BEFORE THE VICTIM COMPENSATION BOARD

OF THE STATE OF CALIFORNIA

In the Matter: **Lawrence M. Martin** Claim No. 19-ECO-26	**Proposed Decision** **(Penal Code § 4900 et seq.)**

I. INTRODUCTION

On December 18, 2019, an application for compensation as an erroneously convicted person was filed on behalf of Lawrence M. Martin (Martin) with the California Victim Compensation Board (CalVCB) pursuant to Penal Code section 4900. Martin is represented by his attorney James A. Bryant II (Bryant) of The Cochran Firm. The claim was based upon a 1998 conviction and wrongful incarceration for possession of a concealed dirk or dagger, which was reversed on habeas corpus by the Santa Clara County Superior Court. The application requested compensation for 7,460 days of incarceration. In a response letter filed February 14, 2020, the Attorney General conceded that Martin was entitled to $1,015,980 for only 7,257 days of his 7,332 days of imprisonment. The Attorney General objected to compensation for the remaining 76 days, during which Martin was simultaneously serving a 90 day and a 1-day sentence for two valid convictions. On March 2, 2020, Martin, through his attorney, waived his right to an informal hearing and stated he did not dispute the Attorney General's Office's calculation of compensation in the amount of $1,015,980 for 7,257 days of erroneous incarceration. The matter was assigned to Hearing Officer Sara Harbarger.

As detailed below, CalVCB is statutorily required to recommend that the Legislature appropriate $1,015,980 as payment to Martin for being wrongfully imprisoned for 7,257 days.

II. PROCEDURAL HISTORY

A. Erroneous Conviction in Case Number 202487

On September 18, 1997, Martin was arrested and the Santa Clara County District Attorney (SCDA) subsequently charged Martin with possession of a concealed dirk or dagger and possession of less than 28.5 grams of marijuana.[1] SCDA further alleged that Martin served three separate prior prison terms and four serious and violent felony strike convictions within the meaning of the Three Strikes Law.[2] Martin was released from custody prior to November 4, 1997.[3] On November 19, 1997, Martin was served with the arrest warrant in this case, while in custody in for a violation of tampering with a vehicle in case number 202486.[4] On May 11, 1998, a jury convicted Martin of possession of a concealed dirk or dagger and possession of less than 28.5 grams of marijuana.[5] On May 12, 1998, in a bifurcated proceeding, the trial court found true the allegations that Martin suffered four prior felony serious and violent felony convictions within the meaning of the Three Strikes Law and allegations that Martin served three prior prison terms.[6] On August 11, 1998, the trial court sentenced Martin to 25 years to life for possession of a concealed dirk or dagger with prior serious and violent felonies within the meaning of the Three Strikes Law and a consecutive determinative term of three years for the prior prison terms.[7] In total, Martin was ordered to serve 28 years to life in state prison with the possibility of parole.[8] On December 15, 2017, the Santa Clara County Superior

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[1] AG Ex. 4; Pen. Code, § 12020, subd. (a); Health & Saf. Code, § 11357, subd. (b).

[2] AG Exs. 2, 4, 10; Pen. Code, §§ 667.5, subd. (b), 667, subds. (b)-(i), 1170.12.

[3] The exact date of release is not listed in the record.

[4] AG Ex. 4; Veh. Code, § 10852; Page 22 of AG Ex. 4 lists the date as November 19, 1998. The year 1998 appears to be a typographical error since this date occurs after the date of conviction.

[5] AG Ex. 4.

[6] AG Exs. 4, 7 at p. 74; Pen. Code, §§ 667.5, subd. (b), 667, subds. (b)-(i), 1170.12.

[7] AG Ex. 4. The court did not impose any custodial time for the violation of Health & Saf. Code, § 11357, subd. (b).

[8] AG Exs. 5 at pp. 69, 6.

Court granted Martin's Petition for Writ of Habeas Corpus and vacated the conviction of possession of a concealed dirk or dagger.[9]

B. Conviction in Case Number 202486

On November 4, 1997, Martin was arrested and subsequently charged by SCDA with tampering with a vehicle, a misdemeanor.[10] On May 12, 1998, Martin pled nolo contendere to this charge.[11] On August 11, 1998, the trial court sentenced him to 90 days concurrent to case number 202487.[12] The court awarded Martin credit for 280 actual days served in custody.[13] Martin did not appeal or otherwise challenge the conviction in case number 202486.

