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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 **George Shull**

**Proposed Decision re Board's Jurisdiction**  
**(Penal Code § 4900 et seq.)**

13  
14 **Introduction**

15 On June 7, 2010, George Shull filed his claim for compensation as an erroneously convicted  
16 person with the California Victim Compensation and Government Claims Board. Upon review of the  
17 claim, it was determined that Shull did not file his claim within two years after:

- 18 1. Judgment of acquittal or discharge given, or  
19 2. Pardon granted, or  
20 3. Release from imprisonment.<sup>1</sup>

21 Although no hearing was conducted as to the merits of Shull's claim for compensation, both  
22 Shull and Senior Assistant Attorney General Michael Farrell were given the opportunity to provide  
23 information relating to whether or not Shull's claim was timely filed. After reviewing the parties'  
24 submissions, it is determined that the Board does not have jurisdiction to hear this claim.

25 **Issue**

26 Does the Board have jurisdiction to consider Shull's claim for compensation?  
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<sup>1</sup> Pen. Code, § 4901.

1 **Summary of the Evidence**

2 On December 8, 1989, Shull plead guilty to four felonies, the result of two separate criminal  
3 cases<sup>2</sup> that the prosecutor joined for trial. He was sentenced to five years state prison. Shull was  
4 released from imprisonment on June 16, 1992, after serving thirty months of his sixty month  
5 sentence. In 1995, Shull was discharged from parole. On September 23, 2009, Shull filed a habeas  
6 petition.<sup>3</sup> On December 10, 2009, the Santa Clara County Superior Court granted Shull's habeas  
7 petition, vacating two felony convictions for crimes that occurred in Los Gatos, with the other two San  
8 Jose-related convictions remaining undisturbed.<sup>4</sup>

9 **Claimant's Argument**

10 On his claim form, Shull referenced the December 10, 2009, order granting his habeas  
11 petition as his "date of judgment of acquittal," thus making his claim timely because it was filed on  
12 June 7, 2010, well within the two year's afforded him in Penal Code section 4901.

13 In the alternative, Shull argued that because Penal Code section 4901 also allowed him a  
14 period of two years to file his claim "after discharge given," his claim was timely because when his  
15 habeas petition was granted on December 10, 2009, he received an official order of exoneration from  
16 the court, and that this order was synonymous with the term "discharge given."

17 **Attorney General's Response**

18 The Attorney General asserted that Shull's habeas petition was not a triggering event pursuant  
19 to Penal Code section 4901 because Shull's habeas proceeding did not functionally "acquit" him of any  
20 offenses.<sup>5</sup> The superior court did not vacate Shull's convictions due to insufficiency of the evidence,  
21 which, as explained in the *Tennison* case, is the functional equivalent of an acquittal at trial. The court

22  
23 <sup>2</sup> A Los Gatos case (sexual assault and assault with a deadly weapon) and a San Jose case (annoy  
24 and molest a child under 18 and assault with a deadly weapon).

25 <sup>3</sup> Although one typically must be in custody to file a habeas petition, Mr. Shull had been out of prison  
26 since 1992. Mr. Shull and the District Attorney instead stipulated to the Santa Clara Superior Court's  
27 jurisdiction.

28 <sup>4</sup> Shull admits to and does not dispute the validity of the San Jose charges.

<sup>5</sup> *Tennison v. Victim Compensation and Government Claims Board* (2000) 152 Cal. App. 4<sup>th</sup> 1164,  
1179.

