

1
2
3
4
5
6 **BEFORE THE VICTIM COMPENSATION BOARD**
7 **OF THE STATE OF CALIFORNIA**

8
9 In the Matter of:

10 **Gerardo Cabanillas**

11 Claim No. 23-ECO-56

Proposed Decision

(Penal Code §§ 1485.55, 4900 et seq.)

12 **I. Introduction**

13 On November 13, 2023, Gerardo Cabanillas (Cabanillas) submitted a claim for compensation
14 to the California Victim Compensation Board (CalVCB) as an erroneously convicted person pursuant
15 to Penal Code section 4900, which was supplemented on November 17 and 21, 2023. The claim is
16 based upon Cabanillas' 28 years imprisonment for 13 counts including robbery, carjacking, kidnapping,
17 and multiple forcible sexual offenses, all of which were vacated with a finding of factual innocence.
18 Cabanillas is represented by Jasmin Harris (Harris), Director of Public Education and Development for
19 the Innocence Center.¹ The claim requests compensation in the amount of \$1,466,080 for 10,472
20 days incarceration, which includes 127 days on supervised release.

21 At CalVCB's invitation, Deputy Attorney General Jessica Leal (DAG Leal) appeared on behalf
22 of the Attorney General and opposed any compensation for supervised release under the current
23 statutes governing Cabanillas' claim. The matter was assigned to CalVCB Senior Attorney Laura
24 Simpton. As mandated by Penal Code section 1485.55, it is recommended that CalVCB approve the
25 claim in the amount of \$1,447,740 if sufficient funds are available, upon appropriation by the
26 Legislature, as indemnification for the injury sustained by Cabanillas' incarceration for 10,341 days

27
28 ¹ Though Harris is not an attorney, CalVCB regulations generally permit representation by any person
of the party's choosing. (Cal. Code Regs., tit. 2, § 617.3.)

1 solely as a result of these erroneous convictions. It is recommended that compensation be denied for
2 the remaining 131 days (i.e., \$18,340) as the record fails to demonstrate that this time was part of
3 Cabanillas' term of incarceration for the erroneous convictions.

4 **II. Procedural Background**

5 On January 20, 1995, Cabanillas was arrested on an outstanding traffic warrant and
6 subsequently arraigned on January 24, 1995, for 14 felony counts in Los Angeles County Superior
7 Court case number VA030567.² The counts arose from two separate incidents, committed days apart,
8 during which two different couples were robbed at night while sitting in their car.³ Specifically, on
9 January 16, 1995, two men robbed Maria A. and Raul F. (counts 1 and 2), carjacked them both while
10 armed with a gun (count 3), kidnapped Maria A. for sexual purposes (count 4), then forcibly raped,
11 sodomized, and orally copulated Maria A. while acting in concert and armed with a gun (counts 5, 6,
12 and 7, respectively), and twice forcibly penetrated Maria A. with a foreign object while acting in concert
13 and armed with a gun (counts 12 and 13).⁴ Two days later on January 18, 1995, two men robbed
14 Maria L. and attempted to rob Riccardo S. (counts 11 and 9, respectively), attempted to carjack them
15 both while armed with a gun (count 8), and attempted to kidnap Maria L. for sexual purposes (count
16 10).⁵

17 Cabanillas was tried in two separate trials as the sole defendant for all 14 counts. After the first
18 jury trial, Cabanillas was convicted on August 16, 1995, of counts 8, 9, and 11 for the second incident
19 only and acquitted of count 10 for the attempted kidnapping of Maria L. The jury deadlocked on all
20

21 ² Cabanillas Application (App.) at pp. 17, 40-41. The pagination refers to the continuous page
22 numbers for the entire, 264-page PDF file. See also Docket Entry for *People v. Gerardo Cabanillas*,
23 Los Angeles County Municipal Court, case number SGVA030567-01, accessible online at [https://
www.lacourt.org/criminalcasesummary/ui/](https://www.lacourt.org/criminalcasesummary/ui/). (Cal. Code Regs., tit. 2, § 617.8 (official notice).)

24 ³ Joint Letter Requesting Habeas Relief and Factual Innocence Finding (Joint Letter), dated Sept. 21,
25 2023, at p. 2, submitted via email attachment by Harris on Nov. 17, 2023. This proposed decision
omits the last name for all victims and witnesses in an effort to protect their privacy.

26 ⁴ Cabanillas App. at pp. 41-42; see also Pen. Code, §§ 211 (robbery), 215 (carjacking), 207
27 (kidnapping for sexual purposes), 264.1 / 261 (forcible rape in concert), 286 (forcible sodomy in
concert), 288a (forcible oral copulation in concert), 289 (forcible penetration in concert).

28 ⁵ Cabanillas App. at pp. 42; see also Pen. Code, §§ 211 (robbery), 664/211 (attempted robbery),
664/215 (attempted carjacking), 664/207 (attempted kidnapping for sexual purposes).