C. Conviction in Case Number B9737541

On January 16, 1998, Martin was convicted of misdemeanor possession of controlled substance paraphernalia.[14] Martin was sentenced to one day in county jail.[15] Martin did not appeal or otherwise challenge the conviction in case number B9737541.

D. Erroneous Conviction Claim

Meanwhile, on December 18, 2019, Martin submitted a claim to CalVCB seeking compensation as an erroneously convicted person under Penal Code section 4900. The application requested compensation for 7,460 days imprisonment.[16] On February 14, 2020, the Attorney General filed a response letter with 10 exhibits. Therein, the Attorney General stated Martin is factually innocent of the crime of possession of a concealed dirk or dagger. Further, the Attorney General partially conceded that Martin was entitled to compensation in the amount of $1,015,980 for only

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[9] AG Ex. 9; Martin Ex. H.

[10] AG Ex. 4; Veh. Code, § 10852.

[11] AG Ex. 4.

[12] AG Exs. 5 at pp. 69, 10 at p. 124.

[13] AG Ex. 4.

[14] AG Exs. 4, 10 at p. 125.

[15] AG Ex. 4.

[16] Martin did not explain how he calculated this number of custodial days.

7,257 days of imprisonment resulting from the 1998 conviction.[17] The Attorney General's calculation excluded 76 days for the 90 day and one day term that Martin simultaneously served for his tampering with a vehicle and possession of controlled substance paraphernalia convictions which remain valid and unchallenged convictions.[18]

On March 2, 2020, Bryant submitted a letter dated February 26, 2020 to CalVCB that stated Martin decided to waive the informal hearing and pre-hearing brief and proceed on the written record. Further, Martin did not dispute the AG's finding that 76 days of Martin's term were lawful and agreed with the AG's calculation of 7,257 days of erroneous imprisonment for a total of $1,015,980 in compensation. The record closed immediately thereafter.

CalVCB determined that, despite the Santa Clara County Superior Court's finding of innocence for the 1998 possession of a concealed dirk or dagger conviction, Martin was not entitled to automatic compensation because a finding of factual innocence was lacking for each and every conviction underlying Martin's incarceration (i.e., the tampering with a vehicle and possession of controlled substance paraphernalia convictions).

III. FACTUAL SUMMARY

A. Trial Evidence

At the jury trial, San Jose State University Police Officer Stoker testified that on September 18, 1997 at approximately 10:55 p.m., he observed Martin walking through the Taco Bell parking lot.[19] Officer Stokes and Martin had a casual conversation.[20] During the conversation, Officer Stokes

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[17] The Attorney General's aggregate calculation includes the first day of Martin's erroneous incarceration November 19, 1997, through December 15, 2017 (7,332 days) minus the 75 days Martin served concurrently for his 90-day sentence in case number 202486 and the one day he served concurrently in case number B9737541. (7,332- (90-15+1) = 7,257.)

[18] On November 4, 1997, Martin started to earn custodial credits for the violation of tampering with a vehicle in case number 202486. On November 19, 1997, 15 days later, Martin began earning custodial credits for the violation of possession of a concealed dirk or dagger in case number 202487. On January 16, 1998, while awaiting trial for case number 202487, Martin was convicted of possession of controlled substance paraphernalia in case number B9737541 and sentenced to one day in jail.

[19] Martin Ex. B at pp. 84-86, 93.

[20] Martin Ex. at p. 94.

asked Martin if he possessed any weapons and Martin answered affirmatively.[21] Martin disclosed he had a knife inside the sleeve of his jacket, placed between his forearm and his sleeve with the blade pointed towards his elbow.[22] Martin moved the cuff on the right sleeve of his jacket and showed Officer Stokes the knife.[23] Officer Stokes observed that the knife was in an open, locked position.[24] Officer Stokes described the knife as a pocket knife with a single sided, two and a half inch blade that when opened stayed in an open, locked position.[25] Officer Stokes explained that to close the knife a person had to hold the knife in one hand, take the other hand and assert pressure on the back of the blade, and fold the blade over to close it.[26] A person did not have to press a release mechanism to close the knife.[27]

Officer Stokes took the knife from Martin, closed the knife, and placed it in his pocket.[28] Officer Stokes asked Martin if he possessed any drugs and he answered affirmatively.[29] Martin took a two inch by five inch clear plastic bag containing a usable amount of marijuana out of his front left pants pocket and handed it to Officer Stokes.[30] Officer Stokes described Martin as fully cooperative during the entire encounter.[31]

Martin did not present affirmative evidence on his behalf at trial.[32]

On May 11, 1998, the jury convicted Martin of possession of a concealed dirk or dagger and possession of less than 28.5 grams of marijuana. On May 12, 1998, the trial court found all of the

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[21] Martin Ex. at p. 94.

