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6 **BEFORE THE VICTIM COMPENSATION BOARD**
7 **OF THE STATE OF CALIFORNIA**

8
9 In the Matter of:

10 **Brandon Washington**

11 Claim No. 21-ECO-20

Proposed Decision

(Penal Code §§ 851.865, 4900 et seq.)

12 **I. Introduction**

13 On July 21, 2021, Brandon Washington (Washington) submitted a claim for compensation to
14 the California Victim Compensation Board (CalVCB) as an erroneously convicted person pursuant to
15 Penal Code section 4900, which was initially stayed and then supplemented on November 9, 2023.
16 The supplemented claim is based on Washington's two convictions for assault with a firearm as an
17 aider and abettor, which were both vacated with a finding of factual innocence on September 28, 2023.
18 The supplemented claim requests compensation in the amount of \$231,560 for allegedly serving 1,654
19 days imprisonment. Washington is represented by William F. Wright.

20 The Attorney General is represented by Deputy Attorney General Dina Petrushenko, who
21 disputes the amount of compensation requested by Washington. By the Attorney General's
22 calculation, Washington spent a total of 1,443 days in custody solely as a result of his erroneous
23 conviction, which excludes an overlapping detention on an unrelated case that was ultimately
24 dismissed. In reply, Washington's counsel disputed the Attorney General's calculations, asserting that
25 Washington was arrested on a "no bail" warrant and remained in custody throughout the pendency of
26 the case and any overlapping detention resulting from the unrelated case should not be deducted from
27 the total amount of compensation requested.

1 As both parties agreed, the supplemented claim remained stayed until November 27, 2023,
2 and the administrative record closed that same day.¹ The matter was assigned to CalVCB Senior
3 Attorney Kristen Sellers. For the reasons detailed below, Washington’s demonstrated injury amounts
4 to 1,650 days of imprisonment solely for his vacated convictions for assault with a firearm. As
5 mandated by Penal Code section 851.865, it is recommended that CalVCB approve Washington’s
6 claim in the amount of \$231,000 if sufficient funds are available, upon appropriation by the Legislature,
7 as indemnification for the injury sustained by Washington’s imprisonment for 1,650 days solely as a
8 result of these erroneous convictions for assault with a firearm. No compensation is recommended for
9 the remaining four days of Washington’s claim as the record fails to demonstrate that he was
10 incarcerated beyond 1,650 days.

11 **II. Procedural Background**

12 **A. Washington’s Original Convictions**

13 On February 23, 2011, Washington was arrested and subsequently charged with one count of
14 murder, two counts of attempted murder, two counts of assault with a firearm, and association with a
15 criminal street gang in Sacramento County Superior Court case number 11F01080.² All of these
16 charges arose from a single incident that occurred several months earlier on June 5, 2010. A trial
17 commenced, and on June 5, 2013, the jury found Washington guilty of two counts of assault with a
18 firearm³ and found true the allegation that he committed the offenses in furtherance of a criminal street
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25 ¹ Pen. Code, § 4901; Cal. Code of Regs., tit. 2, § 645, subds. (a).

26 ² Pen. Code, §§ 187, 664, 245, subd. (a)(2) 182.22, subd. (b)(1) (committing a felony in furtherance of a
27 criminal street gang).

28 ³ Pen. Code, §§ 245, subd. (a)(2) (assault with a firearm- Leon M.), and 245, sub. (a)(2) (assault with a
firearm- Rakeem C.).

1 gang.⁴ The jury found Washington not guilty of the remaining charges.⁵ On July 12, 2013,
2 Washington was subsequently sentenced to eight years in state prison, with presentencing credit of
3 871 days for actual time served.⁶ He was ultimately released from custody on August 30, 2015, after
4 having completed his sentence for case number 11F01080. By then, Washington had been confined
5 for 1,650 days from his arrest on February 23, 2011, to and including the date of his release on August
6 30, 2015.⁷

