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

In the Matter of the Claim of:

Notice of Decision

Johnny Williams

On May 15, 2014, 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: May 22, 2014



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:
Johnny Williams

**Proposed Decision
(Penal Code § 4900 et seq.)**

Introduction

This claim for compensation as an erroneously convicted person was decided based on the written record by considering all the evidence submitted to date and without the necessity of a telephonic or in-person hearing. Kyle Hedum was assigned to hear this matter by the Executive Officer of the California Victim Compensation and Government Claims Board. Johnny Williams (Claimant) was represented by Melissa Dague O'Connell, attorney at law. The California Department of Justice, Office of the Attorney General (AG), was represented by Larenda Delaini.

After considering all the evidence, it is determined that the Claimant has proven by a preponderance of the evidence that the crime with which he was charged was not committed. It is also determined the Claimant has proven by a preponderance of the evidence that he sustained pecuniary injury as a result of this conviction. Therefore, it is recommended that the Claimant receive compensation pursuant to Penal Code section 4900 et seq. in the amount of \$461,600.

History

Mr. Williams was arrested on September 30, 1998 for lewd conduct and attempted rape of a nine-year-old girl. His first trial resulted in a mistrial as the jury could not agree on a verdict. Mr. Williams' second trial began on April 7, 2000. On May 19, 2000, an Alameda County jury convicted Claimant of two counts of lewd conduct against a child under the age of 14 and attempted rape. On

1 June 8, 2000, the trial court sentenced Claimant to an aggregate term of 16 years in state prison and,
2 in compliance with Penal Code section 290, lifetime sex offender registration.

3 On May 30, 2002, the Court of Appeal for the First District affirmed the trial Court's judgment
4 and on June 20, 2002, denied Claimant's Petition for Rehearing. The California Supreme Court
5 denied Claimants' Petition for Review on August 14, 2002.

6 In 2012, the California DNA Project and the Alameda County District Attorney's Office
7 stipulated to the examination and testing of the t-shirt which the victim had worn during the assault,
8 and onto which the perpetrator had ejaculated. Based on this stipulation, the Alameda County
9 Superior Court ordered DNA testing. Sperm samples taken from the t-shirt yielded a complete male
10 DNA profile. That profile conclusively excluded Claimant as having been the source of semen stains
11 on the victim's shirt.

12 On March 1, 2013, the California DNA Project and Northern California Innocence Project filed a
13 petition for writ of habeas corpus on behalf of Claimant asking that his conviction be reversed based
14 on this newly discovered evidence establishing his actual innocence.

15 On March 8, 2013, the Alameda County District Attorney's Office conceded Claimant's factual
16 innocence. The Alameda County Superior Court granted Claimant's writ of habeas corpus on the
17 grounds that he had produced new DNA evidence conclusively establishing his innocence of the
18 charges for which he had been convicted, and reversed his conviction and ordered him released from
19 all conditions of parole.

20 On October 18, 2013, a Deputy District Attorney agreed that Claimant was factually innocent
21 and therefore met the standards requiring the court to seal his arrest and detention records under
22 Penal Code section 851.86. Penal Code section 851.86 states that:

23 "Whenever a person's conviction is set aside based upon a determination that the person was
24 factually innocent of the charge, the judge shall order that the records in the case be sealed,
25 including any record of arrest or detention."

26 As a result, Alameda County Superior Court Judge, the Honorable Larry J. Goodman, granted
27 Claimant' petition for sealing of records pursuant to Penal Code section 851.86.
28

1 Claimant then timely filed his application for compensation as an erroneously convicted person
2 on April 7, 2014. He provided evidence of his pecuniary loss in the form of a declaration signed under
3 penalty of perjury. This declaration stated that his work history consisted on short-term temporary
4 employment whenever such employment became available. He has worked for Labor Ready, a toy
5 warehouse, and a used vehicle repair facility. During the time he was incarcerated, he worked as a
6 custodian, a porter, and also in the kitchen. After his release from incarceration Claimant passed the
7 examination for a forklift operator's license.