[22] Martin Ex. at pp. 87-88, 96.

[23] Martin Ex. at pp. 87-88, 96.

[24] Martin Ex. at p. 95.

[25] Martin Ex. at p. 88.

[26] Martin Ex. at p. 98.

[27] Martin Ex. at p. 98.

[28] Martin Ex. at p. 89.

[29] Martin Ex. at p. 99.

[30] Martin Ex. at pp. 90-91, 98-99.

[31] Martin Ex. at pp. 95-97.

[32] AG Ex. 7 at p. 76.

priors to be true.[33] Martin requested the court grant his *Romero* motion to dismiss his prior strike convictions and sentence him to probation.[34] On August 11, 1998, the court denied Martin's motion and sentenced him to state prison for 28 years to life with the possibility of parole.[35]

B. Post-Trial Events

Martin filed an appeal based on insufficient evidence, improper denial of his motion to suppress, incorrect jury instructions, cruel and unusual punishment, and improper denial of his *Romero* motion.[36] On July 28, 2000, the Court of Appeals affirmed the judgment and held the knife constituted a dirk or dagger, the suppression motion was properly denied, the court provided adequate jury instructions, the sentence did not constitute cruel and unusual punishment, and the court did not improperly deny the *Romero* motion.[37]

In 2013, Martin filed a petition for recall of sentence in the trial court pursuant to Penal Code section 1170.126.[38] On January 16, 2014, the trial court denied the petition finding that although the defendant was eligible for resentencing, he posed an unreasonable risk of danger to public safety.[39] Martin appealed this decision and the Court of Appeals affirmed the order denying Martin's petition for recall of sentence.[40]

On August 22, 2016, Martin filed a habeas corpus petition based on insufficient evidence based on the recent appellate court decision *People v. Castillo-Lopez*.[41] On December 15, 2017, the Santa Clara County Superior Court granted the habeas corpus relief and vacated Martin's conviction

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[33] AG Ex. 4.

[34] AG Ex. 5; *People v. Romero* (1996) 13 Cal.4th 497.

[35] AG Exs. 5 at pp. 69, 6.

[36] AG Ex. 7 at pp. 74-75.

[37] AG Ex. 7.

[38] AG Ex. 8 at p. 95.

[39] AG Ex. 8 at p. 95.

[40] AG Ex. 8 at p. 95.

[41] Martin Ex. F at p. 1; *People v. Castillo-Lopez* (2016) 63 Cal.4th 322.

of possession of a concealed dirk or dagger.[42] The court based its decision on the *People v. Castillo-Lopez* case that held a pocket knife with a blade which is held open using a spring or friction and is closed by only applying pressure does not constitute a dirk or dagger because the blade is not in a locked position.[43] The court granted Martin's habeas corpus petition because Martin did not possess a dirk or dagger as defined by *People v. Castillo-Lopez*. Martin was released from custody on the same day.[44]

IV. DETERMINATION OF ISSUES

Penal Code section 4900 allows a person, who has been erroneously convicted and imprisoned for a felony offense, to apply for compensation from CalVCB.[45] As of January 1, 2020, the application must be submitted no more than 10 years after dismissal of charges, release from custody, acquittal, or pardon.[46] Untimely or premature claims must be rejected for lack of jurisdiction without further consideration by the Board.[47]

Once an application has been properly filed, CalVCB typically requests a written response from the Attorney General pursuant to Penal Code section 4902, and then an informal evidentiary hearing ensues in accordance with Penal Code section 4903.[48] Under Penal Code section 1485.55, CalVCB is bound by any express factual findings of innocence rendered by a court when granting a habeas conviction, vacating a conviction, or issuing a certificate of factual innocence.[49] Ultimately, the claimant bears the burden to prove, by a preponderance of evidence, that (1) the crime with which he was charged was either not committed at all, or, if committed, was not committed by him, and (2) he

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[42] AG Ex. 9; Martin Ex. H.

[43] Martin Ex. F at p. 1; *People v. Castillo-Lopez* (2016) 63 Cal.4th 322.