7 At the time of his arrest for the challenged convictions in case number 11F01080, Washington
8 faced unrelated charges for the unlawful possession of an assault weapon, arising from an incident
9 that occurred on February 9, 2011, in Sacramento County Superior Court case number 11F01236.⁸
10 Washington was arrested for these charges on February 9, 2011, and released on bond the next day
11 on February 10, 2011. Washington remained free until his arrest for case number 11F01080 on
12 February 23, 2011. Washington was not returned to custody for case number 11F01236 until March
13 16, 2011, when he was still detained for case number 11F01080. He remained confined for his
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18 ⁴ Washington Application (App.) at pp. 1, 8, 26- 34. The pagination refers to the continuous page
19 numbers for the entire 128-page PDF file submitted on July 21, 2021, including the Erroneously
20 Convicted Person Claim Form (App. at pp. 1-2) mailing envelope and cover letter (*id.* at pp. 3-4);
21 Washington’s supporting declaration (*id.* at pp. 5-12); Jury Verdict Forms for Washington’s co-
22 defendant, Al A. (*id.* at pp. 13-25); Jury Verdict Forms for Washington (*id.* at pp. 26-34); *People v. Allen*
et al., Third District Court of Appeal, case number C074260 (*id.* at pp. 35-85); the May 11, 2020, minute
order in case number 11F01080 (*id.* at p. 86); the clerk’s transcript on appeal in case number C074260
(*id.* at p. 87); Elk Grove Police Department’s crime report number 10-5043 (*id.* at pp. 88-91); reporter’s
transcript on appeal in case number C074260 (*id.* at pp. 92-128).

23 ⁵ Pen. Code, §§ 187 (murder- D’Andre B.), 664, 187 (attempted murder- Leon M.), and 664, 187
24 (attempted murder- Rakeem C.); App. at pp. 8, 26-34.

25 ⁶ App. at p. 1; see Abstract of Judgment dated July 12, 2013, attached to Washington’s November 9,
26 2023, email. Thus, Washington received presentence credit for each day of his confinement starting
27 from the date of arrest on February 23, 2011, until the date of sentencing on July 12, 2013.

28 ⁷ The number of days between Washington’s arrest and release was determined using the online “Days
Calculator” located at <https://www.timeanddate.com/date/duration.html>.

⁸ Former Pen. Code, §§ 12280, subd. (b), 12031, subd. (a)(1); see also Minutes in Case Number
11F01236 attached to Attorney General email dated November 7, 2023.

1 erroneous conviction while the unrelated charges were pending in case number 11F01236. On
2 October 7, 2011, case number 11F01236 was dismissed.⁹

3 **B. Washington’s Convictions were Reversed on Direct Appeal**

4 On October 1, 2019, the Third District Court of Appeal reversed Washington’s convictions in
5 case number 11F01080 for assault with a firearm, and the accompanying gang enhancement, for
6 insufficiency of evidence.¹⁰ On December 24, 2019, the Court of Appeal issued the remittitur, and on
7 May 11, 2020, the convictions and sentence were vacated and dismissed with prejudice by the
8 Sacramento County Superior Court, without a finding of factual innocence.¹¹

9 **C. Washington’s Original CalVCB Claim was Stayed**

10 On July 21, 2021, Washington submitted a claim to CalVCB seeking compensation as an
11 erroneously convicted person under Penal Code section 4900. In his claim, Washington alleged he
12 served a total of 1,654 days in custody, both pre- and post-conviction solely as a result of his
13 erroneous convictions, commencing with the unspecified date of his arrest to and including the date of
14 his release on August 30, 2015. On August 25, 2021, CalVCB requested a response letter from the
15 Attorney General within 60 days in accordance with Penal Code section 4902. On September 24,
16 2021, the parties jointly requested CalVCB stay all proceedings on Washington’s claim pending
17 Washington’s pursuit of a finding of factual innocence under Penal Code section 1485.55 in the
18 Sacramento County Superior Court. By letter dated September 27, 2021, CalVCB granted the parties’
19 joint request and stayed the administrative proceedings pending the court’s ruling on Washington’s
20 motion for a finding of factual innocence. CalVCB requested the parties provide a copy of the court’s
21 decision to CalVCB within 30 days after the decision is filed.

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24 ⁹ Docket for *People v. Washington*, Sacramento County Superior Court case number 11F01236,
25 available online <https://www.services.saccourts.ca.gov/PublicCaseAccess/Criminal/CaseDetails>; see
also Cal. Code Regs., tit. 2, § 617.8 (official notice.)

26 ¹⁰ App. at pp. 9, 35-85; See also, e.g., *People v. Allen et al.*, Third District Court of Appeal, case
27 number C074260, opinion filed October 1, 2019, available at 2019 WL 4783953, docket accessible at
<https://appellatecases.courtinfo.ca.gov/>. (Cal. Code Regs., tit. 2, § 617.8 (official notice).)

28 ¹¹ App. at pp. 9, 86.

