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

8 In the Matter of:

9 **Gerry Johns**

10 Claim No. 24-ECO-53

Proposed Decision

Penal Code § 4900, subd. (a)

11 **I. Introduction**

12 On July 31, 2024, Gerry Johns (Johns) submitted a claim to the California Victim
13 Compensation Board (CalVCB) seeking compensation as an erroneously convicted person under
14 Penal Code section 4900, which was supplemented on September 30, 2024, and October 8, 2024.
15 The claim is based upon Johns' 1981 conviction for felony murder in San Bernardino County Superior
16 Court case number OCR-7302, which was vacated and dismissed in 2021 pursuant to Penal Code
17 section 1172.6. Johns withdrew any challenge to his related robbery conviction, which was dismissed
18 in 2023 pursuant to Penal Code section 1203.41. Johns, who represents himself, seeks compensation
19 in the amount of \$2,075,640.

20 The Attorney General, represented by Deputy Attorney General James Spradley, opposed the
21 claim on September 18, 2025. According to the Attorney General, a preponderance of the evidence
22 fails to demonstrate Johns' innocence of murder as defined at the time the offense occurred. The
23 Attorney General alternatively maintains that any injury amounts, at most, to \$1,857,380 for 13,267
24 days imprisonment, after deducting for the four-year sentence imposed for Johns' related robbery
25 conviction, as well as the concurrent, four-year sentence imposed for an unrelated robbery conviction.

26 The claim was assigned to CalVCB Supervising Attorney Laura Simpton and was later
27 reassigned to CalVCB Senior Attorney Keri Klein. On September 19, 2025, the parties waived
28 evidentiary hearing and chose to proceed solely on the written materials. Johns submitted a reply brief,

1 which was received on October 30, 2025, and the record closed that same day. After careful
2 consideration, the claim is recommended for denial as Johns has failed to prove by a preponderance
3 of the evidence that he is innocent of the challenged conviction.

4 **II. Procedural Background**

5 **A. Trial Proceedings**

6 Johns was arrested on February 21, 1981, and charged in San Bernardino County Superior
7 Court case number OCR-7302 with first-degree felony murder and two counts of robbery, as well as
8 enhancements that a principal was armed with a firearm during the course of the offenses. On July 10,
9 1981, Johns was convicted after jury trial of one count of robbery and one count of felony murder. The
10 jury also found the allegations that a principal was armed with a firearm during the course of the
11 offense to be true. Thereafter, Johns was sentenced to the midterm of three years in state prison for
12 the robbery, plus a one-year enhancement for the arming allegation, followed by 25 years to life for the
13 murder, plus an additional one-year enhancement for the arming allegation for a total of 30 years to life
14 in prison.¹ In addition, Johns was sentenced to a concurrent term of four years for an unrelated
15 robbery conviction in San Bernardino County Superior Court case number OCR-7343.²

16 **B. Appellate Proceedings**

17 Johns appealed his convictions in case number OCR-7302 to the Court of Appeal, Fourth Appellate
18 District, Division Two. He alleged, inter alia, he was improperly sentenced to state prison for both the
19 robbery and the murder convictions in violation of Penal Code section 654, subdivision (a),³ as well as
20 that the trial court improperly sentenced him to state prison for first-degree murder when the jury failed
21 to determine the degree of murder. On June 21, 1983, applying the law in effect at the time, the court
22 affirmed and modified Johns' conviction, striking one of the arming enhancements and reducing the
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24 ¹ Pen. Code, §§187(a), 211, 12022(d). Attorney General Response Letter (AGRL) Volume 1 Exhibit
25 (Ex.) 1 at pp. 23-30; Volume 2 Ex. 4 at p. 307; Johns Application (APP) at pp 2-3.

26 ² AGRL Ex. 2 at p. 248.

27 ³ An act or omission that is punishable in different ways by different provisions of law may be punished
28 under either of such provisions, but in no case shall the act or omission be punished under more than
one provision. An acquittal or conviction and sentence under any one bars a prosecution for the same
act or omission under any other. (Pen. Code, §654, subd. (a).)

1 degree of murder to second-degree, as there had not been an express jury finding that the murder was
2 of the first-degree.⁴ Johns was resentenced to 21 years to life.⁵

3 **C. Post-Conviction Proceedings**

4 Over the next few decades, Johns filed multiple habeas petitions, all of which were denied or
5 dismissed.⁶

6 **1. Intervening change to the law of Felony Murder**

7 In 2019, the Legislature narrowed the definition of felony murder for accomplices with the passage
8 of Senate Bill (SB) 1437. Among its provisions, SB 1437 amended the felony murder rule to exclude
9 any accomplice who was not the actual killer if the accomplice either (1) lacked a specific intent to kill,
10 or (2) was not a “major participant” in the underlying felony while acting with “reckless indifference to
11 human life” as defined by the California Supreme Court’s decisions in *Banks* and *Clark*.⁷ SB 1437
12 added Penal Code section 1170.95, later renumbered as section 1172.6, to establish a procedure for
13 previously convicted accomplices to petition to vacate their conviction if they would have been
14 excluded under the new and narrowed definition for felony murder.⁸ This statutory change to the law
15 changed the legal landscape that, until then, had supported Johns’ convictions for second-degree
16 felony murder and robbery with an arming enhancement.

17 **2. Johns’ Petition for Resentencing**

18 On October 12, 2018, Johns filed a petition in San Bernardino County Superior Court pursuant to
19 Penal Code section 1172.6 (then 1170.95). He claimed that while he had been convicted of second-
20 degree felony murder, he could not be convicted today under the statutory changes enacted by SB

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22 ⁴ AGRL Ex. 2 at pp 300-311.

23 ⁵ AGRL Ex. 1 at pp 37-38.

24 ⁶ See docket for *People v. Gerry Johns*, Court Of Appeal, 4th Appellate Dist, Div. 2; case numbers
25 E003874, E006219, E010136, E011683, E012447, E062791, available online at
<https://appellatecases.courtinfo.ca.gov/>; Cal. Code Regs., tit. 2, §§640 (admissible evidence), and
26 617.8 (official notice).

27 ⁷ See Pen. Code, §§188 (malice definition revised), 189 (degree classification revised); *People v.*
Banks (2015), 61 Cal.4th 788; *People v. Clark* (2016), 63 Cal.4th 522.

28 ⁸ Former Pen. Code, §1170.95, renumbered as Pen. Code, §1172.6 by Stats.2022, c. 58 (AB 200), eff.
Jun. 30, 2022.

1 1437.⁹ The Superior Court found Johns had made a prima facie showing. However, it also found that
2 SB 1437 was unconstitutional and denied Johns' petition for resentencing.¹⁰ Johns appealed the
3 decision. On June 8, 2020, the Court of Appeal, Fourth District, Division Two sided with Johns and
4 found that SB 1437 was constitutional. The judgment denying the petition was reversed, and the case
5 was remanded to the Superior Court for further proceedings.¹¹

6 On June 11, 2021, the Superior Court granted Johns' petition. The court indicated it was convinced
7 beyond a reasonable doubt that Johns was a major participant in the homicide.¹² However, it found
8 there was insufficient evidence to demonstrate beyond a reasonable doubt that Johns acted with
9 reckless indifference to human life and thus granted the petition to set aside the second-degree
10 murder conviction.¹³ Johns was resentenced to a term of four years in state prison for robbery and the
11 arming enhancement.¹⁴ The court awarded 2,922 days of custody credit, deeming Johns' time served,
12 and a term of parole was not imposed.¹⁵

13 **3. Johns' Petition for a Finding of Factual Innocence**

14 On November 9, 2021, Johns petitioned the San Bernardino County Superior Court for a finding of
15 factual innocence pursuant to Penal Code section 851.8.¹⁶ On February 18, 2022, the Superior Court
16 denied Johns' petition.¹⁷ Johns appealed the denial.¹⁸ On July 25, 2022, the appeal was dismissed as
17 abandoned.¹⁹

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20 ⁹ AGRL at p. 2, Ex.1 at pp. 44-56.

21 ¹⁰ AGRL Ex. 5 at p. 508.

22 ¹¹ AGRL Ex. 5 at pp. 507-519. *People v. Johns* (2020) 50 Cal.App.5th 46.

