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5 BEFORE THE VICTIM COMPENSATION AND GOVERNMENT CLAIMS BOARD  
6 OF THE STATE OF CALIFORNIA  
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8 In the Matter of the Claim of:

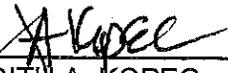
9 Alejo Rivero

10 Claim No. G518442

Notice of Decision

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12 On October 29, 2004, the California Victim Compensation and Government Claims Board  
13 adopted the attached Proposed Decision as its Decision in the above-referenced matter. The  
14 Decision became effective on October 29, 2004.

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17 Date: November 3, 2004

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19 JUDITH A. KOPEC  
20 Chief Counsel  
21 California Victim Compensation  
22 and Government Claims Board  
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6 BEFORE THE VICTIM COMPENSATION AND GOVERNMENT CLAIMS BOARD  
7 OF THE STATE OF CALIFORNIA  
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9 In the Matter of the Claim of:

10 Alejo Rivero

11 Claim No. G518442

Proposed Decision

(Penal Code § 4900 et seq.)

12 A hearing on this claim was held in Sacramento, California, by Deborah Bain, Hearing  
13 Officer, who was assigned to hear this matter by the Executive Officer of the Victim Compensation  
14 and Government Claims Board (Board). The claimant Alejo Rivero is represented by the law firm of  
15 Moreno, Becerra, Guerrero & Casillas. Attorney Arnoldo Casillas waived Mr. Rivero's appearance,  
16 waived 15 days' notice of the hearing pursuant to Penal Code section 4902 and agreed to have an  
17 informal hearing conducted by the hearing officer upon the written record. Mr. Rivero did not attend  
18 the hearing.

19 Deputy Attorney Michael P. Farrell represented the Attorney General in this matter.  
20 Mr. Farrell also waived his appearance, waived 15 days' notice of the hearing pursuant to Penal  
21 Code section 4902, and agreed to have an informal hearing conducted upon the written record.

22 **Findings of Fact**

- 23 1. Mr. Rivero submitted a government claim for relief under Penal Code section 4900  
24 *et. seq.* on August 28, 2001. Mr. Rivero claims that he was erroneously convicted of a violation of  
25 Health and Safety Code section 11350(a), possession of a controlled substance. Mr. Rivero listed the  
26 date of incident as March 9, 2001, and he is seeking an award of \$70,700.
- 27 2. In support of his Penal Code section 4900 claim, Mr. Rivero attached two documents: 1)  
28 a copy of a Claim for Money Damages and, 2) a minute order from the Los Angeles Superior Court for  
29 case number BA161985.

1           3.       On June 18, 2004, the Board's Chief Counsel, Judith A. Kopec, sent a letter to  
2 Mr. Casillas of the law firm of Moreno, Becerra, Guerrero & Casillas. In the letter, Ms. Kopec informed  
3 Mr. Casillas that if he wished to submit any additional information supporting Mr. Rivero's claim, he  
4 must submit it by July 1, 2004. To date, no additional information has been received.

5           4.       The minute order reflects that the Los Angeles Superior court heard Mr. Rivero's Writ of  
6 Habeas Corpus in case number BA161985 on March 9, 2001. On that date, the court dismissed the  
7 case in the interest of justice.

8           5.       The Claim for Money Damages lists Mr. Rivero as the claimant and the City of Los  
9 Angeles as the respondent. Mr. Rivero states in the complaint that Los Angeles Police Officers  
10 Cochran and Coppock, and other unknown officers arrested him on January 7, 1998 for possession of  
11 a controlled substance. Mr. Rivero further states that these officers planted narcotic substances on  
12 him for purposes of framing him. In addition, he contends that these officers, along with their  
13 supervisors, deliberately conspired to plant evidence and maliciously allowed the claimant to be  
14 imprisoned for a period of 707 days.<sup>1</sup>

15           6.       The District Attorney's office filed an answer to Mr. Rivero's writ. In the answer, the District  
16 Attorney noted that the arrest of Mr. Rivero by Los Angeles Police Department (LAPD) Officers  
17 Coppock and Cochran occurred on January 7, 1998, not January 7, 1997. The D.A. also noted that  
18 LAPD Officers Calvin Hill and Lisa Gallegos subsequently arrested  
19 Mr. Rivero for cocaine sales on July 15, 1998, one block from the location of where Mr. Rivero was  
20 arrested on January 7, 1998.<sup>2</sup>

