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

In the matter of the Claim of:
Toreano Browning

Proposed Decision
(Penal Code § 4900 et seq.)

Introduction

An in-person hearing on this claim was conducted in Sacramento on August 8, 2016, by Jasmine Turner-Bond, the Hearing Officer assigned to hear this matter by the Executive Officer of the Victim Compensation Board. Toreano Browning (Browning) appeared at his hearing and testified under oath. Also present was the Office of the Attorney General.

After the hearing was concluded, it was discovered that the hearing was not recorded due to technical error. Because it is a requirement that all hearings be recorded,¹ it was necessary to re-open the hearing.² Hearing Officer Kyle Hedum was assigned to this matter by the Executive Officer of the Victim Compensation Board. On December 2, 2016, the parties³ were consulted to determine if it would be acceptable to continue the hearing by telephone or by using the existing record. Browning informed the Board that he wanted an in-person hearing so arrangements were made to accommodate his request. His in-person hearing was set for

¹ Cal. Code Regs., tit. 2, §644, subd. (h).

² Cal. Code Regs., tit. 2, §644, subd. (n).

³ The Attorney General was represented by Deputy Attorney General Barton Bowers.

1 9:00 a.m. on December 16, 2016, in Los Angeles. On Friday, December 9, 2016, Browning
2 notified the Board that he objected to the re-opening of his hearing and stated he would not
3 attend the hearing in Los Angeles on December 16, 2016. After verifying a second time that
4 Browning was not coming to Los Angeles and after being informed by Browning via email “Go
5 ahead Sir rule as you will,” the matter was decided based on the evidence previously submitted
6 by Browning and the Attorney General. Neither the Attorney General nor Browning participated
7 in the hearing on the written record.

8 **Background⁴**

9 On July 15, 2013, the Los Angeles County District Attorney’s Office filed an information
10 charging Browning in count I with making criminal threats against his aunt, Shirley Browning
11 (Pen. Code, § 422, subd. (a)).⁵ (Exhibit 1 at p. 2 [Information, Case Number MA059956].)
12 The information further alleged that Browning had suffered a prior conviction within the
13 meaning of California’s Three Strikes Law (§§ 667, subd. (b)-(j), 1170.12), which also qualified
14 for a habitual criminal sentencing enhancement (§ 667, subd. (a)(1)). (Exhibit 1 at p. 3.) The
15 information also charged Browning in count II with making criminal threats against his mother,
16 Joshalyn Browning (§ 422, subd. (a)); however, the allegation in count II was set aside
17 pursuant to Penal Code section 995, on September 9, 2013. (Exhibit 2 at pp. 4-5 [Docket,
18 Case Number MA059956].) Browning pled not guilty and requested a jury trial.

19 On September 11, 2013, a trial by jury commenced. (Exhibit 2 at p. 5.) The jury trial
20 concluded on September 19, 2013, when the jury declared that they were deadlocked and the
21 trial court declared a mistrial. (*Id.* at pp. 11-12.) The foreperson indicated that the jury was
22 split 11-1 in favor of guilt. (*Id.* at p. 12.) Browning again requested a jury trial.

23 On November 26, 2013, Browning pled no contest to count I, criminal threats against
24 Shirley Browning (§ 422, subd. (a)), and admitted that he suffered a prior conviction within the

25
26 ⁴ The background is based on crime reports, investigations, trial testimony, an unpublished
27 opinion, and other case-related documents.

28 ⁵ All further statutory references are to the California Penal Code, unless otherwise indicated.

1 meaning of California's Three Strikes Law (§§ 667, subd. (b)-(j), 1170.12). (Exhibit 2 at p. 15.)
2 The trial court subsequently dismissed the prior strike allegation and sentenced Browning to
3 an aggregate term of eight years in state prison, calculated as follows: the upper term of three
4 years on count I, criminal threats (§ 422, subd. (a)), plus five years for the habitual offender
5 sentencing enhancement (§ 667, subd. (a)(1)). (Exhibit 2 at p. 15.) The trial court suspended
6 execution of sentence and placed Browning on formal probation for three years. (*Ibid.*)

7 Probation was conditioned on a number of terms, including the following: that
8 Browning "serve 30 days [of] community labor or PAAWS [Probation Adult Alternative Work
9 Service program]" in California or out of state; "complete a 26-week anger management class
10 approved by probation;" "cooperate with the probation officer in a plan for drug treatment and
11 rehabilitation;" and pay various fines and fees. Although the trial court cautioned Browning
12 that the probation conditions would be "very strict," and although the court set deadlines for
13 certain terms and conditions of Browning's probation, it chose not to set deadlines for most of
14 the conditions, including those identified above.