23 ¹² AGRL Ex. 3 at p 476, 483.

24 ¹³ AGRL Ex. 3 at pp 450-483.

25 ¹⁴ AGRL Ex. 3 at p 483.

26 ¹⁵ AGRL Ex. 1 at pp. 211-212.

27 ¹⁶ AGRL at p. 3, Ex. 1 at pp. 217-235, Ex. 3 at p. 485.

28 ¹⁷ AGRL Ex. 1 at p. 285, Ex. 3 at pp. 485-493.

¹⁸ AGRL Ex. 1 at p. 286.

¹⁹ AGRL Ex. 6 at p. 521.

1 **D. CalVCB Proceedings**

2 On July 31, 2024, the California Victim Compensation Board received Johns' claim seeking
3 compensation as an erroneously convicted person under Penal Code section 4900.²⁰ The claim initially
4 challenged both the felony murder conviction and the conviction for robbery. It requested
5 compensation in the amount of \$2,075,640 for an unspecified duration of imprisonment.²¹

6 By letter dated August 28, 2024, a CalVCB hearing officer notified Johns that his claim appeared
7 deficient as it failed to provide both a factual summary and a statement of injury.²² In addition, it failed
8 to include the court order that allegedly granted him habeas relief.²³ Further, the letter explained that
9 relief is not available under Penal Code section 4900 when a claim is based solely on a conviction
10 being vacated due to a change in the law. Relief is only available upon a demonstration that the
11 claimant did not commit the offense as it was defined at the time it occurred.²⁴ The letter allowed Johns
12 30 days to cure the deficiencies.

13 Johns first responded by email sent on September 27, 2024, at 7:14 p.m., which was received by
14 CalVCB on September 30, 2024. The email included a link to download Johns' three-page declaration,
15 which was signed and dated September 27, 2024.²⁵ Meanwhile, Johns sent a second response by
16 regular mail, which was received by CalVCB on October 8, 2024. It included an identical hardcopy of
17 Johns' declaration, plus additional court records.²⁶ In his declaration, Johns alleged he only
18 accompanied the co-defendant who spontaneously robbed the victims and killed one of them.²⁷ Johns
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20 ²⁰ APP at p. 1.

21 ²¹ APP at pp 2-6.

22 ²² The letter was sent by then-CalVCB Senior Attorney Laura Simption, who was initially assigned to
23 review this claim. Following her unavailability, the claim was reassigned on February 4, 2026, to
24 CalVCB Senior Attorney Keri Klein. (Cal. Code Regs., tit. 2, § 615.10 (Assignment of Hearing Officer).)

25 ²³ CalVCB Deficiency Letter dated August 28, 2024.

26 ²⁴ *Ibid.*; Cal. Code Regs., tit. 2, §642, subd. (a)(3).

27 ²⁵Claimant's First Response, at pp. 1-4, received via email sent Sep. 27, 2024, at 7:15 p.m.

28 ²⁶Claimant's Second Response, dated Sep. 27, 2024, at pp. 1-24, received via regular mail on Oct. 8,
2024.

²⁷First Response at p. 1; Second Response at p. 1.

1 then indicated that, due to the retroactive effect of Penal Code section 1172.6,²⁸ he should not have
2 been convicted of felony murder in 1981.²⁹ Additionally, he indicated that he was imprisoned for a total
3 of 13,915 days.³⁰

4 On October 16, 2024, the hearing officer requested clarification from Johns. He was informed
5 Penal Code section 1172.6 did not provide a valid basis for relief pursuant to Penal Code section 4900
6 and his claim could only proceed if he could prove by a preponderance of the evidence he did not
7 commit the crime of felony murder as it was defined in 1981, which at that time merely required proof
8 that a killing occurred during the commission of a felony. Therefore, his claim could only proceed to the
9 extent he alleged innocence under the law in effect in 1981 because either he did not commit the crime
10 of robbery or no killing occurred during that robbery.³¹ Absent further clarification, CalVCB would
11 proceed solely on the permissible portion of his claim.³²

12 On November 20, 2024, having received no response to the clarification request, the hearing
13 officer notified the parties the claim was deemed filed pursuant to Penal Code section 4900,
14 subdivision (a), solely to the extent Johns alleged innocence under the law in effect at the time of the
15 crime.³³ The hearing officer requested a response from the Attorney General within 60 days.

16 Following four extensions of time for demonstrated good cause, the Attorney General submitted a
17 response letter on September 18, 2025, along with 13 exhibits spanning 740 pages. The Attorney
18 General maintains Johns has failed to prove his innocence of robbery and felony murder pursuant to
19 the law in effect at the time of conviction by a preponderance of the evidence and therefore his claim
20 must be denied.³⁴ The Attorney General alternatively asserts, even if Johns has demonstrated his

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22 ²⁸ Penal Code §1170.95 was renumbered as Penal Code §1172.6 by Stats.2022, c. 58 (AB 200), eff.
23 Jun. 30, 2022.

24 ²⁹ Claimant's First Response at pp. 2-3; Claimant's Second Response at pp. 2-3.

25 ³⁰ *Ibid.* at p. 3.

26 ³¹ CalVCB Clarification at p. 2.

27 ³² *Ibid.*

28 ³³ CalVCB Request for Attorney General Response, dated Nov. 20, 2024, at pp. 1-2.

³⁴ AGRL at pp. 1-16.

1 innocence of murder, any injury is limited to 13,267 days incarceration after excluding the four-year
2 sentence for his related robbery conviction, as well as his concurrent, four-year prison sentence for the
3 unrelated robbery conviction in case number OCR07343.³⁵

4 On September 18, 2025, the hearing officer confirmed receipt of the Attorney General's response
5 and asked the parties to meet and confer to determine whether Johns wished to proceed with a
6 hearing, and if so the preferred timeframe and means of appearance. It was noted a hearing likely
7 could not be set before February of 2026. The hearing officer explained that the parties' optional pre-
8 hearing briefs would be due approximately one month before the hearing and the mandatory pre-
9 hearing statements identifying all witnesses to be presented at the hearing would be due
10 approximately two weeks before the hearing.³⁶

11 On September 19, 2025, the Attorney General notified CalVCB that Johns had agreed to waive his
12 evidentiary hearing and rely on the written materials. In addition, Johns intended to submit a reply brief
13 to the Attorney General's response letter. Based upon the undisputed representation of the Attorney
14 General, the hearing officer confirmed the hearing waiver and set the date of October 22, 2025, as the
15 due date for Johns' reply brief.³⁷

16 On October 30, 2025, having not received the reply brief, the hearing officer contacted the parties
17 indicating the administrative record was closed and a hearing officer would begin drafting a proposed
18 decision for the Board's consideration.³⁸ Johns responded that same day by email, stating he had sent
19 a reply brief on October 22, 2025, and he attached a four-page Word document entitled, "Claimant
20 Reply 10-22-25."³⁹ In it, Johns insisted that he was not convicted of felony murder but was instead
21 convicted of second-degree murder. He indicated that he did not have malice aforethought and thus
22 could not have been found guilty of the offense in 1981. Johns further indicated the Superior Court

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24 ³⁵ AGRL at pp. 15-16.

25 ³⁶ CalVCB email to parties, sent Sep. 18, 2025, with courtesy hardcopy sent by regular mail to Johns;
26 see also Cal. Code Regs., tit. 2, §643, subds. (a) & (b).

27 ³⁷ CalVCB email to parties dated Sep. 22, 2025, with courtesy hardcopy sent via mail to Johns.

28 ³⁸ CalVCB email to parties dated Oct. 30, 2025.

³⁹ Email from claimant, sent Oct. 30, 2025, at 8:11 a.m., attached to Claimant's Reply Brief at pp. 1-3.

