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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:

12 **Frank Lind**

13 Claim No. G565878

Proposed Decision

(Penal Code § 4900)

14
15 **Introduction**

16 An in-person hearing on this claim was held on November 13, 2008, in Sacramento, California,
17 by Dorothy Le, Hearing Officer, California Victim Compensation and Government Claims Board. The
18 claimant, Frank Lind, appeared but was not represented by an attorney. The California Attorney
19 General's Office was represented by Leslie Westmoreland, Deputy Attorney General (DAG). The
20 record remained open for the submittal of additional documents. Additional documents were received
21 on or about November 16, 2008, and the record closed. As explained below, Lind has not met the
22 statutory requirements to receive compensation under Penal Code section 4900 because he failed to
23 prove that he did not commit the crimes with which he was charged.

24 **Procedural Background**

25 Lind was charged with seven counts of lewd conduct and oral copulation with Jacob, a child.
26 In addition, it was alleged that Lind was a habitual sex offender, with two prior convictions.¹ On

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28 ¹ Lind had previously been convicted of two counts of lewd acts with a child under 14 years of age, one
29 count with the use of force under California Penal Code section 288. He was sentenced to 16 years in
prison and served eight years.

1 August 8, 2002, Lind was convicted of one count of lewd conduct with a child under 14 years of age.
2 The jury was unable to reach a verdict on the remaining six counts. On or about June 25, 2004, the
3 Court of Appeals reversed the conviction, finding that the trial court erroneously excluded two pieces
4 of evidence relevant to Jacob's credibility and that the combined errors prejudiced Lind.² However,
5 the Court of Appeals did not make a determination relating to Lind's innocence or guilt. Lind was
6 released from prison on June 8, 2005.

7 **Summary of Evidence**

8 Lind initially met Jacob and Jacob's mother, Shirley, because Lind's father and Shirley's father
9 were business partners. Thereafter, Lind became a family friend, helped Shirley refurbish
10 apartments owned by her father, and befriended Jacob. Jacob helped Lind work on cars and
11 motorcycles.

12 **I. Trial Court Testimony**

13 According to the evidence presented at Lind's trial,³ Jacob stated that Lind began sexually
14 abusing him when he was 13 years old. Jacob recounted several events when they were alone, and
15 Lind touched and orally copulated him. The first incident occurred while they were swimming, and
16 Lind untied Jacob's shorts and grasped his penis. Later on that same day, Lind again touched Jacob
17 and placed his tongue on Jacob's penis. On another occasion, they were in an orchard near Jacob's
18 house when Lind orally copulated Jacob. Jacob described this event in detail, recalling the exact
19 location in the orchard, the fact that Lind removed his teeth, and the feeling of Lind's mustache.
20 Jacob stated that Lind had false teeth, and that he would remove the top set during the oral
21 copulation. Lind also orally copulated Jacob while they were in Lind's tow truck, in the office at Acme
22 Auto, and in Lind's van. On one occasion in Lind's bedroom, Jacob resisted the molestation, and
23 Lind "got physical." He blocked Jacob from escaping, and Jacob feared that Lind would kill him. On
24 the last occasion, they were at Lind's house working on a motorcycle when Lind touched Jacob's
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27 ² The two pieces of evidence were: (1) that Jacob had been accused of sodomizing his cousin; and (2)
28 that Jacob had forged Lind's checks while he was in custody.

29 ³ All trial information comes from the trial transcripts. (DAG Exhibit 2).

1 inner thigh. Jacob became angry and walked away from Lind's house to a payphone. Jacob called
2 his mother who picked him up, and Jacob ultimately disclosed the molestation to her.

3 At trial, Lind admitted that he molested two boys in 1987, and pled guilty to the charges.
4 However, he had sought counseling while in prison, and had changed his behavior. He stated that
5 he was honest with Shirley and her family about his prior convictions. Although he admittedly spent a
6 great deal of time with Jacob, he never molested him.

7 **II. Penal Code Section 4900 Hearing and Evidence**

8 Lind testified at his hearing under Penal Code section 4900 that he was innocent and that he
9 did not sexually abuse Jacob. Additionally, Lind's father testified that he never witnessed his son
10 sexually abusing Jacob, and if he had, he would have called the police.

11 Lind argued that Jacob was a known liar in the community and in the church. Jacob had
12 been accused of sodomizing his cousin, and had forged Lind's checks while he was in custody.
13 Therefore, Jacob's testimony was not credible, and the jury would not have found him guilty if it was
14 allowed to consider this evidence. Lind provided a declaration from Erin Smith, one of the jurors who
15 found Lind guilty of molesting Jacob. Smith stated that she believes she would not have voted to
16 convict Lind had she known that Jacob had been accused of sodomizing his cousin and had forged
17 Lind's checks.

