously" imports a wish to vex, defraud, annoy, or injure
15 another person, or an intent to do a wrongful act, established
16 either by proof or presumption of law....

17 **III. Analysis**

18 While the AG initially contested Goolsby's section 4900 application, she subsequently conceded
19 that, based on a plain reading of sections 4900 et seq., Goolsby was entitled to a recommendation from
20 the Board that an appropriation be made by the Legislature for the purpose of indemnifying him for 254
21 days of wrongful incarceration, for a total of \$35,560.²⁰ Because he did not set fire to a "structure," he
22 could not be found guilty of arson of an inhabited structure as a matter of law. Because he served a
23 prison term for an erroneous conviction, he sustained injury. Therefore, Goolsby had satisfied his
24 burden for purposes of section 4900 et seq. While acknowledging that this is the legally required
25 conclusion in this matter, the AG emphasized that her Office takes strong exception to the wording of
26 the governing statutes which mandate this result. The AG pointed out that the facts surrounding the
27 incident are undisputed and show that Goolsby did, in fact, commit arson of property by intentionally
28 setting fire to a motor home parked next to the one in which his girlfriend was sleeping. Indeed,

²⁰ In his application, Goolsby asserted he was wrongfully incarcerated for 2,445 days, for a total of \$342,300 in compensation.

1 Goolsby has never denied doing so. However, because a motor home falls within the definition of
2 “property” and is not considered a “structure,” as defined in the relevant statute, and the two elements
3 are mutually exclusive, he cannot be found guilty of arson of a structure – the crime with which he was
4 charged and convicted.

5 The AG then underscores the ludicrousness of the result necessitated here by the current
6 wording of the statutes by reciting Goolsby’s extensive criminal record. As noted in her response dated
7 March 1, 2017, Goolsby was a 52-year-old career criminal at the time he was sentenced for the arson.
8 Specifically, she stated:

9 “He had just turned 18 when he was convicted of first-degree
10 burglary and first-degree robbery....He had multiple convictions
11 for burglary, possession of stolen property, theft....He had been
12 previously convicted of an arson, setting a public building on fire,
13 endangering life and demonstrating he was familiar with the
14 crime....His life had been ‘an endless parade of conviction, parole,
15 revocation, arrest, county jail, revocation, conviction, and
16 incarceration since he was in his teens. Moreover, the period
17 after the first degree burglary and first degree robbery convictions
18 has been spotted with multiple burglaries, receiving stolen
19 property, and ex-felon with firearm convictions,’ and even an
20 escape from prison and recapture because he committed grand
21 larceny the day after his escape...[Goolsby also] suffered at least
22 10 parole violations since he was first sentenced to state prison in
23 1980 and had ‘spent most of his life in prison....”

24 Based on all of the evidence presented to the Board, it is determined that Goolsby has proven
25 by a preponderance of the evidence that the crime with which he was charged – arson of an inhabited
26 structure - was not committed and that he sustained injury as a result of his conviction. Accordingly, he
27 is entitled to compensation of \$140.00 for each day of incarceration served, pursuant to section 4900 et
28 seq.

1 **IV. Amount of compensation**

2 Goalsby contends he should receive compensation in the amount of \$342,300 for 2,445 days of
3 incarceration. However, as the AG correctly points out, while Goalsby was serving his sentence for the
4 erroneous arson conviction, he was also serving a concurrent, six-year term for receiving stolen
5 property. Therefore, he cannot show he suffered an injury for the erroneous conviction during that six-
6 year overlap. The six-year term commenced on the date of his arrest on November 28, 2009, and
7 lasted until November 28, 2015. Thereafter, he spent another 256 days in prison on the arson
8 conviction alone, until he was released – the time period for which he is entitled to compensation.²¹ At
9 the rate of \$140.00 per day, that comes to a total of \$35,840.

10 The Board recommends to the Legislature that an appropriation be made to pay the claim in the
11 amount of \$35,840.

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13 Date: March 29, 2017

14 Andrea L. Konstad
15 Hearing Officer
16 California Victim Compensation Board
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27 ²¹ While the AG has stated that the time Goalsby served on the erroneous conviction is 254 days, the
28 Board's calculations show it to be 256 days.

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**BEFORE THE VICTIM COMPENSATION BOARD
OF THE STATE OF CALIFORNIA**

In the Matter of the Claim of:

Notice of Decision

Richard James Goolsby

Application Number: 16-ECO-07

On June 15, 2017, the California Victim Compensation Board adopted the attached Proposed Decision of the Hearing Officer as its Decision in the above-referenced matter.

Date: June 19, 2017

Tisha Heard
Board Liaison
California Victim Compensation Board