1 found there was no implied malice when it declared there was insufficient evidence to demonstrate he
2 acted with reckless indifference to human life.⁴⁰ Finally, Johns asserted, contrary to his initial claim,
3 that he “never alleged that the robbery conviction was erroneous....”⁴¹

4 Upon receipt, the hearing officer contacted the parties again on October 30, 2025, confirming
5 receipt of the reply brief and stating the administrative record was closed.⁴²

6 III. Factual Summary

7 A. Unrelated Robbery (OCR-7343)

8 On February 9, 1981, two male adults, later identified as Johns and his co-defendant James
9 Randle (Randle), entered the Circle K market in San Bernardino County and announced a robbery.
10 Randle racked a shotgun, announced it was a robbery and told the clerk to open the register. Johns
11 emptied the registers, and then he and Randle left the store. Johns pled guilty to the robbery, including
12 an arming enhancement.⁴³ This was not the first time that Johns and Randle had committed a crime
13 together, as they had previously engaged in two separate home invasion robberies in 1978, and in
14 both instances Randle shot and injured one of the victims.⁴⁴

15 B. The Robbery and Murder (OCR-7302)

16 On February 21, 1981, at approximately 1:00 a.m., Cecilia (Cecilia), her sister Teresa S. (Teresa)
17 and two friends were going through the Jack-in-the-Box drive-thru in Rancho Cucamonga.⁴⁵ Cecilia
18 was in the driver’s seat, and her sister Teresa was seated immediately behind her in the back driver’s
19 side passenger seat. As they prepared to pay at the window, Teresa saw two figures approaching the
20 driver’s side of the car and heard a voice demanding money. A hand reached through and grabbed
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22 ⁴⁰ Claimant’s Reply Brief at pp. 1-3.

23 ⁴¹ Claimant’s Reply Brief at p. 1.

24 ⁴² CalVCB email to parties dated Oct. 30, 2025, with a courtesy hardcopy sent via mail to Johns
25 excluding the attachment.

26 ⁴³ AGRL, Ex.1 at pp. 71, 247-248.

27 ⁴⁴ AGRL Ex. 1 at pp. 251-253.

28 ⁴⁵ In an effort to protect their privacy, the victims and eyewitnesses are referred to by their first names
only.

1 Teresa's wallet out of her hand. Teresa heard her sister saying "take it" and then heard a shot. She
2 saw her sister slump forward. Cecilia had been fatally wounded by a shotgun.⁴⁶

3 Moments later, a deputy sheriff saw two men running from the direction of the Jack-in-the-Box to a
4 car parked across the street. The men drove off without their headlights on before the deputy could
5 make an investigatory stop. He followed them with lights and sirens on, but the men failed to stop the
6 car. At one point during the chase, the deputy saw the car doors open and saw sparks fly out from
7 underneath the car. He finally stopped the car by ramming it. The driver exited and began to run. The
8 deputy told him to stop, but he failed to do so. The deputy shot and wounded the driver.⁴⁷ The driver
9 was later identified as Gerry Johns, claimant herein.

10 Thereafter, a search of the area where the deputy saw the sparks flying was made. A shotgun was
11 recovered. In addition, Teresa's wallet was recovered in Johns' car.⁴⁸

12 **1. Johns' Confession**

13 Johns was interviewed three times by law enforcement. In each interview he was provided with his
14 *Miranda*⁴⁹ rights and waived them. In the first interview, Johns denied all involvement in the robbery
15 and murder.⁵⁰ Johns admitted being present during the robbery in the second interview but denied
16 planning or participating in the robbery and homicide.⁵¹ At Johns' request, he was interviewed a third
17 time. In this interview, Johns implicated himself and Randle in the commission of the offenses.⁵²

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23 ⁴⁶ AGRL, Ex. 2 at pp. 351-370, Ex. 4 at pp. 499-500.

24 ⁴⁷AGRL, Ex. 2 at pp.372-390, Ex 4. at pp. 499-500.

25 ⁴⁸ AGRL Ex. 2 at pp. 415-416, 438-440.

26 ⁴⁹ *Miranda v. Arizona* (1966), 384 U.S. 436.

27 ⁵⁰ AGRL Ex. 4 at p. 501.

28 ⁵¹ AGRL Ex. 4 at p. 502.

⁵² *Ibid.*

1 **2. Johns' Trial Testimony**

2 At trial, Johns testified under oath. It is unknown what his testimony entailed as a transcript is not
3 provided. The only documentation of the testimony is a court clerk's notation regarding a read back of
4 Johns' testimony.⁵³

5 Despite Johns' testimony, the jury found him guilty of felony murder and robbery, as well as finding
6 the arming enhancement to be true.

7 **3. Johns' Probation Report Admission**

8 Following the jury's verdict, Johns was interviewed by the probation department. Johns admitted
9 that he and Randle were long-time friends, that he knew Randle was armed with a shotgun when they
10 approached the Jack-in-the-Box, and that Randle had suggested they commit a robbery. The report
11 acknowledged there were no indications that Johns "pulled the trigger" but questioned whether any
12 mitigation was warranted in light of Johns' voluntary continued association with Randle .⁵⁴ Accordingly,
13 Johns was sentenced to 30 years to life as an accomplice to the robbery and murder.

14 **4. Decision On Petition Pursuant to Penal Code Section 1172.6**

15 Decades after the offense when deciding whether to set aside Johns' conviction for second-degree
16 murder, the court made findings as to Johns' involvement in the offense. The court indicated Johns
17 went to Cecilia's car with his co-defendant Randle, they stood side-by-side on the driver's side of the
18 car, they were within inches of each other and they simultaneously demanded money from the driver
19 and the rear passenger. The court noted that after the driver was shot, Johns kept the wallet he stole
20 from the rear passenger, assisted in disposing of the murder weapon, and engaged in a high-speed
21 chase with law enforcement.⁵⁵ The court was convinced Johns was a major participant in the
22 robbery.⁵⁶ However, the court indicated it did not have admissible evidence Johns knew his co-

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26 ⁵³ AGRL Ex.1 at p 31-32.

27 ⁵⁴ AGRL Ex. 1 at pp. 255-256.

28 ⁵⁵ AGRL Ex.3 at p. 476.

⁵⁶ *Ibid.*

1 defendant was armed. Therefore, the court was not convinced Johns acted with reckless indifference
2 to human life and granted the petition.⁵⁷

3 **5. Decision on Motion for Finding of Factual Innocence**

4 Representing himself, Johns filed a motion in the San Bernardino County Superior Court
5 requesting the court issue a finding of factual innocence. He relied upon the court's finding that there
6 was insufficient evidence presented at the hearing on his petition for relief pursuant to Penal Code
7 section 1172.6 to convince the court beyond a reasonable doubt that he acted with reckless
8 indifference to human life.⁵⁸

9 The court denied Johns' request for two reasons. First, the court found Johns was statutorily
10 ineligible for relief. Second, the court indicated that Johns had not demonstrated that he was actually
11 innocent of the offenses.⁵⁹ The court emphasized that its previous ruling to vacate Johns' murder
12 conviction "only indicated that I was not convinced beyond a reasonable doubt that the defendant
13 acted with reckless indifference to human life," but that ruling "does not rise to a finding of factual
14 innocence."⁶⁰ The court added that it likely would not have vacated Johns' murder conviction had the
15 prosecution "been able to provide additional facts, such as that the defendant and the shooter were
16 involved in two previous home invasion robberies during which the shooter shot one male adult in the
17 first home and an elderly woman in the second home" as detailed in the probation report.⁶¹

18 **6. Parole Hearings**

19 During the course of his incarceration, Johns repeatedly appeared in front of the parole board
20 attempting to be paroled on the offenses. At the parole hearings held on April 24, 2001, and November
21 1, 2005, he was represented by counsel and informed by the Parole Board that he need not answer
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25 ⁵⁷ AGRL Ex. 3 at pp. 472-482.

26 ⁵⁸ AGRL Ex. 3 at pp. 220-235.

27 ⁵⁹ AGRL Ex.3 at pp. 491-492.

28 ⁶⁰ AGRL Ex. 3 at p. 492.

⁶¹ AGLR Ex. 3 at p. 492.