1 remaining counts for the first incident. After the second jury trial, Cabanillas was convicted on April 18,
2 1996, of all remaining charges, including the sexual offenses against Maria A., in counts 1 through 7,
3 12, and 13. On May 31, 1996, Cabanillas was sentenced to an aggregate term of 87 years and four
4 months to life in prison for all 13 counts.⁶

5 Cabanillas appealed. On January 30, 1998, the Court of Appeal affirmed the judgment, and
6 the California Supreme Court denied review on March 18, 1998.⁷ The following year, Cabanillas
7 sought habeas relief in state and federal court but was denied.⁸

8 Almost 20 years later in 2017, Cabanillas contacted the California Innocence Project (CIP) and
9 insisted he was innocent. In 2019, with CIP's assistance, Cabanillas moved for DNA testing on
10 several items of evidence obtained during Maria A.'s sexual assault examination, which was approved
11 in 2020 by the Los Angeles County Superior Court. Testing commenced in 2020 and continued
12 through 2022. Prompted by the initial results that excluded Cabanillas, Cabanillas filed a petition for
13 writ of habeas corpus with the superior court on December 9, 2022. On March 14, 2023, additional
14 DNA testing excluded Cabanillas' alleged accomplice. On May 16, 2023, with a stipulation from the
15 Los Angeles County District Attorney's Office (LADA), Cabanillas was released from incarceration on
16 his own recognizance, subject to electronic monitoring, pending the ongoing habeas litigation.⁹

17 By the date of his release on May 16, 2023, 10,345 days had passed since Cabanillas was
18 arrested for an outstanding traffic warrant on January 20, 1995.¹⁰ Of that time, 10,341 days had
19 passed since Cabanillas was arraigned on January 24, 1995, for the charges that led to the challenged
20

21 ⁶ Cabanillas App. at p. 43-44; see also Probation Officer's Report (1996 POR), signed May 14, 1996,
22 at p. 1, submitted via email attachment by Harris on Nov. 17, 2023; Probation Officer's Report (1995
POR), dated Sept. 12, 1995, at p. 1.

23 ⁷ Cabanillas App. at p. 43-44; see also *People v. Cabanillas*, Court of Appeal, Second District, case
24 number B103776, docket accessible online at <https://appellatecases.courtinfo.ca.gov/>. (Cal. Code
Regs., tit. 2, § 617.8 (official notice).)

25 ⁸ Cabanillas App. at p. 44.

26 ⁹ Joint Letter at pp. 3-5; Cabanillas App. at pp. 261-264.

27 ¹⁰ The number of days between Cabanillas' arrest on January 20, 1995, to and including his release on
28 May 17, 2023, was determined using the online "Days Calculator" located at <https://www.timeanddate.com/date/duration.html>. (See Pen. Code, § 2900.5 (credit for days spent in custody); *People v. King*
(1992) 3 Cal.App.4th 882, 886 (construing "days" for custody credit to include partial days).)

1 convictions in case number VA030567. Evidently, no conviction resulted from the unrelated arrest
2 warrant.¹¹

3 On September 21, 2023, LADA and CIP filed a joint letter in the Los Angeles County Superior
4 Court requesting habeas relief for Cabanillas on the basis of newly discovered evidence that likely
5 would have changed the outcome at trial pursuant to Penal Code section 1473, subdivision (b)(3). The
6 letter further requested a finding of factual innocence pursuant to Penal Code section 1485.55,
7 subdivision (b), as both LADA and CIP agreed that the newly discovered evidence demonstrated
8 Cabanillas' innocence by a preponderance.¹²

9 In a hearing held that same day, the court granted both requests. Specifically, the court
10 vacated all 13 of Cabanillas' convictions in case number VA030567. The court further found
11 Cabanillas factually innocent of all charges in case number VA030567. Finally, the court ordered
12 Cabanillas' own recognizance release exonerated.¹³ By then, Cabanillas had spent 127 days on
13 supervised release after his discharge from prison on May 17, 2023.¹⁴

14 By email from representative Harris sent on November 13, 2023, Cabanillas submitted a claim
15 to CalVCB seeking compensation as an erroneously convicted person under Penal Code section
16 4900. The 264-page claim was accessible via a link for download through Google Docs. Harris
17 acknowledged the claim was premature under Penal Code section 4901, as 60 days had not yet
18 passed since Cabanillas' convictions were reversed on September 21, 2023, but hoped the additional
19 time would enable the Board to schedule "a special meeting for December" to decide the claim.¹⁵ The
20 claim requested compensation in the amount of \$1,466,080 for 10,472 days from January 20, 1995, to

21
22 ¹¹ See 1996 POR at p. 7 (noting no prior convictions as of May 1996); see also Harris email, sent Nov.
23 17, 2023 (confirming that Cabanillas was not confined as a result of any unrelated conviction for any
24 period of time overlapping the duration of his incarceration for case number VA030567).

25 ¹² Cabanillas App. at pp. 12-13; Joint Letter at pp. 1-16.

26 ¹³ Cabanillas App. at pp. 17-18.

27 ¹⁴ The duration of Cabanillas' supervised released, starting on May 18, 2023, through September 21,
28 2023, was determined using the online "Days Calculator" located at [https://www.timeanddate.com/
date/duration.html](https://www.timeanddate.com/date/duration.html).

¹⁵ Email from Harris to CalVCB, sent Nov. 13, 2023, at 2:34 p.m.; see also Pen. Code, § 4901, subd. (c)
(barring claim until 60 days have passed sentence date of reversal).

1 and including September 21, 2023.¹⁶ The matter was assigned to CalVCB Senior Attorney Laura
2 Simpton for review.

