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

In the Matter of the Claim of:

**Larry Duncan**

Claim No. G574757

**Notice of Decision**

On February 18, 2010, 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 22, 2010



Tisha Heard  
Board Liaison  
California Victim Compensation and  
Government Claims Board

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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 claim of:

**Proposed Decision**

12 **Larry Duncan**

**(Penal Code §§ 4900 et seq.)**

13 Claim No. G574757  
14

**Introduction**

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16 A telephonic hearing on this claim for compensation as an erroneously convicted person was  
17 conducted on January 14, 2010. Kyle Hedum was assigned to hear this matter by the Executive  
18 Officer of the California Victim Compensation and Government Claims Board. Deputy Attorney  
19 General Michael Farrell represented the California Department of Justice, Office of the Attorney  
20 General. Larry Duncan failed to appear at his telephonic hearing.<sup>1</sup>

21 After considering all the evidence, it is determined that Duncan has not proven by a  
22 preponderance of the evidence that (1) he is innocent of the crime for which he was convicted and  
23 incarcerated, and (2) he did not by any act or omission on his part, intentionally contribute to the  
24 bringing about of the arrest or conviction for the crime. Therefore, it is recommended that Duncan's  
25 claim for compensation pursuant to Penal Code section 4900 et seq. be denied.

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28 <sup>1</sup> On December 14, 2009, Larry Duncan acknowledged the January 14, 2010, hearing date.

## Background<sup>2</sup>

1  
2 According to the Los Angeles County Sheriff's Department, a deputy was dispatched to a call  
3 of a hit and run traffic accident on August 31, 2006. The reporting party was Verra W., who told the  
4 deputy that her son, Duncan, was under the influence of alcohol and cocaine. She said that he had  
5 assaulted her prior to stealing her car, and then crashed it into her garage before fleeing in the  
6 vehicle. She also told the deputy that her son was naked and out of his mind and that the deputy  
7 needed to catch her son before he hurt someone.

8 As the deputy was talking with Verra W., he was notified that Duncan had crashed into a  
9 nearby residence and then fled in the vehicle. The deputy then received a report that Duncan was  
10 seen in another neighborhood, in close proximity to an elementary school. When the deputy arrived  
11 on scene, Duncan was trying to steal a pick-up truck. He was seated in the front seat and the owner  
12 of the truck was outside his vehicle. The deputy confirmed that Duncan was naked and not armed,  
13 so the deputy started to remove a stun gun from his patrol cars' trunk. However, he was prevented  
14 from doing so when Duncan charged towards him and struck him in the face with a handful of keys.  
15 The deputy struggled with Duncan, who was attempting to enter the deputy's patrol car. After two  
16 more deputies arrived, the deputies used their nightsticks and a Taser<sup>3</sup> to finally subdue Duncan.<sup>4</sup>

17 On January 16, 2007, the Los Angeles County Probation Department prepared a pre-  
18 conviction report. The report summarizes the crime report, and also includes statements made by  
19 Duncan while he was being interviewed by a probation officer. Duncan admitted that on the morning  
20 of August 31, 2006, he drank a half-bottle of gin and smoked marijuana and cocaine. He also  
21 admitted that he "was out of it" and that he did not remember everything that happened during the  
22 incident. He told the probation officer that he thought he was being arrested for being naked, and  
23 that he did not offer any resistance when the deputies arrested him.

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25 <sup>2</sup> The background is based on claim-related documents provided by the claimant and the AG.

26 <sup>3</sup> A Taser is an electroshock weapon that uses electrical current to disrupt voluntary control of muscles.

27 <sup>4</sup> One of the sheriff's deputies expressed fear that if Duncan was not stopped, he likely would have  
28 injured or killed innocent civilians.

1 Prior to being sentenced on January 18, 2007, the court asked Duncan a series of questions,  
2 and he replied as follows:

- 3 1. He understood that if he plead no contest to one felony count of Penal Code section 69,  
4 obstructing or resisting a law enforcement officer while in the performance of his or her  
5 duties, he would receive a two-year prison sentence.
- 6 2. He understood that seven additional related criminal charges would be dismissed as a result  
7 of his plea.
- 8 3. Neither he nor anyone close to him had been threatened to obtain this plea.
- 9 4. He had sufficient time with his attorney to discuss this plea.
- 10 5. He understood that his plea would result in a lifetime firearms ban.
- 11 6. He waived his right to a preliminary hearing and his right to a trial by jury.
- 12 7. He freely and voluntarily waived his rights because it was the best thing for him to do.

13 Duncan then plead no contest to one felony count of obstructing a law enforcement officer  
14 while in the performance of his or her duties<sup>5</sup> and he received a two-year state prison term. Duncan  
15 was released from prison on December 8, 2007, after serving less than half of his original sentence.  
16 Duncan then timely filed an application for compensation as an erroneously convicted person with the  
17 California Victim Compensation and Government Claims Board.

18 In his claim for compensation, Duncan alleged the following events took place during the  
19 incident on August 31, 2006:

- 20 1. He was assaulted with a firearm.
- 21 2. He was "inflicted" with the firearm.
- 22 3. He was subjected to excessive force and police misconduct.
- 23 4. He was subjected to "multiple conspiracies."
- 24 5. He was maliciously Tasered multiple times.
- 25 6. He was only defending himself when he fought with the sheriff's deputies.

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27 <sup>5</sup> Penal Code section 69.  
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## Findings

A preponderance of the evidence supports the following findings:

1. Duncan did not have good cause for failing to appear at his hearing for compensation.
2. Duncan's no contest plea to a felony violation of Penal Code section 69 was knowing and voluntary.
3. Law enforcement did not use excessive force to arrest Duncan.
4. Duncan served 324 days in prison as a result of his no contest plea to Penal Code section 69.