1 any questions. At the hearing held on October 7, 2009, he chose to represent himself and was again
2 informed that he need not answer any questions. At each hearing, he chose to speak.⁶²

3 **a. April 24, 2001, Hearing**

4 At his parole hearing in 2001, the presiding parole commissioner recited the facts of the case and
5 indicated, “you were well aware of the fact that Mr. Randall had a shotgun, a sawed off shotgun, and
6 that he had taken it with him when you left his residence and you knew he had it with you – with him
7 when you went to the Jack-in-the-Box.”⁶³ Johns affirmatively confirmed this information. He admitted
8 he fled the scene, leading law enforcement in a pursuit.⁶⁴ He further admitted he was responsible for
9 the death of Cecilia.⁶⁵ At the hearing he denied walking up to the window of the car with his co-
10 defendant and claimed he was “in the vicinity of the area towards the back of the car.”⁶⁶

11 Johns then discussed his juvenile criminal history with the commissioners. He confirmed he had
12 been adjudicated delinquent and committed to the California Youth Authority⁶⁷ for burglary, robbery and
13 assault with intent to commit murder. He volunteered that he committed those offenses with the same
14 co-defendant, Randall, who was involved in the homicide at the Jack-in-the-Box.⁶⁸

15 Johns was denied parole for a term of two years.

16 **b. November 1, 2005, Parole Hearing**

17 The next hearing began with a recitation of Johns’ background, including the 1978 burglary,
18 robbery and assault that led to him being committed to the California Youth Authority. Johns again
19 confirmed it was an armed robbery he participated in with the same co-defendant, Randall, who was
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22 ⁶² AGRL Ex.7 at pp. 532-533; Ex. 8 at pp. 592-593; Ex. 9 at pp. 643-647.

23 ⁶³ AGRL Ex. 7 at pp. 533-534.

24 ⁶⁴ AGRL Ex. 7 at p. 537.

25 ⁶⁵ AGRL Ex. 7 at pp. 537-538.

26 ⁶⁶ AGRL Ex. 7 at pp. 534, 536.

27 ⁶⁷ The California Youth Authority changed its name to the Department of Juvenile Justice (DJJ) in
2005. In 2023, all DJJ youth were realigned to the care of counties pursuant to Senate Bill 823.

28 ⁶⁸ AGRL Ex. 7 at pp. 541-542.

1 involved in the later homicide case.⁶⁹ Johns admitted that in the home invasion robbery, Randall shot a
2 victim.⁷⁰ When asked if the shooting was a “spontaneous act of violence,” Johns indicated it was a
3 “careless act of violence.”⁷¹ Johns denied participating with Randall in yet another home invasion
4 robbery, wherein Randall beat and shot a 71 year old woman in the face. However, he stated he did
5 admit the offense in juvenile court.⁷² Later in the hearing, he was asked about four offenses he
6 allegedly committed with Randall, including the shotgun robbery on February 9, 1981 (San Bernardino
7 Superior Court Case Number CRW-7343), just weeks before the homicide of Cecilia on February 21,
8 1981. He stated he did not commit that offense, but he did plead guilty to it and received a sentence
9 concurrent to the one for the homicide.⁷³

10 Significantly, Johns admitted involvement in the fatal shooting and accepted the Commissioners’
11 recitation of the facts, which specified that Johns had accompanied his armed co-defendant to the
12 victim’s car, where his co-defendant thrust the shotgun inside the car, demanded money from all four
13 of the occupants, and then fired a single round that fatally injured the victim.⁷⁴ However, Johns denied
14 being present in the immediate vicinity, stating he was ten feet away from the car when his co-
15 defendant robbed and murdered the victim.⁷⁵ Later he indicated it was ten to fifteen feet.⁷⁶ He also
16 classified the shooting as a “spontaneous act of violence” by his co-defendant.⁷⁷

17 At the conclusion of the hearing, the Parole Board denied Johns parole for a term of three years.

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21 ⁶⁹ AGRL Ex. 8 at pp. 593-596.

22 ⁷⁰ AGRL Ex. 8 at pp. 599-600.

23 ⁷¹ AGRL Ex. 8 at p. 622.

24 ⁷² AGRL Ex. 8 at pp. 601-602 618-619.

25 ⁷³ AGRL Ex. 8 at pp. 618-620, Ex. 12 at p. 738.

26 ⁷⁴ AGRL Ex. 8 at pp. 597-598.

27 ⁷⁵ AGRL Ex. 8 at p. 598.

28 ⁷⁶ AGRL Ex. 8 at p. 621.

⁷⁷ AGRL Ex. 8 at p. 598.

1 **c. October 7, 2009, Parole Hearing**

2 At the final hearing, Johns was asked to describe his relationship with his co-defendant Randle. He
3 described the co-defendant as someone who had a “high propensity for violence” and presented
4 himself “in an intimidating fashion, because of his aggression.”⁷⁸

5 The District Attorney, during their opportunity to speak, discussed information from the police
6 interviews of Johns in February of 1981. Johns admitted he knew his co-defendant had a shotgun with
7 him that night. He further admitted his co-defendant had made statements to him about the next time
8 he shoots someone, he’s going to kill them.⁷⁹

9 After the Presiding Commissioner recited the facts of the murder, which was characterized as a
10 “pretty nasty situation,” Johns was provided with an opportunity to respond.⁸⁰ At that time, he accepted
11 responsibility for his involvement in the offense.⁸¹ However, he indicated that his co-defendant was the
12 person who intended to rob the Jack-in-the-Box, not him. He also said he was somewhere between 10
13 to 20 feet from the co-defendant when the victim was robbed and shot. He acknowledged he knew his
14 co-defendant had a gun that night.⁸²

15 Johns was questioned about the beating and shooting of an elderly woman during a home invasion
16 robbery with his co-defendant. He denied involvement, indicating he was never charged or convicted
17 of that offense.⁸³

18 Johns was denied parole for a term of ten years. Johns was eventually released in 2021 after the
19 Superior Court granted his petition pursuant to Penal Code section 1172.6.

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24 ⁷⁸ AGRL Ex. 9 at pp. 651-652.

25 ⁷⁹ AGRL Ex. 9 at pp. 696-704.

26 ⁸⁰ AGRL Ex. 9 at p. 660.

27 ⁸¹ AGRL Ex. 9 at p. 660.

28 ⁸² AGRL Ex. 9 at pp. 661-664.

⁸³ AGRL Ex. 9 at pp. 670-673.

1 **7. 2019 Central Prison File Documents**

2 In 2019, Johns submitted a Relapse Prevention Plan. In it, he acknowledged, “I’m guilty of having
3 subconsciously been a criminal where I took advantage, abused and injured others without any moral
4 regard.”⁸⁴ His relapse plan goes on to indicate that he “chose not to weigh the consequences of my
5 actions,” “chose not to conform with the law,” “chose not to pay attention to the warning signs of
6 danger” and “chose to repeatedly engage in criminality.”⁸⁵

7 Also in 2019, Johns wrote a letter to Brothers Against Banging Youth. In it, he once again indicates
8 that he was involved in the robbery that resulted in the murder of Cecilia.⁸⁶

9 **C. CalVCB Evidence**

10 In this administrative proceeding, Johns presented various documents in an effort to demonstrate
11 his innocence by a preponderance of the evidence. Notably absent is any live testimony from Johns.

12 **1. Johns’ Initial Claim**

13 In his claim form, Johns alleged that his convictions for murder and robbery were both erroneous.
14 Johns’ initial statement of factual innocence indicated he was sentenced to state prison for a murder
15 committed by another. He further stated it was determined “beyond a reasonable doubt” he did not act
16 with reckless indifference to human life.⁸⁷ Johns did not specifically address innocence of robbery but
17 attached the superior court’s minute order that dismissed this conviction pursuant to Penal Code
18 section 1203.41 in 2023.⁸⁸ His claim stated he served over 40 years of imprisonment, which caused
19 his psychological disorders, loss of earnings, post-traumatic stress, mental distress and depression.⁸⁹

23 ⁸⁴ AGRL, Ex. 10, p. 725.

24 ⁸⁵ AGRL, Ex. 10, p. 726.

25 ⁸⁶ AGRL, Ex. 11, p. 734.

26 ⁸⁷ APP at p. 4.

27 ⁸⁸ Under Penal Code section 1203.41, a defendant’s conviction may be vacated after completing the
sentence under specified conditions.

28 ⁸⁹ APP at p. 5.