8 **Determination of Issues**

9 In order to be successful on such a claim, a claimant must prove the following by a
10 preponderance of the evidence:

- 11 (1) that the crime with which he was charged was either not committed at all, or, if committed,
12 was not committed by him; and
13 (2) that he sustained a pecuniary injury through his erroneous conviction and imprisonment.¹

14 This is a demanding standard, and a claimant must prove his innocence by a preponderance
15 of the evidence.² Preponderance of the evidence means evidence that has more convincing force
16 than that opposed to it.³

17 In reaching its determination of the merits of the claim, the Board may consider the claimant's
18 mere denial of commission of the crime for which he was convicted, reversal of the judgment of
19 conviction on appeal, acquittal of the claimant on retrial, or the failure of the prosecuting authority to
20 retry the claimant for the crime. However, those factors will not be deemed sufficient evidence to
21 warrant the Board's recommendation that a claimant be indemnified in the absence of substantial
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25 ¹ Pen. Code, § 4903; *Tennison v. Victim Compensation and Government Claims Board* (2006) 152 Cal.
App. 4th 1164.

26 ² *Diola v. State Board of Control* (1982) 135 Cal.App.3d 580, 588 fn. 7.

27 ³ *People v. Miller* (1916) 171 Cal. 649, 652; *Diola, supra*.

1 independent corroborating evidence that the claimant is innocent of the crime charged.⁴ The Board
2 may also consider as substantive evidence testimony of witnesses that the claimant had an
3 opportunity to cross-examine, and evidence to which the claimant had an opportunity to object,
4 admitted in prior proceedings relating to the claimant and the crime with which he was charged. All
5 relevant evidence is admissible, irrespective of whether it would be admitted at a criminal jury trial or
6 in a civil or administrative proceeding, so long as the evidence is probative to the claimant's assertion
7 that he is innocent.⁵ The formal hearing rules of the Administrative Procedures Act are not
8 applicable.⁶

9 If a claimant meets his burden of proof, the Board shall recommend to the legislature that an
10 appropriation of \$100.00 be made for each day of incarceration in prison served subsequent to the
11 claimant's conviction.⁷

12 A finding of factual innocence from the court under Section 851.86 of the Penal Code is
13 sufficient grounds for payment of compensation for a 4900 claim. If the provisions of Section 861.865
14 or 1485.55 apply in any claim, the California Victim Compensation and Government Claims Board
15 shall calculate the compensation for the claimant pursuant to Section 4904 and recommend to the
16 Legislature payment of that sum.⁸ The claimant needs to show no more than the court's declaration
17 of his or her factual innocence for the Board to recommend to the Legislature that compensation be
18 paid under Penal Code section 4900 et. seq.

19 **The crime was not committed by the Claimant**

20 In March 2013, DNA evidence conclusively proved that Claimant was not the perpetrator of
21 the sexual assault on the nine-year-old victim for which he had been convicted and sentenced to 16

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

24 ⁵ Cal. Code Regs., tit. 2, § 641.

25 ⁶ Cal. Code Regs., tit. 2, § 615.1.

26 ⁷ Pen. Code, § 4904.

27 ⁸ Pen. Code, § 4902, subd. (a).
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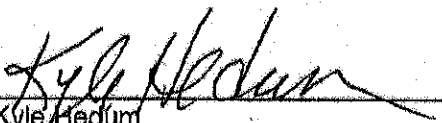
1 years in prison. The Alameda County District Attorney's Office determined that Claimant was
2 factually innocent of this crime. As a result, the Alameda County Superior Court granted Claimant's
3 petition for writ of habeas corpus, overturned his 2000 conviction and released him from all conditions
4 of parole. The court also vacated the requirement that Claimant register as a sex offender pursuant
5 to Penal Code section 290. The court went on to declare Claimant factually innocent and granted his
6 Penal Code section 851.86 petition to seal his arrest and detention records. Based on this evidence,
7 it is determined that there is a preponderance of the evidence that the Claimant is innocent of the
8 crime for which he was convicted and incarcerated.

9 **Claimant's Pecuniary Injury**

10 Based on the evidence, it is determined that the Claimant has provided sufficient proof to find
11 that he has suffered a pecuniary loss due to his incarceration. Although he may not have been
12 employed at the time of his arrest and conviction, his statement regarding his employment history that
13 accompanied his claim and that was submitted under penalty of perjury provides a preponderance of
14 evidence that he was at one time employed and that he likely would have obtained other employment
15 if not for his erroneous conviction.

16 Claimant was incarcerated for 4,616 days. It is recommended to the Legislature that an
17 appropriation be made to pay the claim of Johnny Williams in the sum of \$461,600.

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19 Date: April 9, 2014

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21 Kyle Hedum
22 Hearing Officer
23 California Victim Compensation and
24 Government Claims Board
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