3 By reply email sent November 14, 2023, which included representatives for the Attorney
4 General, CalVCB acknowledged receipt of Cabanillas' premature claim and agreed to stay the
5 proceeding until November 20, 2023. However, CalVCB determined that additional information and
6 documentation was needed to confirm Cabanillas' convictions and incarceration, as well as the scope
7 of the finding of factual innocence. To that end, CalVCB requested a copy of the Abstract of Judgment
8 (AOJ) and the parties' Joint Letter. CalVCB also cited Penal Code section 4904, which limits
9 compensation to the number of days incarcerated, and requested clarification on the amount of
10 compensation requested.¹⁷

11 Cabanillas' representative Harris responded on Friday, November 17, 2023. Harris attached a
12 copy of the Joint Letter with redactions, which had been filed under seal with the superior court. Harris
13 declined to provide a copy of the AOJ, explaining that she did not have a copy in her files. Instead,
14 she attached the 1996 POR, which included an estimate of days spent in jail, in an effort to confirm
15 presentencing credits for actual days served for case number VA030567. Finally, Harris insisted that
16 compensation must include all 127 days of Cabanillas' supervised release at the rate of \$140 per day
17 based on her statutory interpretation to extend the definition of custody for purposes of calculating
18 timeliness under Penal Code section 4901 to include compensation calculations under Penal Code
19 section 4904.¹⁸ That same day, CalVCB requested a response from the Attorney General within one
20 week on the issue of compensation for time spent on supervised released, while CalVCB continued to
21 review the submitted materials.¹⁹

24 ¹⁶ Cabanillas' initial request for \$1,446,080 in the claim form appears to be a typographical error, given
25 his subsequent request for \$1,466,080 in the supporting memorandum, which amounts to \$140 for
26 each day of the alleged 10,472 days served. (Cabanillas App. at pp. 2, 15.)

27 ¹⁷ Email from Jasmin Harris to CalVCB, sent Nov. 13, 2023, at 2:34 p.m.

28 ¹⁸ Email from Jasmin Harris to CalVCB, sent Nov. 17, 2023, at 3:31 p.m.

¹⁹ Email to parties from CalVCB, sent Nov. 13, 2023, at 4:38 p.m.

1 On Monday, November 20, 2023, CalVCB lifted the stay, as the claim was no longer
2 premature. However, CalVCB again requested additional information and clarification from Cabanillas
3 before filing the claim. Specifically, the 1996 POR included only an estimate of presentencing credits,
4 and that estimate suggested Cabanillas' confinement for the challenged offenses commenced after his
5 arrest on January 20, 1995, for an outstanding traffic warrant. Moreover, the 1996 POR listed the date
6 of arrest for the charges in case number VA030567 as January 24, 1995.²⁰ CalVCB again requested
7 supporting documentation, such as the AOJ or sentencing minute record, to confirm the number of
8 actual days Cabanillas spent incarcerated solely as a result of case number VA030567.²¹

9 Meanwhile, on November 21, 2023, the Attorney General timely opposed any compensation for
10 days spent on supervised release. To support its position, the Attorney General emphasized the
11 statutory language for the relevant provisions, which plainly negated Cabanillas' interpretation.²²

12 Later that afternoon on November 21, 2023, representative Harris submitted three additional
13 documents, though none were for the requested court records. Harris explained that, "because of the
14 age of the case, we are not able to access documents like the AOJ, transcripts, etc. online."²³ Instead,
15 Harris provided the 1995 POR, which listed the arrest date as January 20, 1995, and included an
16 estimate of presentence custody credits that matched the date of arrest. Harris also provided a
17 booking report, which listed an arrest date of January 20, 1995, on the charge of "outside warr" for
18 "J66199219000" plus Penal Code sections "215, 211, 207, 261, 289."²⁴ Harris finally provided a
19 Spanish "Miranda" advisement form that was dated January 20, 1995.²⁵

20
21 ²⁰ 1996 POR at p. 3. It appears this arrest date was based upon Cabanillas' arraignment for those
22 charges, after having been arrested and detained for the unrelated warrant since January 20, 1995.
23 (See Docket Entry, *supra*, for *People v. Gerardo Cabanillas*, Los Angeles County Municipal Court,
case number of SGVA030567-01.)

24 ²¹ Email to parties from CalVCB, sent Nov. 17, 2023, at 3:31 p.m.

25 ²² Email to parties from DAG Leal, sent Nov. 21, 2023, at 11:07 a.m.

26 ²³ Email to parties from Harris, sent Nov. 21, 2023, at 4:48 p.m.

27 ²⁴ Booking Report, dated Jan. 20, 1995, at p. 1, submitted via email attachment by Harris on Nov. 21,
2023.

28 ²⁵ Miranda Advisement Form, dated Jan. 20, 1995, submitted via email attachment by Harris on Nov.
21, 2023.

1 On November 27, 2023, after reviewing the claim and all supplemental information and
2 documents to confirm compliance with Penal Code sections 4900 and 4901, CalVCB deemed the
3 claim filed. The administrative record closed the same day.