1 hearing before a hearing officer ensues, at which the claimant and Attorney General may present
2 evidence concerning innocence and injury.⁹⁵ Upon the requisite showing, CalVCB shall approve
3 payment pursuant to Penal Code section 4904 for the purpose of indemnifying the claimant for the
4 injury sustained if sufficient funds are available, upon appropriation by the Legislature, at a rate of
5 \$140 per day for their erroneous imprisonment.⁹⁶

6 In limited circumstances, a different and expedited procedure may apply to claims filed by
7 claimants whose convictions were reversed under specified circumstances. First, under Penal Code
8 sections 1485.55 or 851.865, if the claimant received a court finding of factual innocence, then CalVCB
9 must approve the claim, without a hearing and within 90 days, for the demonstrated injury.⁹⁷ A finding
10 of factual innocence “must be made by at least a preponderance of the evidence and must reflect a
11 determination that the person charged and convicted of an offense did not commit the crime.”⁹⁸
12 Second, under subdivision (b) of Penal Code section 4900, if the claimant’s conviction was vacated by
13 a grant of habeas relief or pursuant to Penal Code sections 1473.6 or 1473.7, subdivision (a)(2), and
14 the charges were dismissed or acquitted on remand, and the Attorney General declined to object with
15 clear and convincing proof of guilt, then CalVCB must approve the claim, without a hearing and within
16 90 days, for the demonstrated injury.⁹⁹ Third, under subdivision (d) of section 1485.55, if a court
17 granted a motion for administrative relief based upon a conviction that was vacated by a grant of
18 habeas relief or pursuant to Penal Code sections 1473.6 or 1473.7, subdivision (a)(2), the charges
19 were dismissed or acquitted on remand, and the district attorney failed to timely object with clear and
20 convincing proof of the claimant’s guilt, then CalVCB must approve the claim, without a hearing and
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24 ⁹⁵ Pen. Code, § 4903, subd. (a); Cal Code of Regs., tit. 2, § 644.

25 ⁹⁶ Pen. Code, § 4904, as amended by Stats.2022, c. 58 (A.B.200), § 19, eff. June 30, 2022.

26 ⁹⁷ Pen. Code, §§ 851.865; 1485.55, subds. (a), (b), and (e), 4902, subd. (a); see also Cal. Code of
27 Regs., tit. 2, § 640, subds. (e)(1)-(2).

28 ⁹⁸ *Larsen v. CalVCB* (2021) 64 Cal.App.5th 112, 129 (interpreting Pen. Code, § 1485.55, subd. (a)).

⁹⁹ Pen. Code, §§ 4900, subd. (b), 4902, subd. (d); 4904.

1 within 90 days, for the demonstrated injury.¹⁰⁰ Unless one of these statutory exceptions applies, then
2 the claimant bears the burden to prove innocence and injury by a preponderance of the evidence
3 under subdivision (a) of Penal Code section 4900.

4 When determining whether the claimant has satisfied their burden of proof, the Board may
5 consider the “claimant’s denial of the commission of the crime; reversal of the judgment of conviction;
6 acquittal of claimant on retrial; or the decision of the prosecuting authority not to retry claimant of the
7 crime....”¹⁰¹ The Board may also “consider as substantive evidence the prior testimony of witnesses
8 [that] claimant had an opportunity to cross-examine, and evidence admitted in prior proceedings for
9 which claimant had an opportunity to object.”¹⁰² Ultimately, the Board may consider “any other
10 information that it deems relevant to the issue before it,” even if inadmissible under the traditional rules
11 of evidence, so long as “it is the sort of evidence on which reasonable persons are accustomed to rely
12 in the conduct of serious affairs.”¹⁰³

13 CalVCB’s broad authority to consider all relevant evidence may be limited by various court
14 decisions during the criminal proceedings. By statute, CalVCB is bound by “factual findings” and
15 “credibility determinations” rendered by a court during proceedings on a claimant’s petition for habeas
16 corpus, motion to vacate judgment pursuant to Penal Code sections 1473.6 or 1473.7, subdivision
17 (a)(2), or an application for a certificate of factual innocence.¹⁰⁴ Nonetheless, CalVCB is not bound by
18 a court’s “summary of, observations about, and characterizations of the trial record when the [court] is
19 *not finding facts* after entertaining new evidence....”¹⁰⁵ Finally, a claim under Penal Code section 4900
20 may not be denied solely because the claimant failed to obtain a court finding of factual innocence.¹⁰⁶

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23 ¹⁰⁰ Pen. Code, § 1485.55, subd. (e). While a court order under subdivision (d) of §1485.55 does not
constitute a finding of factual innocence, it nevertheless requires expedited approval of a filed claim.

24 ¹⁰¹ Cal. Code Regs., tit. 2, § 641, subd. (a).

25 ¹⁰² Cal. Code Regs., tit. 2, § 641, subd. (b).

26 ¹⁰³ Cal. Code Regs., tit. 2, § 641, subds. (c), (d), and (f).

27 ¹⁰⁴ Pen. Code, §§ 1485.5, subd. (c); 4903, subd. (c).

28 ¹⁰⁵ *Gonzales v. CalVCB* (2023) 98 Cal.App.5th 427, 447, italics in original.

¹⁰⁶ Pen. Code, § 1485.55, subd. (d); Cal. Code of Regs., tit. 2, § 645, subd. (f).

1 **A. Penal Code section 4900(a) governs Johns' Claim**

2 Johns seeks compensation for his 1981 conviction for second-degree murder in San Bernardino
3 County Superior Court Case Number OCR-7302, having conceded that his related robbery conviction
4 was not erroneous. Neither conviction was reversed or vacated by grant of habeas corpus or pursuant
5 to Penal Code section 1473.6 or 1473.7, subdivision (a)(2). As such, the burden shifting provisions of
6 Penal Code sections 4900, subdivision (b), and 4902, subdivision (d), do not apply. Moreover, Johns
7 lacks a finding of factual innocence by any court under Penal Code section 1485.55 or 851.865.
8 Therefore, his claim does not fall within any of the limited statutory exceptions to Penal Code section
9 4900, subdivision (a), and he bears the burden of demonstrating innocence by a preponderance of the
10 evidence.

11 **B. CalVCB is not bound by the Appellate Court Findings**

12 By statute, CalVCB is bound by “factual findings” made and “credibility determinations” rendered
13 during proceedings on a petition for habeas corpus, motion to vacate a judgment pursuant to Penal
14 Code section 1473.6 or 1473.7, subdivision (a)(2), or an application for a finding of factual
15 innocence.¹⁰⁷ Notably, these statutory provisions omit decisions rendered by an appellate court on
16 direct appeal, or during proceedings under any provision not specifically enumerated.¹⁰⁸

17 As a result, CalVCB is not statutorily bound by a resentencing determination under Penal Code
18 section 1172.6, nor by the appellate court’s characterization of the evidence in an appeal from the
19 order summarily denying a petition pursuant to Penal Code section 1172.6.¹⁰⁹ Consequently, neither
20 the appellate court’s order reversing the denial of Johns’ petition, nor the court’s finding he was eligible
21 for relief in a proceeding under Penal Code section 1172.6 are binding for purposes of these

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23 ¹⁰⁷ Pen. Code, §§ 1485.5, subd. (c); 4903, subd. (c); see also *Gonzales v. California Victim*
24 *Compensation Board*, *supra*, 98 Cal.App.5th at p. 427 (defining “factual findings” in this context to
25 exclude “the habeas court’s summary of, observations about, and characterizations of the trial record
when the habeas court is not finding facts after entering new evidence”).

26 ¹⁰⁸ *Ibid.*; see also *Jack v. Ring LLC* (2023) 91 Cal.App.5th 1186, 1211-1212 (“Appellate courts do not
27 make factual findings; we review “the correctness of a judgment [or order] as of the time of its
28 rendition”); *People v. Cervantes* (2020) 46 Cal.App.5th 213, 224 (“appellate courts are not equipped to
accept new evidence and make factual findings”).

¹⁰⁹ Pen. Code, §§ 851.865, subd. (a), 1485.5, subds. (a)-(b), & (e); 4903, subd. (b).

1 proceedings before the Board. Because Johns' case falls outside the proceedings contemplated in
2 sections 4903, 1485.5, and 1485.55, the appellate court findings are not binding and do not establish
3 Johns' innocence for purposes of these administrative proceedings.