1 **D. Washington was Found Factually Innocent**

2 On October 28, 2022, Washington filed a motion for a finding of factual innocence as to both
3 reversed assault convictions under Penal Code section 1485.55 in Sacramento County Superior
4 Court.¹² Relief under this section requires proof by a preponderance that the defendant did not commit
5 the crimes for which he was convicted and imprisoned.¹³ However, this section does not apply to
6 vacated convictions that were reversed on direct appeal. On March 5, 2023, after hearing oral
7 argument, the Court tentatively denied Washington’s motion but continued the matter for further
8 briefing on alternate grounds for relief.¹⁴

9 On July 14, 2023, Washington filed a supplemental brief, seeking a finding of factual innocence
10 under Penal Code section 851.8, subdivision (c). Relief under this section requires a showing that “no
11 reasonable cause exists to believe that the arrestee committed the offense for which the arrest was
12 made.”¹⁵ This section applies whenever an arrest does not result in a conviction, though certain
13 deadlines apply.¹⁶ A finding of factual innocence under section 851.8 may be appealed by the
14 prosecution, but a finding of factual innocence under section 1485.55 may not.¹⁷

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17 ¹² Washington’s Supplement (Supp.) at p. 1. Pagination refers to the continuous page numbers for the
18 seven-page PDF provided on October 11, 2023, as a supplement to Washington’s application, following
19 CalVCB’s imposed stay on the administrative proceedings pending Washington’s pursuit of a finding of
20 factual innocence. This supplement includes a letter dated October 11, 2023, from Washington’s
21 counsel to CalVCB and the Attorney General (pp. 1-2) and the Order Granting Petition Under Penal
22 Code 851.8, subd. (c) (Supp. at pp. 3-7).

23 ¹³ Pen. Code, § 1485.55; *Larsen v. CalVCB* (2021) 64 Cal.App.5th 112, 129 (“a court finding of factual
24 innocence must be made by at least a preponderance of the evidence and must reflect a determination
25 that the person charged and convicted of an offense did not commit the crime”).

26 ¹⁴ Supp. at p. 1.

27 ¹⁵ Pen. Code, § 851.8, subd. (b); *People v. Adair* (2003) 29 Cal.4th 895, 904 (defining “reasonable
28 cause” as showing “facts exist which would lead no person of ordinary care and prudence to believe or
conscientiously entertain any honest and strong suspicion that the person arrested [or acquitted] is
guilty of the crimes charged.”

¹⁶ Pen. Code, § 851.8, subd. (l) (imposing two-year deadline that may be waived upon showing of good
cause and absence of prejudice).

¹⁷ *People v. Caldwell* (2018) 29 Cal.App.5th 180, 188-89 (concluding that “a defendant may appeal
denial of a factual innocence motion” despite the People’s inability to do so); *In re Anthony* (2015) 236
Cal.App.4th 204, 215 (holding that “section 1485.55 order is not appealable by the People”); see also
Pen. Code, § 1485.5 (omitting any right of appeal of factual innocence determination rendered

1 On September 8, 2023, the court heard further oral argument and the matter was taken under
2 submission.¹⁸ On September 28, 2023, the Sacramento County Superior Court granted Washington's
3 motion for factual innocence under Penal Code section 851.8, subdivision (c), over the prosecution's
4 objection.¹⁹

5 The prosecution declined to appeal, rendering the court's order final 60 days later on
6 November 27, 2023.

7 **E. Washington's Supplemented CalVCB Claim**

8 Throughout these superior court proceedings, Washington's pending claim as an erroneously
9 convicted offender remained stayed. By letter dated October 11, 2023, Washington provided CalVCB
10 and the Attorney General with a copy of the Order Granting Petition Under Penal Code section 851.8,
11 subd. (c). In an email to the parties sent October 12, 2023, CalVCB requested additional information
12 to confirm the court's order applied to both of Washington's reversed convictions in order to qualify for
13 automatic approval of the claim, without a hearing, under Penal Code section 851.865. CalVCB also
14 requested confirmation of the duration of Washington's confinement solely as a result of those
15 convictions in order to calculate injury as mandated by Penal Code section 4904. CalVCB further
16 requested confirmation from both parties as to the date of finality of the court's innocence finding.

17 In separate responses submitted on October 17, 2023, both parties agreed that the court's
18 order would not be final until November 27, 2023. Consequently, CalVCB notified the parties that the
19 stay would remain in effect until then. CalVCB added that the parties' responses for the remaining
20 issues were due by November 3, 2023, and in the event the parties disagreed with the custody
21 calculation, then Washington's optional reply was due by November 10, 2023.