15 On November 20, 2014, a little over a year into his probation, the trial court held a
16 hearing in response to a report by Browning's probation officer indicating that Browning had
17 not completed the "work program" or "provided proof of enrollment in the community labor
18 program," had not completed an "anger management" course "or cooperated in a plan for
19 drug treatment and rehabilitation." The trial court remanded Browning into custody and set a
20 probation violation hearing for the following month and ordered a follow-up probation report.

21 On December 10, 2014, the trial court held a hearing on Browning's purported
22 probation violations. The prosecutor, who described Browning's alleged noncompliance as a
23 "technical violation" of the terms of probation, submitted on the initial probation report,
24 prepared on October 28, 2014, and the probation officer's supplemental report, prepared on
25 December 8, 2014.

26 In the October report, the probation officer stated it "appears" that Browning was in
27 violation of the following four probation terms: (1) enrolling and completing either a 30-day
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1 PAAWS program, or 30 days of community labor, because Browning did not provide proof of
2 enrollment or progress; (2) attending a 26-week anger management program, because
3 Browning did not provide proof of enrollment or progress in this program; (3) cooperating with
4 the probation officer in a plan for drug treatment and rehabilitation, because Browning did not
5 provide proof of enrollment or progress in this program; and (4) making payments of court-
6 ordered fees and fines, because Browning made only one \$20 payment on September 4,
7 2014. According to the October report, Browning told his probation officer that he did not
8 enroll in an "anger management program, drug treatment program or PAAWS, because he . .
9 ha[d] [no] transportation or money," that he was forced to quit a job selling Kirby vacuums
10 because his friend and housemate quit working at Kirby and, as a result, Browning was no
11 longer able to get to work. It was the probation officer's conclusion that although Browning
12 had to be "held accountable for only making one payment, not being enrolled in a 26 week
13 anger management class, drug counseling or 30 days of community labor," he nonetheless
14 should be given the "benefit of the doubt." Accordingly, the probation officer recommended
15 that while Browning be found in violation of probation, he should also be given an opportunity
16 to "show proof of progress in 26 week management class, drug and alcohol counseling class
17 and 30 days of community labor or PAAWS."

18 On December 10, 2014, following a hearing, the trial court found Browning in violation
19 of his terms of probation and remanded him into custody. (Exhibit 2 at p. 19; Exhibit 3 at p. 2
20 [Appellant's Opening Brief].) Five days later, the trial court revoked probation and imposed
21 the suspended prison term of eight years. (Exhibit 2 at pp. 20-21; Exhibit 3 at p. 2.)

22 Browning filed a timely notice of appeal challenging the trial court's order revoking his
23 probation and imposing the suspended prison term. (Exhibit 4 [Unpublished Opinion, Case
24 Number B261077].) On November 23, 2015, the California Court of Appeal, Second
25 Appellate District, reversed the trial court's order, finding that the trial court improperly found
26 Browning in violation of probation. (Exhibit 4 at p. 2.) The Court of Appeal did not find that
27 Browning had satisfied the terms and conditions of probation. (*Ibid.*) Instead, the Court of
28 Appeal found that the trial court did not set definite and reasonable deadlines for the

1 completion of those terms and conditions. (*Ibid.*) Browning was released from custody on
2 December 24, 2015. (Exhibit 8 at p. 1 [Certified Section 969b Packet].)

3 Browning subsequently filed an erroneously convicted person claim with the California
4 Victim Compensation Board on March 7, 2016, seeking compensation for the time he was
5 incarcerated in state prison as a result of his probation violation. Browning's underlying felony
6 conviction remains undisturbed.