1 also did not determine Shull's guilt or innocence.<sup>6</sup> Instead, Shull's Los Gatos convictions were vacated  
2 based upon "newly discovered evidence and false testimony at trial that pointed to the petitioner's  
3 innocence." Had the prosecutor wished to re-try Shull for the Los Gatos crimes, he or she would not  
4 have been prevented from doing so because a successful habeas corpus petition necessarily  
5 contemplates and virtually always permits a retrial.<sup>7</sup>

6 Furthermore, if the legislature, which specifically included acquittals and reversals in Penal  
7 Code section 4901, intended to include the granting of a habeas petition as an event to be considered  
8 when regarding the timeliness of a claim, it would have included that language.<sup>8</sup>

### 9 **Legal Analysis**

10 In order to assess Shull's argument that his claim was timely because it was filed within two  
11 years of "judgment of acquittal or discharge given," it is necessary to review the legislative history of  
12 the erroneously convicted statutes. In order to determine legislative intent, one must first look to the  
13 words of the statute, giving them their usual and ordinary meaning.<sup>9</sup> When the language of the  
14 statute is clear, there is no need to look further. But when the language is susceptible to more than  
15 one reasonable interpretation, the courts look to a variety of extrinsic aids, including the ostensible  
16 objects to be achieved, the evils to be remedied, the legislative history, public policy,  
17 contemporaneous administrative constructions, and the statutory scheme of which the statute is a  
18 part.<sup>10</sup> Lastly, the words of a statute are to be interpreted in the sense in which they would have been  
19 understood at the time of the enactment.<sup>11</sup>

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22 <sup>6</sup> *In re Cruz* (2003) 104 Cal.App.4th 1339, 1346. [A] habeas proceeding is not a trial of guilt or  
23 innocence and the findings of the habeas corpus court do not constitute an acquittal.

24 <sup>7</sup> *In re Cruz* (2003) 104 Cal. App. 4<sup>th</sup> 1339, 1347.

25 <sup>8</sup> *People v. Palacios* (2007) 41 Cal.4th 720, 731 ["expressio unis est exclusio alterius"].

26 <sup>9</sup> *People v. Trevino* (2001) 26 Cal.4th 237, 240, *People v. Gardeley* (1996) 14 Cal.4th 605, 621.

27 <sup>10</sup> *People v. Woodhead* (1987) 43 Cal.3d 1002, 1007-1008.

28 <sup>11</sup> *People v. Cruz* (1996) 13 Cal.4th 764, 776.

1           The current Penal Code sections pertaining to the erroneously convicted are derived from a  
2 statute enacted in 1913 -- Statutes 1913, Chapter 165. Section 1 of that statute stated in relevant  
3 part that any person may present a claim if he has been convicted of a felony, if he has been  
4 imprisoned in state prison, and if "on a retrial of the case, or on reversal on appeal of the final  
5 judgment of conviction, [he has] be[en] acquitted or discharged" for the reason that he did not commit  
6 the crime or because no crime was committed.<sup>12</sup>

7           Section 2 of that statute stated that the claim must be presented within six months "after  
8 judgment of acquittal or discharge given, or after pardon granted, or after release from imprisonment[.]"  
9 The language in Section 2 is the language used today in section 4901, except the time limit to file the  
10 claim has been increased from six months to two years.

11           According to the original 1913 statute, a person may file a claim if he has been acquitted upon  
12 retrial or if he has been discharged after his case was reversed on appeal, assuming that he met all the  
13 other requirements. There is nothing in that statute to suggest that a "discharge" would occur after the  
14 granting of a habeas petition.

15           Additionally, even though the acquittal and reversal language in Section 1 of the 1913 statute no  
16 longer exists, it is doubtful the deletions signal the legislature's intentions to expand the triggering  
17 events. If that truly was the legislature's intent, instead of deleting the language about acquittals and  
18 retrials, it instead would have added language about habeas petitions.

19           The question remains, however, from what would one be discharged after his case was  
20 reversed on appeal? According to Penal Code section 1262, which was enacted in 1872, when a case  
21 is reversed on appeal, "discharge" refers to a release from custody. Specifically, the statute states, in  
22 relevant part: "If a judgment against a defendant is reversed, such reversal shall be deemed an order  
23 for a new trial, unless the appellate court shall otherwise direct. If the appellate court directs a final  
24 disposition of the action in the defendant's favor, the court must, *if he is in custody, direct him to be*  
25 *discharged therefrom.*" (italics added). Thus, it appears that discharge after an appellate reversal refers  
26 to a discharge from custody.