4 III. Factual Background

5 A. Trial Evidence

6 On January 16, 1995, at approximately 10:50 p.m., Maria A. and Raul were seated inside their
7 parked car near the corner of Independent and Evergreen in South Gate, California. Two men
8 approached from behind, one carrying a gun and the other a knife. With their weapons displayed, the
9 men ordered both victims out of the car and took Raul's wallet and watch and Maria A.'s jewelry. Then
10 the man with a knife forced Maria A. into the backseat of the car. The knifeman sat in the front
11 passenger's seat, while the gunman slipped into the driver's seat, and they drove off with Maria A.,
12 leaving Raul behind. While the gunman drove, the knifeman forcibly penetrated Maria A. with his
13 fingers. The driver eventually stopped at a house, and both men forced Maria A. inside, threatening to
14 kill her if she tried to run away. After forcing her to undress, the gunman penetrated Maria A. with his
15 fingers, and then the knifeman sodomized her and forced her to orally copulate him. Meanwhile, the
16 gunman orally copulated Maria A. and raped her. Eventually, both men left the home, briefly leaving
17 Maria A. alone. Maria A. hurriedly dressed and ran to a nearby house where she called police.²⁶

18 Maria A. underwent a sexual assault examination where samples were taken from her mouth
19 and vagina, as well as pubic hair combings. In addition, Maria A. provided a description to police of
20 both assailants. She described the gunman who raped her as Latino, with long black curly hair, five-
21 feet eight-inches tall, 200 pounds, and dark complexion. She described the knifeman whom she orally
22 copulated as Latino, about six-feet tall, and thinner than the gunman. Raul added that the gunman
23 was about 35 years old, and the knifeman was about 25 years old, 160 pounds, with black hair and
24 dark complexion.²⁷

25
26
27 ²⁶ Cabanillas App. at pp. 49-52; Joint Letter at p. 2.

28 ²⁷ Cabanillas App. at pp. 51-52; Joint Letter at p. 2.

1 Two nights later on January 18, 1995, at approximately 7:30 p.m., Maria L. and Riccardo were
2 seated inside their parked, Nissan Sentra near the intersection of Santa Ana and Chestnut in South
3 Gate. It was dark outside, and no lights were on inside the car. Suddenly, a man approached
4 Riccardo on the driver's side of the car, pointed a black revolver at Riccardo's head, and demanded
5 his wallet. Riccardo stepped out of the car and showed the man that he did not have a wallet. The
6 man slipped into the driver's seat, while Maria L. was still seated in the passenger seat, and tried to
7 start the car. Maria L. began crying, which prompted the man to threaten to shoot her if she did not
8 stop. Eventually, after the car refused to start, the man grabbed Maria L.'s purse and jewelry and then
9 fled on foot.²⁸

10 Maria L. and Riccardo immediately reported the incident to police. They described their
11 assailant as 25 to 28 years old, with short wavy brown hair and hazel or green eyes and light
12 complexion, five-feet eight-inches tall, and 130 pounds. He was wearing red pants, a black jacket, and
13 huarache sandals.²⁹

14 Detective L. Alirez thought both incidents may have been committed by the same culprit or
15 culprits. He initially suspected Juan A. (Juan), as he also wore a black jacket with sandals and had
16 been arrested for committing similar crimes in the area. But Juan was 22 years old, Latino with brown
17 eyes, and five-feet six-inches tall and 140 pounds.³⁰ Also, none of the victims from either incident
18 identified Juan as their assailant.

19 Two days later on January 20, 1995, Detective Alirez happened to spot Cabanillas wearing red
20 pants while standing at a street corner in South Gate. At that time, Cabanillas was 19 years old,
21 Hispanic with hazel eyes, five-feet ten-inches tall, and 165 pounds.³¹ Suspicious that Cabanillas may
22 have been responsible for both incidents, Detective Alirez arrested Cabanilla on an outstanding traffic
23 warrant. Detective Alirez created a photographic lineup that included Cabanillas' picture and showed it
24

25 ²⁸ Cabanillas App. at pp. 45-46.

26 ²⁹ Cabanillas App. at p. 46.

27 ³⁰ Cabanillas App. at pp. 46-47, 52-53; Joint Letter at p. 7.

28 ³¹ Booking Report at p. 1.

1 to Maria L. and Riccardo. Both identified Cabanillas. By comparison, Maria A. and Raul only
2 tentatively identified Cabanillas and were unable to identify him at trial.³²

3 Detective Alirez interrogated Cabanillas. Initially, the interrogation was not recorded when,
4 according to Detective Alirez, Cabanillas confessed to the second incident for the attempted carjacking
5 and robbery of Maria L. and Riccardo, which he supposedly committed with his friend “Armando.”
6 Then Detective Alirez started to record their conversation, during which Cabanillas repeated his
7 confession. Police eventually searched Cabanillas’ home but found nothing connecting him to the
8 crimes.³³

9 At trial, Cabanillas insisted he was innocent of all charges. He claimed he repeatedly denied
10 committing the crimes when questioned by Detective Alirez and only confessed after Detective Alirez
11 promised him probation. Cabanillas maintained that all of the details in his confession were provided
12 to him by Detective Alirez. To bolster his defense, Cabanillas’ wife and nephew testified that
13 Cabanillas was at home eating dinner with them when the second incident occurred.³⁴

14 **B. Exculpatory Evidence**

15 Between 2020 and 2022, the samples from Maria A.’s sexual assault examination were tested
16 for DNA. No semen or male DNA was detected from the oral samples, which would have implicated
17 the knifeman. One full male profile was detected from the vaginal samples, which would have
18 implicated the gunman, and that profile did not match Cabanillas. A second partial male profile was
19 detected from the pubic hair combings, which may have implicated either the gunman or knifeman,
20 and that profile did not match Cabanillas. Ultimately, Cabanillas was excluded as the source for either
21 of the DNA profiles. Cabanillas’ supposed accomplice Armando G. was also excluded as the source.³⁵

22 DNA testing further excluded the initial suspect, Juan. Nonetheless, given the similarities
23 between Maria A.’s sexual assault and other offenses for which Juan had been convicted,
24 investigators interviewed him in 2023. At that time, Juan was in prison for murder, rape, and robbery.