22 Initially, in an email sent October 24, 2023, the Attorney General calculated Washington's
23 custody as 1,424 days. This calculation included 1,650 days from Washington's arrest on February
24 23, 2011, to and including his release on August 30, 2015, for case number 11F0180, while

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26 postconviction); cf. Pen. Code, § 851.8, subd. (o) (expressly authorizing right of appeal by either party
of factual innocence determination rendered pre-conviction).

27 ¹⁸ Supp. at p. 1.

28 ¹⁹ Pen. Code, § 851.8, subd. (c); Supp. at pp. 3-7.

1 subtracting 226 days for case number 11F01236. By this calculation, Washington's compensation for
2 his erroneous convictions in case number 11F0180 amounted to \$199,360. As support, the Attorney
3 General attached an email exchange with the local prosecutor who represented that Washington, while
4 out on bond, was re-arrested on February 17, 2011, in case number 11F01236, and remained in
5 custody on that unrelated case until it was dismissed on October 7, 2011.

6 On November 3, 2023, Washington responded with additional information and argument to
7 supplement his stayed claim. Notably, he attached a filed copy of the motion for a finding of factual
8 innocence, as well as the supplemental brief, which confirmed the court's order applied to both of his
9 reversed convictions for purposes of Penal Code section 851.865. He also included an exculpatory
10 declaration from one of the alleged victims for the underlying assault. Finally, Washington disagreed
11 with the Attorney General's custody calculation, which he intended to challenge by separate response
12 on or before November 10, 2023.

13 CalVCB confirmed receipt of Washington's response on November 7, 2023. CalVCB agreed
14 that Penal Code section 851.865 appeared to apply to the claim as supplemented. As for the custody
15 calculation, CalVCB requested Washington include a copy of the Abstract of Judgment in his
16 anticipated reply due November 10, 2023, and offered additional time if needed upon request.

17 Later that same day, the Attorney General amended its calculation of Washington's custody
18 from 1,424 days to 1,443 days, an increase of 19 days, for a total of \$202,020 in compensation. This
19 amendment was based upon recently obtained jail records which showed that Washington was
20 officially released on bond on February 10, 2011, on unrelated case number 11F01236, and remanded
21 on March 16, 2011, not February 17, 2011, as previously represented in the Attorney General's email
22 dated October 24, 2023. This correction thereby increased the number of days that Washington's
23 ongoing confinement was solely attributed to his erroneous convictions in case number 11F01080.
24 CalVCB confirmed receipt of the Attorney General's amended calculation and again offered
25 Washington additional time to respond if needed.

26 Washington's counsel timely responded on November 9, 2023. He disputed the Attorney
27 General's calculation, asserting that on February 23, 2011, Washington was arrested on a "no bail"
28 warrant for case number 11F01080 and remained in custody on that case until his release on August

1 30, 2015. He contended that, but for Washington’s arrest on the “no bail” charges in case 11F01080,
2 Washington would have remained out on bond in case number 11F01236, since those unrelated
3 charges were ultimately dismissed without conviction. Washington continued to insist that he was
4 entitled to compensation for all 1,654 days of imprisonment for case number 11F01080, even though
5 the admitted dates of confinement from his arrest on February 23, 2011, to and including his release
6 on August 30, 2015, actually span 1,650 days.

7 Following receipt of Washington’s response on November 9, 2023, and confirmation that the
8 supplemented claim complies with Penal Code sections 4900 and 4901, CalVCB lifted the stay on
9 November 27, 2023, and closed the record immediately thereafter.

10 **III. Factual Background**

11 **A. The Crime**

12 On June 5, 2010, Washington drove to the Holiday Inn in Elk Grove to attend a graduation
13 party that had been widely promoted on social media.²⁰ Upon arrival, Washington and several friends,
14 including Raymond S.,²¹ Isaevion A., Kionte L., Al A., and Jahmal D. walked down the hallway,
15 searching for the room in which the party was being held.²² Soon thereafter, Washington’s friends ran
16 into another group of people heading to the party, including D’Andre B., Rakeem C., and Leon M. An
17 argument between some of Washington’s friends and rival gang members in the other group quickly
18 ensued.²³

19 At the end of the hallway, there were two doors: one was an exit and the other led to a
20 staircase.²⁴ Leon M. opened the door to the staircase and shouted, “F you, niggas. Let’s go.”²⁵ Leon
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23 ²⁰ App. at pp. 6, 37.