7 **Browning's Position**

8 Browning argued in his claim that he was innocent of threatening to physically harm his
9 mother and his aunt. He said that he was only trying to scare them into giving his daughter
10 back to him. He believed that his daughter had been molested and then kidnapped by his
11 mother and aunt. Although he maintained his innocence, he entered a guilty plea after the
12 hung jury only because he was under duress and because he received poor advice from his
13 attorney.

14 Browning provided documentation showing that he was interviewed by a social worker
15 on May 28, 2013. (Exhibit A at p. 8 [Jurisdictional Disposition Report, Report number
16 CK98731].) Browning told the social worker that he was at his mother's residence working on
17 her computer when he found a picture of his daughter. He broke the code on the computer
18 and found a blurry picture showing a child "giving head" to an adult (*Ibid.*). He also found 6 to
19 10 small screwdrivers that he believed his mother was using to molest MB⁶ (*Ibid.*).

20 Browning told the social worker that MB's mother was part of a sex ring. (Exhibit A at
21 p. 9 [Jurisdictional Disposition Report, Report number CK98731].) He said that he found a
22 picture of his daughter playing outside his restaurant and when he put a contrast on it, it
23 changed to child pornography (*Ibid.*).

24 Browning believes that he should be compensated for the time he was incarcerated in
25 state prison because the Court of Appeal ruled that he was not in violation of the terms of his

26 ⁶ To honor the California Supreme Court's policy against making "damaging disclosures
27 concerning living victims of sex crimes," the hearing officer refers to the victim by her initials.
28 (See Cal. Style Manual (4th ed.2000) § 5:9, pp. 179-180.)

1 probation. Browning's position is best illustrated in this two-page letter he wrote
2 accompanying his claim.⁷

3 This letter in its entirety reads:⁸

4 My daughter's name is [MB]. On May 13th my daughter was taken into hiding by
5 Shirley Black,⁹ my aunt, and Director of the self[-]help center. That operates on the 3rd
6 floor of the Lancaster Court House. I presented the court with evidence about Shirley
7 Black's abuse of my daughter. The court then changed judges and proceeded with
8 my trial for threatening my daughter's kidnapper. Then after my trial resulted in a hung
9 jury, I took an open plea after being advised *poor*, and under duress. I was told by my
10 attorney. "That is the only way to save my daughter" and "Pretend I didn't know I was
11 getting a joint suspension." During my plea hearing he *promted* me what to answer in
12 my ear each question the judge asked me. Then the judge tells me after my plea that
13 my daughter was never raped and their victim Shirley Black is *uncredible* and was
14 caught coaching my daughter to say I raped her. They used the word "coaching," I
15 use the *forcing*. After I was released on joint suspension, I filed suit against Los
16 Angeles County, Lancaster D.C.F.S., Lancaster Sheriff's Department. After my case
17 went into *arbotration*, I was called back into court and had my joint suspension violated
18 for no reason. Even my P.O.¹⁰ said I shouldn't go to state prison, but the judge
19 ignored that. I did 13 months in state prison for no other reason but (I believe) filing
20 my law suit. They have covered up my daughter's sexual assault, and kidnapping for
21 one of their own employees who worked at the same court house I was tried in. I plan
22 on using this money to hire the proper *attorney's* to get my daughter back and expose
23 what my aunt did. I would ask you sir to strongly consider my case and *wiegh* all the

24 ⁷ This two-page letter was received by the Board on April 11, 2016.

25 ⁸ Italicized portions denote spelling and grammatical errors in the original.

26 ⁹ Also known as Shirley Browning.

27 ¹⁰ Probation Officer.

1 facts. Enclosed I'm including a minute order about the court's knowledge about my
2 daughter's abuse, and the judges response after my fraudulent plea. Thank you.
3 Toreano Browning.

4 **Attorney General's Position**

5 The Attorney General presented evidence from Browning's arrest and criminal trial to
6 substantiate the criminal threats conviction. Browning apparently believed that his mother,
7 Joshalyn Browning, sexually assaulted his daughter, MB, and that his aunt, Shirley Browning,
8 kidnapped MB. (Exhibit 7 at p. 1 [Los Angeles County Sheriff's Department, Supplemental
9 Report number 913-08821-1122-339].) Browning was not dissuaded after being told by
10 Shirley Browning that a doctor had determined that MB had not been sexually abused. (*Id.* at
11 p. 2.) Shirley Browning and Joshalyn Browning told law enforcement that Browning was in
12 California and that there was a custody trial case pending. (*Id.* at p.2).