25 ³² Cabanillas App. at pp. 46-47; Joint Letter at p. 2.

26 ³³ Cabanillas App. at pp. 47-48.

27 ³⁴ Cabanillas App. at pp. 48-49.

28 ³⁵ Joint Letter at pp. 3-4.

1 Juan A. readily admitted guilt for his convictions, some of which he claimed to have committed with an
2 accomplice (i.e., "Suspect 1"). Juan further admitted that that he, not Cabanillas, had committed the
3 failed carjacking incident involving Maria L. However, Juan denied any involvement in the carjacking
4 and rape incident involving Maria A. Eventually, Juan claimed to have overheard Suspect 1 and
5 another associate (i.e., "Suspect 2") bragging about Maria A.'s assault the day after it occurred.³⁶

6 In 2023, the LADA contacted Maria A. to inform her of the case developments. Maria A.
7 supported Cabanillas' exoneration, stating that she knew from the beginning he was not the
8 perpetrator.³⁷

9 **IV. Determination of Issues**

10 Penal Code section 4900 allows a person, who has been erroneously convicted and
11 imprisoned for a felony offense that they did not commit, to submit a claim for compensation to
12 CalVCB.³⁸ Specifically, subdivision (a) of section 4900 provides:

13 Any person who, having been convicted of any crime against the state amounting to a
14 felony and imprisoned in the state prison or incarcerated in county jail pursuant to
15 subdivision (h) of Section 1170 for that conviction, is granted a pardon by the Governor
16 for the reason that the crime with which they were charged was either not committed at
17 all or, if committed, was not committed by the person, or who, being innocent of the
18 crime with which they were charged for either of those reasons, shall have served the
term or any part thereof for which they were imprisoned in state prison or incarcerated in
county jail, may, under the conditions provided under this chapter, present a claim
against the state to the California Victim Compensation Board for *the injury sustained by
the person through the erroneous conviction and imprisonment or incarceration.*³⁹

19 Plainly understood, section 4900 applies only to persons who were erroneously convicted and
20 imprisoned for a felony offense that they did not commit and limits relief to the injury caused by their
21 imprisonment or incarceration.

22 To be timely, subdivision (a) of Penal Code section 4901 requires submission of the claim
23 "within a period of 10 years after judgment of acquittal, dismissal of charges, pardon granted, or
24 _____

25 ³⁶ Joint Letter at pp. 4-11.

26 ³⁷ Joint Letter at p. 2.

27 ³⁸ Pen. Code, § 4900, subd. (a).

28 ³⁹ Pen. Code, § 4900, subd. (a), emphasis added; see also Pen. Code, § 1170, subd. (h) (allowing
prison term for specified felony convictions to be served in local county jail instead of state prison).

1 *release from custody*, whichever is later.”⁴⁰ Notably, subdivision (b) of section 4901 defines the phrase
2 “release from custody” as follows:

3 *“For purposes of subdivision (a), ‘release from custody’ means release from*
4 *imprisonment from state prison or from incarceration in county jail ... or when there is a*
5 *parole period or postrelease jurisdiction of a community corrections program, when that*
6 *period ends.”*⁴¹

7 On its face, subdivision (b)’s definition of “release from custody” applies only to that phrase as used in
8 subdivision (a) for calculating timeliness. Subdivision (c) further provides that a “person may not file a
9 claim under Section 4900 until 60 days have passed since the date of reversal of conviction or granting
10 of the writ, or while the case is pending upon an initial refiling, or until a complaint or information has
11 been dismissed a single time.”⁴²

12 To prevail on a claim under subdivision (a) of Penal Code section 4900, claimants typically
13 bear the burden to prove by a preponderance that (1) the crime with which they were convicted either
14 did not occur or was not committed by them and (2) they suffered injury as a result of their erroneous
15 conviction.⁴³ Once such a claim is received and filed, Penal Code section 4902 requires the Attorney
16 General to submit a written response.⁴⁴ Thereafter, under Penal Code section 4903, a hearing before
17 a hearing officer ensues, at which the claimant and Attorney General may present evidence
18 concerning innocence and injury.⁴⁵ Upon the requisite showing of innocence and a finding of injury,
19 Penal Code section 4904 requires approval of the claim, at a rate of \$140 per day of incarceration, if
20 sufficient funds are available.⁴⁶

21 An exception to this process occurs when a claimant obtains a finding of factual innocence.
22 Under subdivision (b) of Penal Code section 1485.55, when a court has granted a writ of habeas

23 ⁴⁰ Pen. Code, § 4901, subd. (a), emphasis added.

24 ⁴¹ Pen. Code, § 4901, subd. (b), emphasis added.

25 ⁴² Pen. Code, § 4901, subd. (c).

26 ⁴³ Pen. Code, §§ 4900, subd. (a); 4903, subd. (a).

27 ⁴⁴ Pen. Code, § 4902, subd. (a).

28 ⁴⁵ Pen. Code, § 4903, subd. (a).

⁴⁶ Pen. Code, § 4904.