24 ²¹ The victims and witnesses are referred to by their first name and last initial only in an effort to protect
25 their privacy. Co-defendants are also referred to by their first name and last initial for uniformity.

26 ²² App. at p. 6.

27 ²³ App. at pp. 7, 38-39.

28 ²⁴ App. at p. 38.

²⁵ *Ibid.*

1 M. immediately ducked into the staircase, followed by D'Andre B. and Rakeem C.²⁶ Just as Rakeem
2 C. closed the door, he saw a gun held by an African-American hand and then heard a single
3 gunshot.²⁷ Neither Rakeem C. nor Leon M. saw who fired the gun.²⁸ Everyone in the hallway started
4 running.²⁹ D'Andre B., Rakeem C., and Leon M. were running up to the third floor, when D'Andre B.,
5 who had been shot in the back, collapsed and died.³⁰ Washington reconvened with his group at a gas
6 station to see what happened and if everyone was okay.³¹ Raymond S. told the group that Al A. fired
7 the gun.³² Washington asked Raymond S. why Al A. fired the gun, and Raymond S. responded that
8 he did not know.³³

9 **B. Evidence Presented at Trial**

10 During trial, several witnesses testified that Washington did not participate in the June 5, 2010,
11 verbal altercation that led to the shooting. Raymond S. testified that at the time of the crime,
12 Washington was just "standing there" and did not have anything in his hands.³⁴ He further testified that
13 Washington was approximately 45-feet away, standing up against a wall, and watching what was
14 going on during the dispute.³⁵ Raymond S. also stated that he did not recognize Washington's voice
15 as one of the voices in the argument.³⁶ Al A. testified that Washington was by the wall, on his cell
16 phone, and not paying attention to the argument.³⁷ Testimony from the AT&T store retail manager,
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18 ²⁶ *Ibid.*

19 ²⁷ *Ibid.*

20 ²⁸ *Ibid.*

21 ²⁹ App. at p. 7.

22 ³⁰ App. at p. 38.

23 ³¹ App. at pp. 7, 39.

24 ³² App. at p. 7.

25 ³³ App. at pp. 7, 39.

26 ³⁴ At the time of trial, Raymond S. was unavailable, and his prior testimony from the Preliminary
27 Hearing was read into the record. See App. at pp. 10, 102.

28 ³⁵ App. at pp. 103-104.

³⁶ App. at pp. 10, 103-104

³⁷ App. at pp. 10, 108.

1 Anthony Sandoval, confirmed that the phone associated with Washington’s cell phone number made
2 or received calls on the date of the crime at 5:03 p.m. and 11:11 p.m. The phone call made at 11:11
3 p.m. used two cell towers, both within one mile of the Holiday Inn where the shooting occurred.³⁸
4 Additionally, the Elk Grove Police Department’s crime report reflects that Washington’s cell phone was
5 used to make and receive calls on the date of the crime at 11:11 p.m. and 11:15 p.m. while police
6 dispatch received the first 9-1-1 call about the shooting a few minutes later at 11:18 p.m.³⁹

7 A gang expert testified that Washington was affiliated with a gang. He noted Washington
8 appeared in a rap video performed by gang members earlier on the day of the shooting, he had his
9 own gang moniker, “Big Beelan,” he had a gang advertisement on his cell phone, his email address
10 was gang-related, and he used gang verbiage in his text messages.⁴⁰ The gang expert also personally
11 observed a validated gang member flash Washington a gang sign at the jail.⁴¹

12 However, Raymond S. testified that Washington sometimes hung out with people who were
13 affiliated with gangs but was not, himself, a member of a gang.⁴² Kionte L. also testified that
14 Washington was not affiliated with any gang.⁴³ Isaevion A. testified that he knew Washington hung out
15 with gang members, but was not sure if Washington was an active gang member himself.⁴⁴ While
16 Rakeem C. did not see Washington at the scene of the crime, he testified that he knew Washington
17 well enough that he did not “gang bang.”⁴⁵

18 Notwithstanding the evidence presented at trial related to Washington’s alleged gang affiliation,
19 the Third District Court of Appeal found that, even if Washington was an active gang member, “his
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22 ³⁸ App. at pp. 9, 93-97.

23 ³⁹ App. at pp. 9, 88, 90.

24 ⁴⁰ App. at pp. 40, 56, 61.

25 ⁴¹ App. at p. 61.

26 ⁴² App. at pp. 10, 111.

27 ⁴³ App. at pp. 10, 115.