21           7.       The District Attorney noted in the answer that Los Angeles Police Officer Raphael  
22 Perez, who had provided information to authorities regarding misconduct by other Los Angeles police  
23 officers, never made any statements concerning Officer Cochran or Officer Coppock.<sup>3</sup>

24           8.       The District Attorney asserted that Mr. Rivero did not suffer any injury from any  
25 irreparable harm due to confinement in case number 161985 inasmuch as he was also simultaneously  
26 confined for case number BA171439.<sup>4</sup>

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28 <sup>1</sup> Mr. Rivero v. City of Los Angeles, Claim for Money Damages, page 2.

<sup>2</sup> Los Angeles District Attorney's Answer to Petition for Habeas Corpus in People v. Rivero, BA161985, Section II.

<sup>3</sup> Los Angeles District Attorney's Answer to Petition for Habeas Corpus in People v. Rivero, BA161985, Section IV.



1           2.       The court granted Mr. Rivero's Writ of Habeas Corpus on March 9, 2001. Mr. Rivero  
2 was released from custody on March 9, 2001. The Board received the claim on August 28, 2001.  
3 Mr. Rivero filed the claim within six calendar months of release and, therefore, has filed a timely  
4 claim.

5           3.       The claimant must prove the following: (1) that the crime with which he was charged  
6 was either not committed at all, or, if committed, was not committed by him; (2) that he did not by any  
7 act or omission on his part, either intentionally or negligently, contribute to the bringing about of the  
8 arrest or conviction for the crime; and (3) he sustained pecuniary injury through the erroneous  
9 conviction and imprisonment. (Pen. Code, § 4903.) The Board may consider any information that it  
10 deems relevant to the issues. (Cal. Code Regs., tit. 2, § 641.) The claimant has the burden of  
11 proving his innocence by a preponderance of the evidence. (*Diola v. Board of Control* (1982) 135  
12 Cal.App.3d 580, 588 fn 7, 185 Cal.Rptr.2d 511, 516 fn 7.)

13           4.       If a claimant meets the requirement of Penal Code section 4903, the Board shall  
14 report the facts of the case and its conclusion to the Legislature with a recommendation that the  
15 Legislature make an appropriation to indemnify the claimant for his pecuniary injury. (Pen. Code,  
16 §4904.) The appropriation recommended shall be a sum equal to \$100 per day of incarceration  
17 served after the claimant's conviction.

18           5.       The claimant submitted only two documents: a dismissal from the court and a civil  
19 complaint. The mere fact that the charge was dismissed does not conclusively prove claimant was  
20 innocent. The court in dismissing the case did not comment on Mr. Rivero's innocence or guilt. The  
21 civil complaint does not provide any facts suggesting innocence. Rather, it is merely conclusory  
22 statements regarding the planting of evidence and a conspiracy.

23           6.       Based on the findings of fact in paragraphs 2- 7, it is found that the claim is denied  
24 because the claimant has not has not carried the burden of proving his innocence by a  
25 preponderance of the evidence.

26           7.       The Attorney General and the District Attorney both asserted that Mr. Rivero did not  
27 suffer any injury from any irreparable harm due to confinement in case number 161985 inasmuch as  
28 he was also confined for case number BA171439. The evidence supports the District Attorney and  
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1 Attorney General's assessment, Mr. Rivero has failed to show by a preponderance of the evidence  
2 that he sustained pecuniary injury through the erroneous conviction and imprisonment.

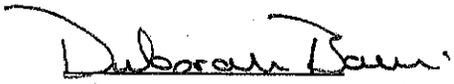
3 8. Based on the findings of fact in paragraphs 8 – 12, it is found that the claim is denied  
4 because the claimant has failed to show that he has sustained any pecuniary injury as a result of his  
5 imprisonment.

6  
7 BEFORE THE VICTIM COMPENSATION AND GOVERNMENT CLAIMS BOARD  
8 OF THE STATE OF CALIFORNIA

9  
10  
11 Order

12 The claim under Penal Code section 4900 *et seq.* is denied.

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15 Date: October 20, 2004

16   
17 DEBORAH BAIN  
18 Hearing Officer  
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