18 The DAG argued that Lind did not provide any evidence that he is innocent. Although the
19 Court of Appeals reversed the conviction, it did so because it found that exclusion of the two pieces
20 of evidence prejudiced Lind legally. The DAG highlighted a pre-sentencing report, which a clinical
21 psychologist prepared following an evaluation of Lind in 1988. The report indicated that Lind
22 "steadfastly denied" molesting the two boys in 1987. It was only later, after much difficulty, that he
23 admitted that he had sexually abused them. Lastly, the DAG argued that Lind's prior convictions
24 were relevant because they showed Lind's pattern of behavior, and the accusations that the two boys
25 made in 1987 were remarkably similar in nature to those made by Jacob.

26 **Findings**

27 A preponderance of the evidence supports each of the following findings:

- 28 1. Lind was convicted by a jury of lewd conduct with a child under 14 years of age.

2. The Court of Appeals reversed the conviction, finding that the trial court erroneously excluded two pieces of evidence relevant to Jacob's credibility.
3. The Court of Appeals did not find that Lind did not commit child molestation.
4. Jacob testified in detail at trial that Lind molested him on many occasions.

Determination of Issues

A person convicted and imprisoned for a felony may submit a claim to the Board for pecuniary injury sustained as a result of his erroneous conviction and imprisonment.⁴ Penal Code section 4903 provides that in order to state a successful claim for compensation, the claimant must prove the following by a preponderance of the evidence:⁵

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, either intentionally or negligently, contribute to the bringing about of the arrest or conviction for the crime; and
3. That he sustained a pecuniary injury through his erroneous conviction and imprisonment.

If the claimant meets his burden of proof, the Board shall recommend to the legislature that an appropriation of \$100.00 per day of incarceration served subsequent to conviction be made for the claimant.⁶

Lind has not proven by a preponderance of the evidence that he is innocent of the crimes with which he was charged. Jacob's detailed testimony at trial is significant evidence, and the jury found Lind guilty beyond a reasonable doubt of child molestation. Although Juror Smith signed a declaration stating that she believes that she would not have voted to convict Lind, the declaration is speculative

⁴ Pen. Code, § 4900.

⁵ *Diola v. Board of Control* (1982) 135 Cal.App.3d 580, 588, fn 7; *Tennison v. Victim Compensation and Government Claims Board* (2000) 152 Cal. App. 4th 1164. Preponderance of the evidence means "evidence that has more convincing force than that opposed to it." (*People v. Miller* (1916) 171 Cal. 649, 652.)

⁶ Pen. Code, § 4904.

1 and is not evidence that Lind did not commit child molestation. The Court of Appeals did not find that
2 Lind did not commit the crimes.

3 Lind did not present any other evidence that he did not commit child molestation other than his
4 and his father's testimony. Lind stated that he was innocent, and his father stated that he never
5 witnessed his son sexually abusing Jacob. A claimant's mere denial of the commission of the crime, or
6 reversal of the judgment of conviction on appeal may be considered by the Board, but it will not be
7 sufficient evidence to carry the claimant's burden in the absence of substantial independent
8 corroborating evidence that the claimant is innocent of the crime charged.⁷ On the other hand, Lind
9 admittedly spent a great deal of time with Jacob. Lind never denied being alone with Jacob at any of
10 the locations where Jacob alleged the molestations occurred. Based on the foregoing, Lind has not
11 presented sufficient evidence to meet his burden of proof.

12 Lind has not proven by a preponderance of the evidence that he did not commit the crimes with
13 which he was charged. Thus, his claim under Penal Code section 4900 is denied.

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15 Dated: December 16, 2008



16 Dorothy Y. Le
17 Hearing Officer
18 California Victim Compensation and
19 Government Claims Board
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29 ⁷ Cal. Code of Regs., title 2, § 641.

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

In the Matter of the Claim of:

Frank Lind

Claim No. G565878

Notice of Decision

On January 21, 2009, 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: January 22, 2009



Tisha Heard
Board Liaison
California Victim Compensation and
Government Claims Board

PROOF OF SERVICE BY MAIL

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Case Name: Frank Lind

Case No: G565878

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 January 22, 2009, I served the following: **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:

Frank Lind
3259 S. Elm
Fresno, CA 93706

Leslie Westmoreland
Deputy Attorney General
Criminal Law Division
2550 Mariposa Mall, Room 5090
Fresno, CA 93721

Michael Farrell
Deputy Attorney General
1300 I Street
P.O. Box 944255
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 January 22, 2009, at Sacramento, California.


BENEDICTE LEWIS