4 Moreover, the appellate court's decision does not "collaterally estop" the Board from fulfilling its
5 statutory obligation to decide the new and separate issues being litigated here. While an appellate
6 court's determination of legal issues that were, or could have been, raised on direct appeal, may bind
7 CalVCB under the doctrines of res judicata and collateral estoppel, neither doctrine applies in this
8 case, nor precludes consideration of the issues presented in this claim.¹¹⁰ In general, collateral
9 estoppel precludes a party from relitigating issues litigated and decided in a prior proceeding.¹¹¹
10 However, the issues being litigated in this claim are wholly discreet from the issues considered during
11 the pendency of Johns' Penal Code section 1172.6 petition. As detailed below, the legal issues
12 previously argued and decided, both on direct appeal and in the Penal Code section 1172.6
13 proceeding, differ significantly from the legal issues presented before CalVCB.

14 Penal Code section 1172.6 allows a person convicted of murder to petition to have the conviction
15 vacated if (1) the complaint allowed the prosecution to proceed under a theory of murder under the
16 natural and probable consequences doctrine, (2) the petitioner was convicted of first- or second-
17 degree murder, and (3) the petitioner could not be convicted of murder after SB 1437's changes to
18 Penal Code sections 188 and 189, which no longer permit murder convictions based on the natural
19 and probable consequences theory.¹¹² As amended, Penal Code section 188 directs that malice may
20 not "be imputed to a person based solely on his or her participation in a crime."¹¹³ Instead, "to be
21 convicted of murder, a principal in a crime shall act with malice," unless the narrowed felony murder
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24 ¹¹⁰ See *Central Delta Water Agency v. Department of Water Resources* (2021) 69 Cal.App.5th 170,
25 206 (explaining "Res judicata, or claim preclusion, precludes parties or their privies from relitigating a
26 cause of action finally resolved in a prior proceeding" and "Collateral estoppel precludes relitigation of
27 issues argued and decided in a prior proceeding").

28 ¹¹¹ *Tennison v. California Victim Comp. & Government Claims Bd.* (2007) 152 Cal.App.4th 1164, 1174.

¹¹² Pen. Code, § 1172.6, subds. (a)(1)-(3).

¹¹³ Pen. Code, §188, subd. (a)(3).

1 rule found in Penal Code section 189, subdivision (e) is applied. Penal Code section 189, subdivision
2 (e), indicates that a participant in a specifically enumerated felony in which death occurs can be found
3 liable for that death only if:

- 4 1. The person was the actual killer; or
- 5 2. The person was not the actual killer but, with the intent to kill, aided, abetted,
6 counseled, induced, solicited, requested, or assisted the actual killer in the
7 commission of murder in the first-degree; or
- 8 3. The person was a major participant in the underlying felony and acted with reckless
9 indifference to human life, as described in subdivision (d) of Penal Code §190.2.¹¹⁴

10 The Superior Court found Johns had made a prima facie showing that he was entitled to relief
11 under Penal Code section 1172.6. However, it also found that SB 1437 was unconstitutional and it
12 struck Johns' petition on that basis. Johns appealed the striking of his petition. Consequently, the
13 issues on appeal were whether SB 1437 was constitutional, whether it violated separation of powers,
14 and whether it violated the Victims' Bill of Rights of 2008. The Court of Appeal, Fourth District, Division
15 2, found that SB 1437 was constitutional and it did not violate either the separation of powers or the
16 Victims' Bill of Rights of 2008.¹¹⁵ The Court remanded the proceeding to the Superior Court for a
17 hearing on Johns' petition. At the hearing, the District Attorney had the burden of proving that Johns
18 was ineligible for re-sentencing under the change in the law.

19 The issue presented in Johns' claim under Penal Code section 4900, on the other hand, is whether
20 Johns can prove by a preponderance of the evidence the crime he was convicted of was not
21 committed at all, or not committed by him, according to the law in effect at the time the crime was
22 committed.¹¹⁶ In other words, he must prove that he is actually innocent of murder under any plausible
23 theory, including under the natural and probable consequences theory, as that remained a valid theory
24 for conviction at the time this crime was committed. The issue of Johns' actual innocence was
25 previously litigated in the superior court. The Court chose not to make a finding of factual innocence
26 stating,

27 ¹¹⁴ Pen. Code, § 189, subd. (e).

28 ¹¹⁵ *People v. Johns* (2020) 50 Cal.App.5th 46.

¹¹⁶ Pen. Code, § 4900.

1 I only indicated that I was not convinced beyond a reasonable doubt that the defendant
2 acted with reckless indifference to human life, even though he was a major participant,
3 thereby setting aside the conviction for murder. This ruling does not rise to a finding of
4 factual innocence. Actual innocence means factual innocence, not a mere legal
5 insufficiency.¹¹⁷

6 However, no presumption is made by the absence of a finding of factual innocence.¹¹⁸

7 Ultimately, none of the decisions rendered by the Superior Court or Court of Appeal mandate any
8 particular result in this administrative proceeding. CalVCB remains free to conclude, based upon the
9 entire administrative record, whether Johns satisfied his burden to prove his innocence by a
10 preponderance of the evidence.

11 **C. There is Insufficient Proof of Innocence**

12 Johns fails to satisfy his burden by demonstrating his innocence of felony murder by a
13 preponderance of the evidence. The weight of the inculpatory evidence far exceeds the proffered
14 exculpatory evidence. As detailed below, the inculpatory evidence includes the jury verdict finding
15 Johns guilty of robbery and felony murder, the appellate court's partial affirmance of his conviction on
16 direct appeal, Johns' own admissions to the investigating officers, to the probation officer and in the
17 parole hearings, the transcript of the preliminary hearing testimony, and Johns' application in this
18 matter.

19 **1. Law of Accomplice Liability for Felony Murder in 1981**

20 In 1981, at the time of Cecilia's death, any killing that occurred during the commission of a robbery
21 amounted to first-degree felony murder, regardless of whether the killing was intentional or
22 accidental.¹¹⁹ The same level of culpability applied regardless of whether the defendant was the killer
23 or an accomplice to a robbery when the murder occurred.¹²⁰ If the defendant aided the robbery, he was

24 ¹¹⁷ AGRL, Ex. 3 at p. 492.

25 ¹¹⁸ Pen Code, § 1485.55, subd. (d).

26 ¹¹⁹ Former Pen. Code, § 189 (1981) ("All murder...which is committed in the perpetration of, or attempt
27 to perpetrate... robbery... is murder of the first degree; and all other kinds of murders are of the
28 second degree.").

¹²⁰ *Ibid.*; *People v. Strong*, (2022) 13 Cal.5th 698, 704 (describing felony murder doctrine before SB
1437 in 2017); Former Penal Code §31 (1981): "All persons concerned in the commission of a

1 an accomplice and was guilty of first-degree felony murder.¹²¹ Of course, the accomplice must have
2 already commenced aiding the robbery by the time of the killing occurred.¹²²

3 Although Johns was charged with first-degree felony murder based upon the foregoing law of
4 accomplice liability, the Court of Appeal, Fourth Appellate District, Division Two, reduced the conviction
5 to second-degree felony murder. As the appellate court explained, “form triumphs over substance”
6 because the jury failed to affix a degree of murder, and consequently the degree of the crime must be
7 of the second-degree.¹²³ The reduction was mandated by Penal Code section 1157, which requires a
8 conviction “be deemed to be of the lesser degree” in the event of “the failure of the jury or the court to
9 so determine....”¹²⁴ As such, both second-degree felony murder and second degree murder will be
10 addressed *infra*.

11 In 1981, to find a defendant guilty of second-degree felony murder, the prosecution needed to
12 demonstrate that during the course of an inherently dangerous felony, the defendant or a co-
13 conspirator engaged in conduct that resulted in the death of another.¹²⁵ Specific felonies were not
14 identified as being inherently dangerous. However, one would be hard pressed not to recognize that
15 robbery is an inherently dangerous felony as it requires the use of force or fear.¹²⁶ Indeed, it is
16 considered so dangerous that it was included in the list of crimes for which a first-degree felony murder
17 conviction could be sustained. The law remained unchanged with regard to this for over one hundred
18 years.¹²⁷

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21 crime,... whether they directly commit the act constituting the offense, or aid and abet in its
22 commission, ... are principals in any crime so committed.”

22 ¹²¹ Former Pen. Code, §§ 31 and 189 (1981).

23 ¹²² *People v. Pulido, supra*, 15 Cal.4th 713, 726.