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28 <sup>12</sup> The statute also allowed the filing of claims for those who were pardoned or who generally are  
innocent, without an acquittal or discharge.

1 **Findings**

2 A preponderance of the evidence supports the following findings:

- 3 1. Shull was sentenced to five years prison on December 8, 1989.
- 4 2. Shull was released from prison on June 16, 1992.
- 5 3. Shull was discharged from parole in 1995.
- 6 4. Shull filed his petition for habeas proceeding on September 23, 2009.
- 7 5. Shull's habeas petition vacating two of his four felony convictions was granted on
- 8 December 10, 2009.
- 9 6. Shull's successful habeas petition was based on newly discovered evidence and false
- 10 testimony that pointed to Shull's innocence.
- 11 7. Shull's claim for compensation as an erroneously convicted person was filed with the
- 12 Board on June 7, 2010.
- 13 8. A "judgment of acquittal" is not synonymous with the granting of a habeas petition.
- 14 9. A "discharge given" is not synonymous with the granting of a habeas petition.
- 15 10. Shull has not received a pardon.
- 16 11. At the time of Shull's release from prison, he had six months to file his claim.
- 17 12. In 2009, the six-month filing limitation was extended to two years.

18 **Determination**

19 Penal Code section 4901 establishes the procedural elements required of claimants in the filing

20 of a claim as an erroneously convicted person. In order for the Board to consider a claim, a claimant

21 must submit his claim to the California Victim Compensation and Government Claims Board within a

22 period of two years after judgment of acquittal or discharge given, or after pardon granted, or after

23 release from imprisonment. No claim not so presented shall be considered by the California Victim

24 Compensation and Government Claims Board.

25 The law in effect at the time of Shull's conviction required a claim to be filed within six months

26 of the above-listed events. In 2010, the law changed to allow a two-year period to file a claim.

27 Because Shull was never acquitted upon retrial, was not pardoned, and because his case was never

28 reversed on appeal, he was required to file his claim for compensation within two years of his release

1 from prison, which occurred in 1992, or, it could be argued, within two years of his discharge from  
2 parole which occurred in 1995.

3 Shull did not file his application until 18 years after he was released from prison and 15 years  
4 after his parole terminated. Shull would like the Board to consider his habeas petition to be  
5 synonymous with a judgment of acquittal or discharge given, thus making his claim timely. But, as  
6 discussed above, there is no support for this proposition.

7 It is therefore determined that Shull's habeas petition was not a triggering event pursuant to  
8 Penal Code section 4901. It was neither an "acquittal" nor a "discharge."<sup>13</sup> In fact, unlike a judgment  
9 of acquittal which bars retrial, Shull is still eligible to be prosecuted for the Los Gatos offenses. In  
10 accordance with the laws in effect at the time, Shull should have filed his claim for compensation as  
11 an erroneously convicted person within six months of his release from imprisonment or, possibly,  
12 within six months of his discharge or release from parole.

13 George Shull's claim under Penal Code section 4900 et seq. must be rejected because the  
14 Board lacks jurisdiction to consider the claim.

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17 Date: August 18, 2010

18   
19 Kyle Hedum  
20 Hearing Officer  
21 California Victim Compensation and  
22 Government Claims Board  
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28 <sup>13</sup> (See, e.g., *In re Cruz* (2003) 104 Cal.App.4th 1339, 1346 ["[A] habeas proceeding is not a trial of guilt or innocence and the findings of the habeas corpus court do not constitute an acquittal."])

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

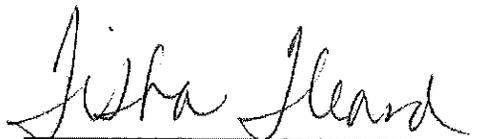
In the Matter of the Application of:

**George Shull**

**Notice of Decision**

On September 16, 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: September 16, 2010



Tisha Heard  
Board Liaison  
California Victim Compensation and  
Government Claims Board