1 corpus, “the person may move for a finding of factual innocence by a preponderance of the evidence
2 that the crime with which they were charged was either not committed at all or, if committed, was not
3 committed by the petitioner.”⁴⁷ If the court makes such a finding, then under subdivision (c) of section
4 1485.55, “the [CalVCB] board shall, without a hearing, recommend to the Legislature that an
5 appropriation be made and any claim filed shall be paid pursuant to Section 4904.”⁴⁸

6 Penal Code section 4904, in turn, provides that, upon a finding by the board “that the claimant
7 has sustained injury through their erroneous conviction and imprisonment,” then the board “shall
8 approve payment for the purpose of indemnifying the claimant for the injury if sufficient funds are
9 available, upon appropriation by the Legislature.”⁴⁹ Section 4904 further provides that the “amount of
10 the payment shall be a sum equivalent to one hundred forty dollars (\$140) per day of incarceration
11 served, and shall include any time spent *in custody*, including a county jail, *that is considered to be*
12 *part of the term of incarceration.*”⁵⁰ Even with a finding of factual innocence, CalVCB is statutorily
13 obligated to determine the extent of injury caused by the erroneous conviction and incarceration and
14 may request additional documents and arguments as needed to complete this calculation.⁵¹

15 A. Innocence

16 Pursuant to the court’s finding under Penal Code section 1485.55, CalVCB unequivocally
17 accepts that Cabanillas is factually innocent of all charges in case number VA030567. As conclusively
18 determined by the superior court, a preponderance of the evidence exonerates Cabanillas. This
19 evidence includes new DNA testing that excludes Cabanillas, as well as his alleged accomplice, from
20 the rape and remaining sexual offenses against Maria A. during the first incident. It also includes an
21 admission by Juan that he, not Cabanillas, committed the attempted carjacking and robbery during the

22
23 ⁴⁷ Pen. Code, § 1485.55, subd. (b).

24 ⁴⁸ Pen. Code, § 1485.55, subd. (c).

25 ⁴⁹ Pen. Code, § 4904.

26 ⁵⁰ Pen. Code, § 4904, emphasis added.

27 ⁵¹ Pen. Code, §4904 (authorizing payment only if “the [CalVCB] has found that the claimant has
28 sustained injury through their erroneous conviction and imprisonment”), see also Senate Bill 78 (2023-
2024 Reg. Sess.), as amends Pen. Code, § 4904 eff. Jan. 1, 2024 (authorizing CalVCB to “request
from both parties additional documents or arguments as needed to calculate compensation”).

1 second incident. Accordingly, the administrative record amply demonstrates Cabanillas' innocence for
2 purposes of compensation under Penal Code section 4900 as an erroneously convicted offender.⁵²

3 **B. Injury**

4 The record further demonstrates injury, though not in the full amount requested by Cabanillas.
5 As detailed above, Penal Code section 4904 specifies that the amount of compensation to be
6 approved for the claimant's injury "shall be a sum equivalent to one hundred forty dollars (\$140) per
7 day of incarceration served, and shall include any time spent in custody, including a county jail, that is
8 considered to be part of the term of incarceration."⁵³ This compensation is "for the purpose of
9 indemnifying the claimant for the injury" sustained "through their erroneous conviction and
10 imprisonment...."⁵⁴ Penal Code section 4900 similarly refers to "injury sustained by the person
11 through the erroneous conviction and imprisonment or incarceration."⁵⁵ Effective 2016, the legislature
12 removed language requiring "pecuniary injury" as "an unfortunate and unsound description of the
13 unique harm suffered when factually innocent persons are imprisoned...."⁵⁶ Though no specific
14 definition was provided, the legislative history reflects that the term "injury" was intended to refer to
15 "whatever harm is suffered by a person who is wrongly imprisoned...."⁵⁷ As recently clarified by
16 regulation, injury "may be established by showing that, but for the erroneous conviction, the claimant
17 would not have been in custody."⁵⁸ Thus, the requisite injury contemplated by Penal Code section
18 4904 is "each day ... spent illegally behind bars, away from society," solely as a result of the erroneous
19 conviction.⁵⁹ The burden to prove injury rests with the claimant by a preponderance of the evidence.⁶⁰

21 ⁵² Pen. Code, §§1485.55, 4902, subd. (a).

22 ⁵³ Pen. Code, § 4904.

23 ⁵⁴ Pen. Code, § 4904.

24 ⁵⁵ Pen. Code, § 4900, subd. (a).

25 ⁵⁶ Senate Floor Analysis of Sen. Bill No. 635 (2015-2016), as amended Sept. 3, 2015, at p. 4.

26 ⁵⁷ *Id.* at pp. 4-5

27 ⁵⁸ Cal. Code of Regs. tit. 2, § 640, subd. (f), eff. Jan. 1, 2023.

28 ⁵⁹ *Holmes v. Calif. Victim Comp. & Gov't Claims Board* (2015) 239 Cal.App.4th 1400, 1405.

⁶⁰ Pen. Code, § 4904; Cal. Code of Regs. tit. 2, § 644, subd. (d); see also Evid. Code, § 500.