24 ¹²³ *People v. Johns* (1983) 145 Cal.App.3d 281; see also *People v. Beamon*, 8 Cal.3d 625; *People v. Dixon*, 24 Cal.3d 43. Disapproved in *People v. Mendoza* (2000), 23 Cal.4th 896, 909-910.

25 ¹²⁴ Pen. Code, § 1157.

26 ¹²⁵ *People v. Doyell* (1874) 48 Cal. 85; *People v. Ford* (1964) 60 Cal.2d 772, 795; *People v. Williams*
27 (1965) 63 Cal.2d 452, 458, fn. 4; former Penal Code § 189 (1981).

27 ¹²⁶ Former Penal Code § 211 (1981).

28 ¹²⁷ Stats. 1850, p. 231; Stats. 1856, p. 219.

1 Johns claims he was not convicted of second-degree felony murder but was convicted of second-
2 degree murder.¹²⁸ In 1981, a second-degree murder conviction could be based upon the natural and
3 probable consequences theory.¹²⁹ Under that theory, the query would have been whether Johns
4 engaged in an act that resulted in the death of another with malice aforethought. Malice could be
5 implied,¹³⁰ did not require hatred or ill-will,¹³¹ and need not be deliberated.¹³² The malice necessary to
6 establish the crime of second-degree murder in 1981 “may be implied when [the] defendant does an
7 act with a *high probability that it will result in death* and does it with a base antisocial motive and with
8 a *wanton disregard for human life.*”¹³³ At that time, the courts repeatedly held that a killing perpetrated
9 during the course of a robbery by its very nature demonstrates “the malice of the abandoned and
10 malignant heart” and thus malice could be presumed from the act of the robbery itself.¹³⁴

11 In sum, the required mental state for Johns’ 1981 second-degree murder conviction was amply
12 satisfied by the jury’s determination, under then existing law, that he aided a robbery during which a
13 killing occurred. Indeed, this determination would have satisfied a verdict of first-degree felony murder
14 had the jury specified the applicable degree of the charged crime.

15 2. Inculcating Evidence

16 Under the law governing accomplice liability for felony murder in 1981, the evidence
17 overwhelmingly incriminates Johns. A jury found Johns guilty after hearing the testimony of all of the
18 witnesses, reviewing any physical evidence, all of which was subject to the stringent, formal rules of
19 evidence. The live witnesses included Johns himself. No court has ever found the jury’s verdict to have
20 been in error. While the verdict was ultimately reversed, the reversal was due solely to subsequent

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22 ¹²⁸ Claimant’s Reply Brief, p. 2.

23 ¹²⁹ As set forth above, this is no longer the law after SB 1468.

24 ¹³⁰ Former Penal Code § 188.

25 ¹³¹ *People v. Seden* (1974) 10 Cal.3d 703; *People v. Conley* (1966) 64 Cal.2d 310, 321; *People v. Bender* (1945) 27 Cal.2d 164, 180.

26 ¹³² Former Penal Code § 188; *People v. Mattison* (1971) 3 Cal.3d 177, 182.

27 ¹³³ *People v. Watson* (1981) 30 Cal.3d 290, 300, emphasis added; see also, *People v. Seden* (1974) 10 Cal.3d 703, 719; *People v. Washington* (1965) 62 Cal.2d 777, 782.

28 ¹³⁴ *People v. Milton* (1904) 145 Cal. 169, 171-172; *People v. Mattison*, 4 Cal.3d at 182.

1 changes in the law defining accomplice liability. Under these circumstances, the jury's verdict carries
2 significant weight in this informal administrative proceeding.

3 In addition, the appellate court carefully reviewed the entire trial record that documented Johns'
4 guilt. While the appellate court did reduce the degree of murder from first-degree to second-degree,
5 they pointed out that was due to an issue of "form triumphs over substance" as the verdict form failed
6 to affix the degree of murder. Contrary to Johns' argument in the Reply Brief, this reduction did not
7 negate the requisite element of malice for second-degree murder, which was readily satisfied in 1981
8 by a killing during the commission of an inherently dangerous felony like robbery, regardless of
9 whether the defendant was the killer and regardless of whether the killing was accidental. This
10 unanimous decision is also incriminating.

11 Moreover, Johns' own statements have been incriminating. In 1981, he admitted to law
12 enforcement that he was involved in the offense, knew his co-defendant had a shotgun and heard the
13 co-defendant make statements regarding killing the next person he shot. During his interview with the
14 probation officer prior to his sentencing, he indicated that he knew the co-defendant had a gun and
15 they intended to rob the Jack-in-the-Box. He spoke to several Parole Boards about the offense and his
16 relationship with the co-defendant, who was the actual killer. He repeatedly agreed that he knew the
17 co-defendant had a gun. He also discussed at each hearing that he had committed a strong-armed
18 robbery, wherein his co-defendant shot someone before the murder of Cecilia. In the 2009 hearing, he
19 expounded on his relationship with the co-defendant, calling the co-defendant "intimidating" due to his
20 "aggression" and saying that the co-defendant had a "high propensity for violence".¹³⁵ He also admitted
21 that he had pled guilty to another strong-armed robbery committed with the same co-defendant that
22 took place shortly before the murder of Cecilia.¹³⁶

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25 ¹³⁵ Evid. Code, §§ 1220 (party opponent admission) and 1230 (declaration against interest); See also
26 Evid. Code § 1101(b) (Character evidence may be used to prove motive, opportunity, intent,
preparation, plan, knowledge, absence of mistake, absence of accident).

27 ¹³⁶ Evidence of a final judgment adjudging a person guilty of a crime punishable as a felony is not
28 made inadmissible by the hearsay rule when offered in a civil action to prove any fact essential to the
judgment whether or not the judgment was based on a plea of nolo contendere. (Evid. Code, § 1300.)

1 Further, even after Johns' murder conviction was reversed due to the change in the law affected by
2 SB 1437, he remained convicted of the related robbery with an arming enhancement. While this
3 conviction was ultimately set aside pursuant to Penal Code section 1203.41 for having completed his
4 sentence, that is not the same as a finding of factual innocence. Thus, this too remains additional
5 incriminating evidence of Johns' guilt.

6 Last, Johns' own petition, response and reply all fail to put forth facts to support his position that he
7 is innocent of the murder and robbery. Indeed, his reply brief says, "the claimant has never alleged that
8 the robbery conviction was erroneous or that a killing never occurred, instead the claimants supportive
9 claim is that the murder committed was not committed by the claimant." This admission to committing
10 the robbery is dispositive of the issue because in 1981, a killing that occurred during the course of a
11 robbery was felony murder.

12 **3. Exculpatory Evidence**

13 Johns' proffered exculpatory evidence is minimal and it fails to overcome the inculpatory evidence.
14 He submits a bare statement that he "accompanied" the co-defendant who "spontaneously attempted
15 to rob" the victims. This statement is contradicted by the testimony at the preliminary hearing, the
16 findings of the jury, Johns' statements to the probation officer, the decision of the Court of Appeal,
17 Johns' statements to the Parole Board, the Superior Court ruling on his petition pursuant to Penal
18 Code section 1172.6, and Johns' reply brief. Accordingly, this conclusory statement lacks credibility in
19 this administrative proceeding.

20 The reversal of Johns' felony murder conviction also is not exculpatory. While reversal of a
21 conviction may be considered as exculpating evidence in a claim under Penal Code section 4900,¹³⁷
22 here it was solely due to a change in the law defining felony murder for accomplices pursuant to Penal
23 Code section 1172.6. Therefore, the superior court's reversal is not exculpating evidence of Johns' guilt
24 for felony murder under the law in effect in 1981, when the crime occurred. Indeed, the reversal is
25 inconsequential as exculpatory evidence, as it merely was the court's determination that the trial
26 evidence failed to demonstrate Johns' guilt for felony murder under the current law.

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28 ¹³⁷ Cal. Code Regs., tit. 2, § 641, subd. (a).