28 ⁴⁴ App. at pp. 10-11, 118-119.

⁴⁵ App. at pp. 11, 122-124.

1 mere presence at a gang-related shooting does not mean he aided and abetted his comrade.”⁴⁶ More
2 importantly, the Court concluded that there was no evidence that Washington “‘knowingly and
3 intentionally’ engaged in any gang-related provocation, verbal confrontation, or any other conduct that
4 would foreseeably lead to violence.”⁴⁷ He was a “peripheral figure throughout the encounter.”⁴⁸

5 On October 1, 2019, the Court reversed both of Washington’s assault with a firearm convictions
6 and accompanying gang enhancement for insufficiency of the evidence.⁴⁹

7 **C. Factual Innocence Proceeding**

8 In support of the finding of factual innocence, Washington presented an exculpatory declaration
9 from Rakeem C.⁵⁰ In it, Rakeem C. confirmed that he had been on good terms with Washington
10 around the time of the shooting and continued to remain friendly years after.⁵¹ Shortly after the
11 shooting, Rakeem C. made plans to go on vacation with Washington, Leon M., and others.⁵² In May
12 2019, Washington, Rakeem C., Leon M., and other friends took a trip from Las Vegas to Arizona.⁵³
13 Rakeem C. never believed that Washington was involved in the shooting.⁵⁴ Rakeem C. expressly
14 supported Washington’s effort to establish his innocence.

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16 ⁴⁶ App. at p. 68.

17 ⁴⁷ App. at p. 72.

18 ⁴⁸ App. at p. 75.

19 ⁴⁹ App. at p. 36.

20 ⁵⁰ Washington’s Supplement (Supp. 2) at pp. 38-39. Pagination refers to the continuous page numbers
21 for the 39-page PDF provided on November 3, 2023, as a supplement to Washington’s application
22 which includes: an email dated November 3, 2023 (*id.* at pp. 1-3); the Order Granting Petition Under
23 Penal Code 851.8 (*id.* at pp. 4-9); Washington’s motion for a finding of factual innocence (*id.* at pp. 10-
24 12); Washington’s supplemental brief in support of motion for factual innocence (*id.* at pp. 13-17);
25 People’s motion in opposition of factual innocence (*id.* at pp. 18-21); Criminal Case Search Results for
26 Brandon Washington (*id.* at pp. 22-24); Criminal Case Information for Washington in Sacramento
27 County Superior Court case numbers 11F01236 (*id.* at pp. 25-28) and 11F01080 (*id.* at pp. 29-36); and
28 the declaration of Rakeem C. in support of Washington’s motion for a finding of factual innocence (*id.* at
pp. 37-39).

⁵¹ Supp. 2 at p. 38.

⁵² App. at pp. 11, 123.

⁵³ *Ibid.*

⁵⁴ Supp. 2 at p. 39.

1 When granting the finding of factual innocence, the superior court observed its “primary
2 consideration is the absence of evidence in the record that petitioner took any action at the time of the
3 confrontation.”⁵⁵ The court declined to “speculate, in the absence of evidence presented, that
4 petitioner affirmatively contributed or took an action that amounted to aiding and abetting the
5 shooter.”⁵⁶ Reasoning that “to assign petitioner a more active role than the record supports would be
6 speculation,” the court granted the finding of factual innocence over the prosecution’s objection.⁵⁷

7 **IV. Determination of Issues**

8 Penal Code section 4900 allows a person, who has been erroneously convicted and
9 imprisoned for a felony offense that they did not commit, to submit a claim for compensation to
10 CalVCB.⁵⁸ Typically, under subdivision (a) of section 4900, claimants bear the burden to prove by a
11 preponderance that (1) the crime with which they were convicted either did not occur or was not
12 committed by them and (2) they suffered injury as a result of their erroneous conviction.⁵⁹ Once such
13 a claim is received and filed, Penal Code section 4902 requires the Attorney General submit a written
14 response.⁶⁰ Thereafter, under Penal Code section 4903, a hearing before a hearing officer ensues, at
15 which the claimant and Attorney General may present evidence concerning innocence and injury.⁶¹
16 Upon the requisite showing of innocence and a finding of injury, Penal Code section 4904 requires
17 approval of the claim, at a rate of \$140 per day, if sufficient funds are available.⁶²

18 An exception to this process occurs when a claimant obtains a finding of factual innocence for
19 each and every conviction underlying their incarceration, issued by a state or federal court. As set
20 forth in subdivision (a) of Penal Code section 851.865:

21 _____
22 ⁵⁵ Supp. at p. 5.