[44] Martin Application.

[45] Pen. Code, § 4900.

[46] Pen. Code, § 4901, added by Stats.2019, c. 473 (S.B. 269), § 2, eff. Jan. 1, 2020.

[47] Cal. Code Regs., tit. 2, § 642, subd. (a).

[48] Pen. Code, §§ 4902, subds. (a)-(b), 4903, subd. (a); Cal. Code Regs., tit. 2, § 615.1, subd. (a).

[49] Pen. Code, § 1485.55, subd. (a).

sustained injury through his erroneous conviction and imprisonment.[50] If the claimant satisfies his burden of persuasion for both elements, then pursuant to Penal Code section 4904, CalVCB shall recommend to the Legislature an award of compensation. Compensation is calculated at the rate of $140 per day for pre-and post-conviction confinement.[51]

A. The Automatic Compensation Provision Does Not Apply

An exception to CalVCB's standard procedure occurs when a claimant has obtained a finding of factual innocence for each and every conviction underlying his incarceration. In that case, Penal Code section 1485.55 compels CalVCB to assume both requisite elements of innocence and injury for a successful claim under Penal Code section 4900 and to recommend compensation accordingly. Penal Code section 4902 further requires CalVCB to recommend payment without a hearing or response from the Attorney General and within 30 days after the application is filed.

This exception does not apply to Martin's application because the Santa Clara County Superior Court granted Martin's habeas corpus relief because he was factually innocent of just one of the three convictions underlying his erroneous imprisonment. Accordingly, Martin continues to bear the burden to demonstrate both innocence and injury in this administrative proceeding.

B. Martin Demonstrated Actual Innocence for Possession of a Concealed Dirk or Dagger

Because compensation is not automatically compelled, Martin bears the burden to demonstrate both requisite elements of (1) innocence and (2) injury by a preponderance.[52] As stated in section 4903,

> The claimant shall prove facts set forth in the statement constituting the claim, including [1] the fact that the crime with which he or she was charged was either not committed at all, or, if committed, was not committed by him or her, and [2] the pecuniary injury sustained by him or her through his or her erroneous conviction and imprisonment.[53]

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[50] Pen. Code, §§ 4903, subd. (a), 4904.

[51] Pen. Code, § 4904.

[52] Pen. Code, § 4903, subd. (a).

[53] Pen. Code, § 4903, subd. (a).

Regulations confirm that claimant bears the burden of proof, by a preponderance of the evidence, on all issues necessary to establish eligibility.[54]

On the issue of innocence, Martin is significantly aided by section 4903, subdivision (b). This subdivision specifically provides,

> In a hearing before the board, the factual findings and credibility determinations establishing the court's basis for granting a writ of habeas corpus, a motion for new trial pursuant to Section 1473.6, or an application for a certificate of factual innocence as described in Section 1485.5 shall be binding on the Attorney General, the factfinder, and the board.[55]

Thus, CalVCB is bound by a court's finding of factual innocence.

Here, the Santa Clara County Superior Court found Martin factually innocent of possession of a concealed dirk or dagger because Martin's pocketknife did not factually constitute a dirk or dagger. Further, the Attorney General conceded Martin was factually innocent of possession of a concealed dirk or dagger. In accordance with subdivision (b) of section 4903, CalVCB unequivocally accepts that Martin is actually innocent of that offense.

Nonetheless, Martin's convictions for tampering with a vehicle and possession of controlled substance paraphernalia remain intact.[56] He has not disputed their validity in this or any other legal proceeding. Additionally, Martin concedes he was lawfully imprisoned for these crimes. Accordingly, Martin is not entitled to compensation for the time spent in custody for these convictions.

C. Martin's Demonstrated Injury Is Limited to 7,257 Days

In addition to innocence, claimant must demonstrate that he sustained injury through his erroneous conviction and imprisonment in order to obtain compensation under Penal Code section 4900. As explained in section 4904,

> If the evidence shows that [1] the crime with which the claimant was charged was either not committed at all, or, if committed, was not committed by the claimant, and that [2] the claimant has *sustained injury* through his or her erroneous conviction and imprisonment, the California Victim Compensation Board shall report the facts of the case and its conclusions to the next Legislature, with a recommendation that the Legislature make an

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[54] Cal. Code Regs., tit. 2, § 644, subd. (c).

[55] Pen. Code, § 4903, subd. (b).