1 Similarly, Johns legal arguments regarding the degree and theory of his murder conviction are not
2 exculpatory. Johns indicates that because the judge in the Penal Code section 1172.6 hearing found
3 that no admissible evidence had been presented to the court of Johns acting with “reckless
4 indifference to human life,”¹³⁸ he cannot now be found to have acted with implied malice pursuant to
5 the law as it existed in 1981. Johns is incorrect. First, CalVCB is not limited to the same record as that
6 presented in the hearing on his petition pursuant to Penal Code section 1172.6. Second, regardless of
7 the Court’s decision in the 1172.6 hearing, a killing that took place during the course of an inherently
8 dangerous felony in 1981 was second-degree felony murder, and armed robbery is inherently
9 dangerous. Finally, as set forth above, Johns’ legal argument regarding the lack of malice is not
10 exculpatory. Express malice was not a requirement of a murder conviction in 1981. Malice has been
11 found from drinking and driving,¹³⁹ escape from a jail,¹⁴⁰ assault with a dangerous weapon,¹⁴¹ and,
12 most importantly for this claim, robbery.¹⁴² Accordingly, the required mental state for Johns’ second-
13 degree murder conviction in 1981 was amply satisfied by Johns’ commission of a robbery during which
14 a killing occurred.

15 **4. Comparative Analysis**

16 When the evidence is weighed, it fails to prove that Johns is more likely innocent than guilty of his
17 challenged conviction for felony murder. The burden rests with Johns to demonstrate that he did not
18 commit the offense or that it never occurred. To that end, it is his burden to show that he did not
19 commit a robbery with his co-defendant that resulted in the death of Cecilia. Instead, there is
20 overwhelming evidence in the record showing that Johns committed the robbery, as well as Johns’
21 concession that his robbery conviction was not erroneous. Accordingly, Johns fails to meet his burden
22 on this record for all of the reasons set forth above.

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25 ¹³⁸ Claimant’s Reply Brief, p. 2.

26 ¹³⁹ *People v. Watson*, *supra*, 30 Cal.3d at p. 300.

27 ¹⁴⁰ *People v. Sedeno*, *supra*, 10 Cal.3d at p. 719.

28 ¹⁴¹ *People v. Lewis* (1969) 81 Cal.App.3d 698.

¹⁴² *People v. King* (1969) 270 Cal.App.2d 817; *People v. Milton* (1904) 145 Cal. 169.

1 **V. CONCLUSION**

2 In accordance with subdivision (a) of Penal Code section 4900, the undersigned Hearing Officer
3 recommends that CalVCB deny Johns' claim. He has failed to demonstrate by a preponderance of
4 evidence that he did not commit the felony murder as that crime was defined at the time of its
5 commission. Johns is, therefore, ineligible for compensation as an erroneously convicted person.
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8 Date: April 9, 2026

Keri Klein

9 Keri Klein
10 Senior Attorney
11 California Victim Compensation Board
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Burrell, Andrea@Victims

From: Gerry Johns <gerryjohns61@gmail.com>
Sent: Wednesday, April 29, 2026 10:05 AM
To: Victims board.meeting
Cc: jessica.leal@doj.ca.gov
Subject: Claimants Objections to proposed decision

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BEFORE THE CALIFORNIA VICTIM COMPENSATION BOARD

In the Matter of:
Gerry Johns, Claimant

Claim No. 24-ECO-53

CLAIMANT'S OBJECTIONS TO PROPOSED DECISION

I. INTRODUCTION

Claimant, Gerry Johns, respectfully objects to the Proposed Decision dated April 9, 2026.

The Proposed Decision should not be adopted because it is based on an incomplete and inaccurate legal analysis that fails to properly apply Penal Code §§ 4900–4904 to the undisputed facts of this case. Specifically, the Proposed Decision improperly relies on the historical validity of Claimant's 1981 conviction while disregarding the controlling legal effect of the retroactive vacatur of the murder conviction and the resulting wrongful incarceration.

II. THE PROPOSED DECISION MISCHARACTERIZES THE BASIS OF THE MURDER CONVICTION

The Proposed Decision asserts that Claimant was charged and convicted under a felony-murder theory. The record does not support this assertion.

The accusatory pleading charged Claimant with murder under Penal Code § 187, alleging malice aforethought, not felony murder. (AG Exh. Vol. 1, p. 15.) The jury returned a general verdict under § 187, without any special finding of felony murder. (AG Exh. Vol. 1, pp. 21, 37.)

On appeal, the court reduced the conviction to second-degree murder, noting that the jury did not make findings sufficient to support first-degree felony murder. See *People v. Johns*.

Accordingly, the Proposed Decision's reliance on a felony-murder characterization is unsupported by the record and cannot form the basis for denying compensation.

III. RETROACTIVE VACATUR RENDERS THE MURDER CONVICTION LEGALLY VOID

Claimant's murder conviction was vacated on June 11, 2021 pursuant to retroactive changes in California law enacted through Senate Bill 1437 (codified at former Penal Code § 1170.95).

The Legislature expressly determined that:

- Malice may not be imputed based solely on participation in a crime;
- Murder liability does not attach to a person who was not the actual killer, did not act with intent to kill, and was not a major participant acting with reckless indifference.

(AG Exh. Vol. 1, pp. 66–69.)

The Superior Court found that Claimant did not meet the elements of murder under this retroactively applicable law and vacated the conviction accordingly. (AG Exh. Vol. 1, pp. 476–482.)

This was a **substantive change in the law**, not procedural. As such, the vacatur operates retroactively and eliminates the legal basis for the conviction.

Under these circumstances, Claimant is **innocent of murder within the meaning of Penal Code § 4900**.

See *Souliotes v. California Victim Compensation Board* (requiring determination whether claimant committed the offense as legally defined);
see also *Gonzales v. California Victim Compensation Board* (recognizing binding effect of innocence determinations).

IV. THE PROPOSED DECISION APPLIES AN INCORRECT LEGAL STANDARD

The Proposed Decision improperly focuses on whether Claimant's conviction was valid under 1981 law.

That is not the governing inquiry under Penal Code § 4900.

The correct inquiry is whether Claimant's incarceration is wrongful in light of **current, retroactively applicable law**.

Once a conviction is vacated based on a substantive change in the elements of the offense, it cannot serve as a lawful basis for continued custody. The State cannot simultaneously:

1. Vacate a conviction because the claimant does not meet the elements of the offense; and
2. Continue to treat the resulting incarceration as lawful for purposes of compensation.

The Proposed Decision fails to reconcile this contradiction.

V. CLAIMANT'S INCARCERATION BEYOND FOUR YEARS WAS WRONGFUL AS A MATTER OF LAW

Upon resentencing, Claimant received:

- 3 years for robbery (Penal Code § 211)
- 1 year firearm enhancement

Total lawful sentence: **4 years**

Claimant served approximately **40 years, 5 months, and 16 days** in custody.

Thus, approximately **36 years of incarceration exceeded the lawful sentence** and were attributable solely to the now-vacated murder conviction.

Those additional years were imposed due to the life-term structure created by the murder conviction.

Once that conviction was vacated retroactively, the legal basis for those additional decades ceased to exist.

Accordingly, the excess period constitutes **wrongful incarceration under Penal Code § 4900**.

VI. COMPENSATION IS MANDATED BY STATUTE

Penal Code § 4904 provides compensation at \$140 per day of wrongful incarceration.

The Attorney General has already calculated:

- 13,267 compensable days
- Total compensation: \$1,857,380

(AG Response dated September 18, 2025, p. 16.)

Claimant concurs with this calculation.

VII. THE PROPOSED DECISION OMITTS CONTROLLING CAUSATION ANALYSIS

The Proposed Decision fails to address the dispositive issue:

Whether the excess decades of incarceration were caused by the vacated murder conviction.

The undisputed facts establish:

- Robbery alone could not legally justify more than four years of custody;
- The murder conviction imposed a life-term structure;
- The excess 36 years were directly caused by that conviction.

This satisfies the causation requirement under Penal Code § 4900.

VIII. CONCLUSION

The Proposed Decision should be rejected because it:

1. Mischaracterizes the nature of the murder conviction;
2. Applies an incorrect legal standard;
3. Fails to account for the retroactive effect of the vacatur;
4. Ignores the causal link between the invalid conviction and the excess incarceration.

The record establishes that Claimant is innocent of murder under current law and that approximately 36 years of incarceration were wrongfully imposed.

Claimant respectfully requests that the Board:

- Reject the Proposed Decision;
 - Find that Claimant is entitled to compensation under Penal Code §§ 4900–4904;
 - Approve payment consistent with the Attorney General’s calculated amount.
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Dated: May __, 2026

Respectfully submitted,

Gerry Johns
Claimant