23 ⁵⁶ Supp. at p. 6.

24 ⁵⁷ *Ibid.*

25 ⁵⁸ Pen. Code, § 4900, subd. (a).

26 ⁵⁹ Pen. Code, §§ 4900, subd. (a); 4903, subd. (a).

27 ⁶⁰ Pen. Code, § 4902, subd. (a).

28 ⁶¹ Pen. Code, § 4903, subd. (a).

⁶² Pen. Code, § 4904.

1 If a person has secured a declaration of factual innocence from the court pursuant to
2 Section 851.8 or 851.86, the finding shall be sufficient grounds for payment of
3 compensation for a claim made pursuant to Section 4900. Upon application by the
4 person, the [CalVCB] shall, without a hearing, recommend to the Legislature that an
5 appropriation be made and the claim paid pursuant to Section 4904.⁶³

6 Section 4904, in turn, provides that the board “shall approve payment for the purpose of
7 indemnifying the claimant for the injury” sustained through their erroneous conviction and
8 imprisonment, “if sufficient funds are available, upon appropriation by the Legislature,” in an amount
9 equivalent to \$140 per day of imprisonment for both pre- and post-conviction imprisonment that
10 resulted solely from the erroneous conviction.⁶⁴ Thus, if the claimant received a court finding of factual
11 innocence pursuant to section 851.8 or 851.86, the finding shall be sufficient grounds for payment of
12 compensation, and CalVCB must automatically approve the claim, within 30 days and without a
13 hearing, for the amount of demonstrated injury.⁶⁵ Even with a finding of factual innocence, CalVCB is
14 statutorily obligated to calculate compensation and may request additional documents and arguments
15 as needed to complete this calculation.⁶⁶

14 **A. Innocence**

15 Pursuant to the court’s finding under Penal Code section 851.8, subd. (c), CalVCB
16 unequivocally accepts that Washington is factually innocent of all charges in case number 11F01080.
17 As determined by the superior court, no reasonable cause exists to believe that Washington committed
18 the offense for which the arrest was made.⁶⁷ The court’s primary consideration is the absence of
19 evidence in the record that Washington took any affirmative action in the confrontation on June 5,
20 2010.⁶⁸ The court emphasized that the video surveillance of the crime showed that the time between
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22 ⁶³ Pen. Code, § 851.865, subd. (a).

23 ⁶⁴ Pen. Code, §§ 851.865, 4904.

24 ⁶⁵ Pen. Code, §§ 851.865, 4902, subd. (a).

25 ⁶⁶ Pen. Code, § 4904 (authorizing payment only if “the [CalVCB] has found that the claimant has
26 sustained injury through their erroneous conviction and imprisonment”), see also Senate Bill 78 (2023-
27 2024 Reg. Sess.), as amends Pen. Code, § 4904 eff. Jan. 1, 2024 (authorizing CalVCB to “request
28 from both parties additional documents or arguments as needed to calculate compensation”).

⁶⁷ Penal Code, § 851.8, subd. (b).

⁶⁸ Supp. at p. 5.

1 Washington's group entering the hall where the confrontation took place, to the time the victims fled
2 was approximately one minute, which was consistent with witness testimony at trial.⁶⁹

3 Accordingly, the administrative record amply demonstrates Washington's innocence for
4 purposes of compensation under Penal Code section 4900 as an erroneously convicted offender.⁷⁰

5 **B. Injury**

6 Though the parties disagree, the record demonstrates by a preponderance of the evidence that
7 Washington's injury amounts to 1,650 days of imprisonment for his erroneous convictions in case
8 number 11F01080. In this context, injury "may be established by showing that, but for the erroneous
9 conviction, the claimant would not have been in custody."⁷¹ As confirmed by records from the court
10 and jail, Washington remained continuously confined for his erroneous convictions from the date of his
11 arrest on February 23, 2011, to and including the date of his release on August 30, 2015, for a total
12 period of 1,650 days.⁷² Although Washington alleges that he spent 1,654 days incarcerated, he does
13 not provide a basis for his calculation and, in fact, concedes that the date of arrest was February 23,
14 2011. Moreover, it does not appear as though Washington's August 30, 2015, date of release is
15 disputed.⁷³ Accordingly, the record fails to demonstrate injury for the additional four days requested by
16 Washington, as he was not incarcerated during that time.