13 On May 13, 2013, Browning called Shirley Browning and threatened to kill her and her
14 family. (Exhibit 5 at p. 3 [Los Angeles County Sheriff's Department, Incident Report number
15 913-08821-1122-339].) Browning specifically said, "I'm gonna kill you and the whole family.
16 I'll wipe out anyone who gets in my way. Cops, family, anyone, because no [*sic*] gonna stop
17 me from doing what I'm gonna do." (*Ibid.*) Shirley Browning appeared to be visibly shaken by
18 the threat, in part, because she knew Browning was a drug addict (methamphetamine and
19 bath salts) and capable of carrying out the threat. (*Ibid.*) She feared her life was in danger.
20 (*Ibid.*) Shirley Browning also reported that Browning had made threats via Facebook and text
21 message. (Exhibit 6 [Los Angeles County Sheriff's Department, Supplemental Report number
22 913-08821-1122-339].) She provided copies of the messages to law enforcement. The
23 Facebook messages said, in relevant part:

24 Y all [*sic*] all ready for the big time, fucking with Messiah Stars your going [*sic*] to die
25 big time. Here comes the pain. (*Id.* at p. 4.) Start downloading my music now cause in
26 a minute I'm going to be on the news. I think you guys are hiding her, I don't care if its
27 at the church she is out of here in the church building. She can turn her self in, or face
28 me period [*sic*]. . . Any family member helping her becamas [*sic*] the child molester to

1 me. (*Id.* at p. 8.) If I find out any member of my family helped her, may ynur [*sic*] god
2 come save you be...fore [*sic*] I find you. (*Id.* at p. 8.) Any family member caught
3 helping my mom, I will take strong issue with that person. If you want to help her turn
4 her in befor [*sic*] I find her ... (*Id.* at p. 9.) Messiah, daddy Will die, and kill 4 u. (*Id.* at
5 p. 10.) Now everybody dies! Ir [*sic*] will find where coco lives and everybody is dead
6 shirley since u kidnapped her your first then joshalyn. (Exhibit 7 at p. 2.) U R DEAD.
7 (*Id.* at p.11.)

8 Browning was arrested on June 19, 2013. (Exhibit 7 at p. 2.) Browning provided a
9 *Mirandized*¹¹ statement to law enforcement. (*Id.* at pp. 3-4.) Therein, he indicated that he
10 previously lived with MB and a roommate in Las Vegas. (*Id.* at p. 3.) The roommate had a
11 14-year old son who also lived with them. (*Ibid.*) On one occasion, Browning observed the
12 son fondling himself (fully clothed) while asleep in the living room where MB was watching
13 television. (*Ibid.*) Shortly thereafter, Browning brought MB to California to stay with Joshalyn
14 Browning. (*Ibid.*) Browning said that he was upset because he found a picture of MB that
15 belonged to his mother. Within the photo he found a coded cartoon that showed a woman
16 having oral sex with a man that only he could read because of his technical computer training.
17 (*Ibid.*)

18 Browning initially denied threatening to kill Joshalyn Browning. (Exhibit 7 at p. 3.) He
19 said he only threatened to kill Shirley and Joshalyn “with the truth.” (*Ibid.*) When confronted
20 with his Facebook postings, Browning said he simply intended to “rattle their minds with fear.”
21 (*Ibid.*) But, he did not intend to place them in fear for their safety because “that might be
22 another charge.” (*Ibid.*) Browning was asked about his profile picture, which showed him
23 pointing a gun. (*Id.* at p. 4.) MB was in the background. (*Ibid.*) According to Browning, the
24 picture represents his “willingness to kill and die for [MB].” (*Ibid.*)

27 ¹¹ *Miranda v. Arizona* (1966) 384 U.S. 436.
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1 **Determination of Issues**