## Determination of Issues

Penal Code section 4903 establishes the requirements for a successful claim for those individuals who contend that they have been imprisoned as a result of an erroneous conviction. In order to be successful on such a claim, a claimant must prove the following by a preponderance of the evidence:

- (1) that the crime with which he was charged was either not committed at all, or, if committed, was not committed by him;
- (2) that he did not by any act or omission on his part, intentionally contribute to the bringing about of his or her arrest or conviction for the crime; and
- (3) that he sustained a pecuniary injury through his erroneous conviction and imprisonment.<sup>6</sup>

"Preponderance of the evidence" means evidence that has more convincing force than that opposed to it.<sup>7</sup> If a claimant meets his burden of proof, the Board shall recommend to the Legislature that an appropriation of \$100.00 be made for each day of incarceration in prison served subsequent to the claimant's conviction.<sup>8</sup>

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<sup>6</sup> Pen. Code, § 4903, *Diola v. Board of Control* (1982) 135 Cal.App.3d 580, 588, fn 7; *Tennison v. Victim Compensation and Government Claims Board* (2006) 152 Cal. App. 4<sup>th</sup> 1164.

<sup>7</sup> *People v. Miller* (1916) 171 Cal. 649, 652.

<sup>8</sup> Pen. Code, § 4904.

1 In reaching its determination of the merits of the claim, the Board may consider the claimant's  
2 mere denial of commission of the crime for which he was convicted, reversal of the judgment of  
3 conviction on appeal, acquittal of the claimant on retrial, or the failure of the prosecuting authority to  
4 retry claimant for the crime. However, those factors will not be deemed sufficient evidence to warrant  
5 the Board's recommendation that a claimant be indemnified in the absence of substantial  
6 independent corroborating evidence that the claimant is innocent of the crime charged.<sup>9</sup> The Board  
7 may also consider as substantive evidence testimony of witnesses the claimant had an opportunity to  
8 cross-examine, and evidence to which the claimant had an opportunity to object, admitted in prior  
9 proceedings relating to the claimant and the crime with which he was charged. Finally, the Board  
10 may also consider any information that it may deem relevant to the issue before it.<sup>10</sup>

11 Duncan did not provide any credible evidence to support his claim for compensation. He  
12 claims that he was assaulted with a firearm and that law enforcement used excessive force when he  
13 was arrested. He also claims that he was forced to defend himself from the illegal acts of the sheriff's  
14 deputies.

15 However, the record does not support Duncan's assertions. Duncan admitted to a probation  
16 officer that he was under the influence of alcohol and cocaine or other drugs when he assaulted his  
17 mother and stole her car. Duncan crashed his mother's car into her garage before he crashed into  
18 another home. Duncan was finally located in a neighborhood in close proximity to an elementary  
19 school. He was naked and was trying to steal a pick-up truck. When a sheriff's deputy arrived on  
20 scene, Duncan got out of the truck and ran towards the deputy. He had a key chain in his hand and  
21 he struck the deputy in the face with a handful of keys. This deputy attempted to arrest Duncan by  
22 himself, but it took three sheriff's deputies, using nightsticks and a Taser, to finally subdue and arrest  
23 him.

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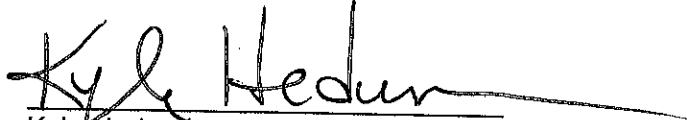
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26 <sup>9</sup> Cal. Code Regs., tit. 2, § 641; *Tennison v. Victim Compensation and Government Claims Board*  
27 (2006) 152 Cal. App. 4<sup>th</sup> 1164.

28 <sup>10</sup> Cal. Code Regs., tit. 2, § 641.

1 Duncan clearly has not met his burden in proving that he did not commit the crime for which  
2 he was arrested and convicted, and he also has not met his burden in proving the he did not, by any  
3 act or omission on his part, intentionally contribute to the bringing about of the arrest or conviction for  
4 the crime with which he was charged.

5 Larry Duncan's claim under Penal Code section 4900 et seq. is denied.

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7 Date: January 27, 2010

8   
9 Kyle Hedum  
10 Hearing Officer  
11 California Victim Compensation and  
12 Government Claims Board  
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PROOF OF SERVICE BY MAIL

Case Name: Larry Duncan

Case No: G574757

I, Benedicte Lewis, declare that:

I am employed in the County of Sacramento, State of California. I am over the age of eighteen (18) and not a party to the within action. My business address is 400 R Street, Sacramento, California 95811.

On February 23, 2010, I served the following: **Hearing Officer Proposed Decision and Notice** by placing a true copy thereof in a sealed envelope with postage thereon fully prepaid in the United States Mail addressed as follows:

Larry Duncan  
4030 W. Avenue J-9  
Lancaster, CA 93536-6842

Michael Farrell, Dept of Justice  
1300 I St.  
Sacramento, CA 94244-2550

BY MAIL: I am readily familiar with my employer's practice for the collection and processing of correspondence/documents for mailing with the United States Postal Service. Under their practice it would be deposited with the United States Postal Service on that same day with postage thereon fully prepaid at Sacramento, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date is more than one day after the date of deposit for mailing in this affidavit.

BY FACSIMILE: I personally sent the above-described documents via FAX to the addressee(s), with a confirming copy by First Class Mail.

BY PERSONAL SERVICE: I delivered such envelope(s) by hand to the offices of the addressee(s).

BY EXPRESS MAIL: I personally deposited such document in the Express Mail depository at Sacramento, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on February 23, 2010, at Sacramento, California.

  
BENEDICTE LEWIS