1 Contrary to Cabanillas' proposed interpretation, the definition for "release from custody" in
2 Penal Code section 4901 for determining timeliness for filing a claim does not apply to the single
3 reference of "custody" in Penal Code section 4904 for purposes of calculating compensation. The
4 definition within section 4901, on its face, solely applies to that particular subdivision, thereby
5 excluding section 4904. Moreover, as the Attorney General persuasively argued,⁶¹ the single
6 reference to "custody" within section 4904 is surrounded by the narrowing terms of "incarceration" and
7 "imprisonment," which speaks to the Legislature's intent that compensation be limited to days a
8 claimant actually spent behind bars. As such, section 4904 plainly limits compensation to days that a
9 claimant was physically confined as a result of the erroneous conviction, thereby excluding any time
10 spent on supervised release. This interpretation of section 4904 is bolstered by the recent passage of
11 Assembly Bill (A.B.) 160, which conditionally amends section 4904 effective July 1, 2024, to add
12 compensation at the rate of \$70 per day for time spent "on supervised release...."⁶² Though A.B. 160
13 is not yet effective and, therefore, does not apply to this claim, it nevertheless confirms the Legislative
14 intent that compensation for injury at the \$140 daily rate under section 4904 solely applies to the
15 period of time during which the claimant was behind bars as a result of their erroneous conviction.⁶³

16 This interpretation of the requisite injury is bolstered by Penal Code section 2900.5, which limits
17 the availability of presentence custody credits for convicted defendants who were detained for multiple
18 crimes. Subdivision (b) of section 2900.5 expressly provides that presentence credit "shall be given
19 only once for a single period of custody attributable to multiple offenses for which a consecutive
20 sentence is imposed."⁶⁴ As confirmed by the California Supreme Court, when a person's presentence
21 custody "stems from multiple, related incidents of misconduct," custodial credit applies under section
22 2900.5 only if the prisoner shows "the term to be credited was also a 'but-for' cause of the earlier
23
24

25 ⁶¹ Email from DAG Leal, sent Nov. 21, 2023, at 11:07 a.m.

26 ⁶² Pen. Code, § 4904, added by stats.2022, c. 771 (A.B.160), § 21, eff. Sept. 29, 2022, conditionally
operative July 1, 2024.

27 ⁶³ See Pen. Code, § 3 ("No part of [the Criminal Code] is retroactive, unless expressly so declared").

28 ⁶⁴ Pen. Code, § 2900.5, subd. (b).

1 restraint.”⁶⁵ Just as “a prisoner is not entitled to credit for presentence confinement unless he shows
2 that the conduct which led to his conviction was the sole reason for the loss of liberty during the
3 presentence period,”⁶⁶ compensation under Penal Code section 4900 is limited to the period of
4 incarceration that solely resulted from the erroneous conviction.

5 Here, the record demonstrates that Cabanillas’ injury amounts to 10,341 days of incarceration
6 (i.e., \$1,447,740) for his erroneous convictions in case number VA030567. The period includes the
7 date of Cabanillas’ arraignment for this case on January 24, 1995, through the date of his release from
8 incarceration on May 17, 2023. But for these convictions, Cabanillas would not have spent 10,341
9 days “illegally behind bars, away from society, employment, and [his] loved ones.”⁶⁷ This
10 determination is supported by the absence of any prior convictions listed in the 1996 POR, as well as
11 representative Harris’ express confirmation that no subsequent convictions were sustained at any time
12 during Cabanillas’ confinement.⁶⁸

13 However, the record fails to show injury for purposes of Penal Code section 4904 for the 127
14 days (i.e., \$17,780) during which Cabanillas was on supervised release between May 18, 2023, and
15 September 21, 2023. Though subject to electronic monitoring, Cabanillas was no longer behind bars
16 during that time. As explained above, injury for purposes of compensation under section 4904 is
17 limited to the number of days during which the claimant was physically confined in a prison or jail.
18 Accordingly, Cabanillas’ supervised release cannot be “considered to be part of the term of
19 incarceration” for his erroneous convictions as required for compensation under section 4904.⁶⁹

20
21
22 ⁶⁵ *People v. Bruner* (1995) 9 Cal.4th 1178, 1191-1194.

23 ⁶⁶ *Ibid.*

24 ⁶⁷ *Holmes, supra*, 239 Cal.App.4th at p. 1405.

25 ⁶⁸ Given the current statutory deadline of 30 days for CalVCB to decide a claim, without a hearing,
26 when accompanied with a finding of factual innocence, no request was made for the Attorney General
27 to confirm the dates of Cabanillas’ confinement, particularly in light of claimant’s burden to demonstrate
28 injury. (Pen. Code, §§ 1485.55, subd. (b); 4902, subd. (a).) Effective January 1, 2024, the statutory
29 deadline will extend to 90 days. (SB 78, as amends Pen. Code, § 1485.55, 4902, 4904, eff. Jan. 1,
2024.)

30 ⁶⁹ Pen. Code, § 4904.

1 The record also fails to show injury for the four-day period (i.e., \$560) from the date of
2 Cabanillas' arrest on January 20, 1995, until his arraignment on January 24, 1995. Despite
3 representative Harris' insistence that Cabanillas was arrested on January 20, 1995, for the charges
4 that led to his erroneous convictions in case number VA030567, multiple documents proclaim
5 otherwise. For instance, the habeas petition states "Detective Alirez arrested Cabanillas on an
6 outstanding traffic warrant."⁷⁰ While the 1995 POR lists January 20, 1995 as the date of Cabanillas'
7 arrest for attempted carjacking and robbery charges only, it clarifies that the "officers contacted the
8 suspect and arrested him for an outstanding traffic warrant no. J6619921900," and Cabanillas was
9 subsequently "charged with violation of 211 PC and 215(a) PC" after "the victims positively identified
10 [him]...."⁷¹ The 1996 POR, which superseded the 1995 POR, lists January 24, 1995, as the date of
11 Cabanillas' arrest for carjacking, robbery, and sexual assault offenses, although it mistakenly cites this
12 same date for when "defendant was detained for a traffic warrant."⁷² Both the 1996 and 1995 POR
13 provided only an "estimated," as opposed to "verified," number of days spent in jail before sentencing,
14 with the 1995 estimate indicative of an arrest on January 20, 1995, while the 1996 estimate was
15 indicative of an arrest on January 21, 1995.⁷³ Finally, while the officially-noticed docket for the
16 municipal court proceedings in case number VA030567 demonstrates that Cabanillas was arraigned
17 for those charges on January 24, 1995, it incorrectly lists the date of Cabanillas' arrest as January 16,
18 1995, when the first incident occurred.⁷⁴