2 Penal Code section 4903 establishes the requirements for a successful claim for an
3 erroneously convicted felon. A person erroneously convicted and imprisoned for a felony may
4 submit a claim to the Board for injury sustained as a result of his erroneous conviction and
5 imprisonment.¹² In order to be successful on such a claim, Browning must prove the
6 following, by a preponderance of the evidence:

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

10 "Preponderance of the evidence" means evidence that has more convincing force
11 than that opposed to it.¹⁴ If Browning meets his burden of proof, the Board shall recommend
12 to the Legislature that an appropriation of \$56,140, be made to compensate Browning for his
13 erroneous conviction and incarceration.¹⁵

14 In reaching its determination of the merits of the claim, the Board may consider
15 Browning's mere denial of commission of the crime for which he was convicted, reversal of the
16 judgment of conviction on appeal, acquittal of Browning on retrial, or the decision of the
17 prosecuting authority to retry Browning for the crime. However, those factors will not be
18 deemed sufficient evidence to warrant the Board's recommendation that Browning be
19 indemnified in the absence of substantial independent corroborating evidence that Browning is
20 innocent of the crime charged.¹⁶ The Board may also consider as substantive evidence
21 testimony of witnesses that Browning had an opportunity to cross-examine, and evidence to

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23 ¹² Pen. Code, § 4900.

24 ¹³ Pen. Code, § 4903, *Diola v. Board of Control* (1982) 135 Cal.App.3d 580, 588, fn 7; *Tennison*
25 *v. Victim Compensation and Government Claims Board* (2000) 152 Cal. App. 4th 1164.

26 ¹⁴ *People v. Miller* (1916) 171 Cal. 649, 652.

27 ¹⁵ Calculated at the rate of \$140 per day of incarceration.

28 ¹⁶ Cal. Code Regs., tit. 2, § 641.

1 which Browning had an opportunity to object, admitted in prior proceedings relating to
2 Browning and the crime with which he was charged. Finally, the Board may also consider any
3 information that it deems relevant to the issue before it.¹⁷

4 In order to be eligible for compensation pursuant to Penal Code section 4900, a person
5 must have served time in a California state prison as a result of an erroneous conviction. Based
6 on the facts and circumstances presented here and the plain language of the statutory scheme,
7 Browning has not met his burden of proving by a preponderance of the evidence that he was
8 incarcerated as a result of an erroneous conviction.

9 Although Browning did serve time in state prison, it was the result of a probation violation
10 that was later determined to be in error. The California Court of Appeal, Second Appellate
11 District, found that Browning's probation violation was in error because the trial court did not set
12 definite and reasonable deadlines for the completion of the terms and conditions. (Exhibit 4 at
13 p. 2). Because the erroneously convicted offender scheme does not provide compensation for
14 injury suffered from imprisonment for probation violations, Browning cannot be compensated as
15 an erroneously convicted person.¹⁸

16 As to the conviction that is the basis for this claim, Browning offered little evidence
17 proving that he is actually innocent of the offense for which he was convicted. He never
18 appealed his conviction nor has he sought a finding of factual innocence. His claim that his
19 comments were not criminal and were only intended to scare his mother and his aunt into
20 returning MB to him is contradicted by the graphic and detailed nature of his language on
21 Facebook and in person. Furthermore, his no contest plea to count I (criminal threats against
22 Shirley Browning) provides additional support negating Browning's claim of innocence.

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27 ¹⁷ Cal. Code Regs., tit. 2, § 641.

28 ¹⁸ Pen. Code, §§ 4900 – 4906.

1 It is therefore determined Browning has not proven by a preponderance of the evidence
2 that he is innocent of the crime of making criminal threats against Shirley Browning. His claim
3 for compensation is denied.¹⁹
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5 Date: December 12, 2016

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7 Kyle Hedum
8 Hearing Officer
9 California Victim Compensation Board
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28 ¹⁹ Because Browning has not met his burden, the issue of injury is rendered moot.

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

In the Matter of the Claim of:

Toreano Browning

Notice of Decision

On February 16, 2017, 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: February 17, 2017

Tisha Heard
Board Liaison
Victim Compensation and
Government Claims Board