[56] AG Ex. 4; Veh. Code, § 10852; Health & Saf. Code, § 11357, subd. (b).

> appropriation for the purpose of indemnifying the claimant for the injury. The amount of the appropriation recommended shall be a sum equivalent to one hundred forty dollars ($140) per day of incarceration served, and shall include any time spent in custody, including in a county jail, that is considered to be part of the term of incarceration.[57]

Notably, the injury need not be pecuniary, as this particular requirement was expressly removed by the Legislature.[58] Consequently, claimant no longer must demonstrate a monetary loss resulting from his erroneous conviction in order to receive compensation as an erroneously-convicted person.[59]

Nonetheless, some injury still must be proven. Given the manner by which compensation is calculated, the injury contemplated under section 4904 is "each day spent illegally behind bars, away from society, employment, and [ ] loved ones."[60] Thus, injury occurs within the meaning of section 4904 upon a showing that, but for the erroneous conviction and imprisonment, the claimant would have been free. Injury is therefore lacking if the erroneously-convicted "claimant remained incarcerated on a separate, unrelated conviction" that was valid.[61] In that scenario, the sentence for the valid conviction "vitiates any claim of damage attributable to the [erroneous] conviction."[62]

Here, Martin's claim characterizes his injury as having lost over 20 years of his life because of the wrongful incarceration. He seeks compensation for the entire duration of his imprisonment. Both the Attorney General and Bryant agree Martin suffered an injury for his incarceration from November 19, 1997 to December 15, 2017 minus the 76 days of lawful incarceration. CalVCB concurs that Martin demonstrated he suffered an injury for his 7,257 days of erroneous incarceration.

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[57] Pen. Code, § 4904 (italics added.)

[58] Former Pen. Code, § 4904 (West 2015) (requiring proof of "pecuniary injury"); Cal. Code Regs., tit. 2, § 640, subd. (c) (defining "pecuniary injury").

[59] Cal. Code Regs., tit. 2, § 640, subd. (c) (defining "pecuniary injury"); see also *Holmes v. Calif. Victim Comp. & Gov't Claims Board* (2015) 239 Cal.App.4th 1400, 1409-1410 (affirming CalVCB's denial of compensation for claimant who was unemployed, homeless, and recently released from prison at the time of his erroneous arrest).

[60] *Holmes, supra,* at p. 1405 (explaining purpose behind compensation provisions).

[61] *Fudger v. State* (N.Y 1987) 131 A.D.2d 136, 141 (denying compensation under New York statute for erroneous offenders because claimant's valid conviction "vitiates any claim of damage attributable to the [erroneous] conviction").

[62] *Ibid*.

Martin was lawfully incarcerated for 76 days as a result of his tampering with a vehicle and possession of controlled substance paraphernalia convictions. Thus, Martin failed to demonstrate that, but for his erroneous conviction for possession of a concealed dirk or dagger, he would have been free for all 7,332 days of his confinement. Accordingly, Martin's injury is limited to 7,257 days. Pursuant to section 4904, CalVCB must recommend the Legislature appropriate $140 for each of these 7,257 days, for a total award of $1,015,980.

V. CONCLUSION

CalVCB hereby grants, in part, Martin's claim for compensation under section 4900 based upon his 1998 conviction for possession of a concealed dirk or dagger. CalVCB accepts that Martin is factually innocent of this offense and was imprisoned for a total of 7,332 days for the three 1998 convictions. However, Martin remains guilty of his convictions for tampering with a vehicle and possession of controlled substance paraphernalia, for which he served 76 days imprisonment. Consequently, Martin's demonstrated injury is limited to 7,257 days of his total incarceration. Pursuant to Penal Code sections 4903 and 4904, CalVCB is required to recommend that the Legislature appropriate $1,015,980 as payment to Martin for being wrongfully imprisoned for 7,257 days.

Date: March 18, 2020

Sara Harbarger
Hearing Officer
California Victim Compensation Board

BEFORE THE VICTIM COMPENSATION BOARD

OF THE STATE OF CALIFORNIA

In the Matter:	
Lawrence M. Martin	**Notice of Decision**
Claim No. 19-ECO-26	**(Penal Code § 4900 et seq.)**

On April 16, 2020, the California Victim Compensation Board adopted the attached Proposed Decision of the Hearing Officer as its Decision in the above-referenced matter.

Date: April 20, 2020

Michelle Greer
Board Liaison
California Victim Compensation Board