19 Significantly, the submitted documents inconsistently reflect different dates for the
20 commencement of Cabanillas' incarceration for case number VA030567, ranging from January 20,
21 1995, to January 21, 1995, and January 24, 1995. Without the AOJ, sentencing minute order, or
22 transcript of the sentencing hearing to specify the number of presentencing custody credits awarded, it

23 ⁷⁰ Cabanillas App. at p. 53.

24 ⁷¹ 1995 POR at pp. 3-4.

25 ⁷² 1996 POR at pp. 3-5.

26 ⁷³ 1996 POR at p. 1 (estimated 482 days as of May 17, 1996, sentencing hearing); 1995 POR at p. 1
27 (estimated 235 days as of Sept. 12, 1995, sentencing hearing).

28 ⁷⁴ Docket Entry, *supra*, for *People v. Cabanillas*, Los Angeles County Municipal Court, case number of
SGVA030567-01.

1 remains uncertain whether any portion of Cabanillas' confinement before his arraignment on January
2 24, 1995, may be attributed to his erroneous convictions, instead of the outstanding traffic warrant for
3 an unspecified offense.⁷⁵ Cabanillas' representative failed to provide these court records, despite
4 CalVCB's multiple requests. Because the burden rests upon Cabanillas to prove injury by a
5 preponderance,⁷⁶ the missing records preclude a finding of injury for the four-day period between his
6 arrest on an unrelated traffic charge and arraignment on case number VA030567. On this record, it
7 appears most likely that Cabanillas was arrested solely due to an outstanding traffic warrant for an
8 unspecified charge on January 20, 1995, that Cabanillas remained confined for that unspecified
9 charge until his arraignment for case number VA030567 on January 24, 1995, and the unspecified
10 charge for the outstanding traffic warrant was dismissed without conviction. As a result, Cabanillas'
11 incarceration for case number VA030567 did not likely commence until his arraignment on January 24,
12 1995. Therefore, any injury for purposes of Penal Code section 4904 did not accrue until then.

13 Incidentally, no deduction applies to Cabanillas' incarceration after January 24, 1995, as a
14 result of his outstanding traffic warrant. This result is compelled by the absence of any conviction for
15 the underlying traffic offense. As such, it appears more likely than not that Cabanillas would have
16 been free from custody after January 24, 1995, but-for his erroneous convictions in case number
17 VA030567. While a deduction may be warranted where unrelated charges result in a conviction for
18 which a valid sentence is imposed that overlaps the claimant's incarceration for an erroneous
19 conviction, this is not such a case.

20 Overall, Cabanillas' demonstrated injury for purposes of compensation under Penal Code
21 section 4904 amounts to 10,341 days. This period includes the duration of his arraignment on January
22 24, 1995, to his release from incarceration on May 17, 2023. It excludes the 127 days during which
23 Cabanillas was on supervised release from May 18, 2023, through September 21, 2023. It also

24
25 ⁷⁵ Pen. Code, § 2900.5, subd. (b) (awarding presentencing custody credits only once for a single
26 period of custody attributable to multiple offenses); *People v. Bruner, supra*, 9 Cal.4th at pp. 1191-
27 1194 (applying presentence custody credit under section 2900.5 that "stems from multiple, related
28 incidents of misconduct" only if the prisoner shows "the term to be credited was also a 'but-for' cause
of the earlier restraint).


⁷⁶ Pen. Code, § 4904; Cal. Code of Regs. tit. 2, § 644, subd. (d); see also Evid. Code, § 500.

1 excludes the four days following his arrest for an unrelated warrant on January 20, 1995. Given the
2 statutory rate of \$140 per day, Cabanillas is therefore entitled to indemnification in the amount of
3 \$1,447,740 for his injury if sufficient funds are available upon appropriation by the Legislature. No
4 relief is available for the remaining 131 days requested by Cabanillas, as the record fails to
5 demonstrate that any of that time "is considered to be part of the term of incarceration" for case
6 number VA030567.⁷⁷

7 **V. Conclusion**

8 As mandated by Penal Code section 1485.55, the undersigned hearing officer recommends
9 CalVCB approve payment to Cabanillas in the amount of \$1,447,740 for his claim as an erroneously
10 convicted offender under Penal Code section 4900 if sufficient funds are available upon appropriation
11 by the Legislature, as indemnification for the injury sustained by his 10,341 days of imprisonment
12 solely as a result of his vacated convictions. No compensation is recommended for the additional 131
13 days requested by Cabanillas, as the record fails to demonstrate that they were part of the term of
14 incarceration for his erroneous convictions.

15
16 Date: December 4, 2023

17 
18 _____
19 Laura Simpton
20 Hearing Officer
21 California Victim Compensation Board

22
23
24
25
26
27 _____
28 ⁷⁷ Pen. Code, § 4904.