17 While Washington was concurrently confined for 206 days in case number 11F01236 from
18 March 16, 2011, to October 7, 2011, no deduction is warranted for the overlapping confinement.
19 Washington was arrested on February 9, 2011, for unrelated weapon charges in case number
20 11F01236 and released on bond the very next day. He remained free on bond until his arrest on
21 February 23, 2011, for murder and assault with a firearm in case number 11F01080. Although he was

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23 ⁶⁹ Supp. at pp. 5-6.

24 ⁷⁰ Pen. Code, §§ 851.865, 4902, subd. (a).

25 ⁷¹ Cal. Code of Regs., tit. 2, § 640, subd. (f).

26 ⁷² See Abstract of Judgment dated July 12, 2013, superior court and jail records provided in the
27 Attorney General's email dated November 7, 2023, and Washington's reply email dated November 9,
2023; see also 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).

28 ⁷³ Washington's email dated November 9, 2023.

1 later remanded to custody on March 16, 2011, in case number 11F01236, Washington contends that
2 his change in custodial status was solely due to his February 23, 2011, arrest for the more serious
3 charges of murder and assault. In other words, but for his erroneous convictions, Washington likely
4 would have remained free on bail during these 206 days until the unrelated charges were dismissed.

5 A preponderance of evidence in the administrative record supports Washington's contention.
6 Specifically, court records establish that he was arrested on a "no bail" warrant for the murder and
7 assault charges in case number 11F01080 and thus would have been ineligible for release pending
8 trial. Moreover, court records reflect that on March 16, 2011, Washington's bail in case number
9 11F01236 was "exonerated," and he was returned to custody. The administrative record contains no
10 evidence indicating that Washington's bail otherwise would have been revoked or that the terms of
11 Washington's bail conditions were violated, such as by failure to appear in court. To the contrary, the
12 administrative record reflects that after his arrest, Washington appeared at a settlement conference on
13 February 28, 2011, and 15 days later, the court exonerated his bail in that case. Given the facts and
14 circumstances of this case, and the exoneration of his bail, it appears that Washington would have
15 remained out on bail had he not been in custody pending the more serious and erroneous charges of
16 murder and assault in case number 11F01080.

17 Further supporting this conclusion is the fact that Washington's charges in case number
18 11F01236 were ultimately dismissed without conviction on October 7, 2011. Thus, no overlapping
19 sentence was ever imposed for this unrelated case during Washington's confinement for his erroneous
20 convictions. Accordingly, Washington has satisfactorily demonstrated by a preponderance of the
21 evidence that he likely would have remained free on bail during the 206 days that he was detained in
22 custody for the unrelated charges had he not also been detained during that same period of time for
23 the erroneous convictions. Consequently, no deduction applies.

24 Overall, Washington's demonstrated injury amounts to 1,650 days. This period includes the
25 date of Washington's arrest for the erroneous convictions on February 23, 2011, to and including the
26 date of his release on August 30, 2015. No exclusion applies to the 206 days between March 16,
27 2011, and October 7, 2011, when Washington was simultaneously detained on unrelated charges
28 because, under the unique circumstances detailed above, he likely would have remained free but for

1 his erroneous convictions. Thus, a preponderance of the evidence in the administrative record
2 demonstrates that, but for his erroneous convictions for assault with a firearm in case number
3 11F01080, Washington would not have spent 1,650 days “illegally behind bars, away from society,
4 employment, and [his] loved ones.”⁷⁴ Given the statutory rate of \$140 per day, Washington is therefore
5 entitled to indemnification in the amount of \$231,000 for his demonstrated injury of 1,650 days
6 incarceration if sufficient funds are available upon appropriation by the Legislature.

7 **V. Conclusion**

8 As mandated by Penal Code section 851.865, subdivision (a), the undersigned hearing officer
9 recommends CalVCB approve payment to Washington in the amount of \$231,000 for his claim as an
10 erroneously convicted offender under Penal Code section 4900 if sufficient funds are available upon
11 appropriation by the Legislature, as indemnification for the injury sustained by his 1,650 days of
12 imprisonment solely as a result of his vacated convictions. No compensation is recommended for the
13 additional four days requested by Washington, as the record fails to demonstrate that he was
14 incarcerated beyond 1,650 days.

15
16 Date: December 1, 2023

Kristen Sellers

Kristen Sellers
Hearing Officer
California Victim Compensation Board

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27 _____
28 ⁷⁴ *Holmes v. California Victim Compensation & Government Claims Bd.* (2015) 239 Cal.App.4th 1400, 1405.