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

8
9 In the Matter of:

10 **Raymond McGinnis**

11 Claim No. 24-ECO-23

Proposed Decision

Penal Code § 4900, subd. (a)

12 **I. Introduction**

13 On February 28, 2024, Raymond McGinnis (McGinnis) submitted a claim to the California
14 Victim Compensation Board (CalVCB) seeking compensation as an erroneously convicted person
15 pursuant to Penal Code section 4900. The claim, as supplemented, is based upon McGinnis' 1999
16 conviction for felony murder as an accomplice, which was vacated and dismissed in 2021 pursuant to
17 former Penal Code section 1170.95. McGinnis does not challenge his related and still valid
18 adjudications for robbery and assault with a firearm or his unrelated and still valid convictions for
19 assaulting correctional staff. McGinnis, who is representing himself, seeks compensation in the
20 amount of \$1,161,860 for 8,299 days imprisonment.

21 The Attorney General, represented by Deputy Attorneys General Jonathan Krauss and Seth
22 McCutcheon, opposed the claim on January 16, 2025. According to the Attorney General, a
23 preponderance of the evidence fails to demonstrate McGinnis' innocence of murder as defined at the
24 time the offense occurred, and, alternatively, a preponderance of the evidence fails to demonstrate any
25 injury due to the overlapping sentences for McGinnis' other crimes.

26 The claim was assigned to CalVCB Senior Attorney Laura Simpton, who held a hearing on July
27 23, 2025, at which both parties appeared. The record closed immediately thereafter. After careful
28 consideration, the claim is recommended for denial due to insufficient proof of innocence or injury.

II. Procedural Background

A. Trial Proceedings – Murder Conviction (TA100236)

McGinnis was arrested on March 17, 1998, and subsequently charged in Los Angeles County Superior Court case number TA100236 with first-degree felony murder with a special-circumstance allegation (count 1), assault with a firearm (count 2), and robbery (counts 3 and 4), plus a gun-use enhancement.¹ McGinnis, who was 16 years old at the time at the time of the killing, was tried as an adult. Although McGinnis testified at trial denying any involvement in the crimes, a jury convicted him of all charges on August 23, 1999.² McGinnis was sentenced on September 2, 1999, to life without the possibility of parole (LWOP) on count 1 due to the special-circumstance finding, plus 10 years for the remaining counts and enhancements.³

B. Unrelated Proceedings – Assault Convictions (BA192639)

Three days later on September 5, 1999, while McGinnis was confined in juvenile hall awaiting transfer to state prison, he violently assaulted four detention service officers. McGinnis, who was then 17 years old, was charged and arraigned as an adult in Los Angeles County Superior Court case number BA192639 on October 8, 1999.⁴ On July 26, 2000, a jury convicted McGinnis of nine felony counts, including assault by a life prisoner (counts 1, 4, and 6), assault of a peace officer (counts 2, 5, and 7), battery causing serious bodily injury (count 3), and use of tear gas against a peace officer (counts 8 and 9).⁵ McGinnis was sentenced on May 17, 2002, to an aggregate term of 90 years to life comprised of three, consecutive 30-years-to-life sentences for counts 1, 4, and 6; four concurrent 30-years-to-life sentences for counts 2, 3, 5, and 7; and two concurrent 25-years-to-life sentences for counts 8 and 9.⁶

¹ Pen. Code, §§ 187, 190.2, 211, 245, 12202. McGinnis Application (App.) at pp. 2, 9; Attorney General Response Letter (AGRL) at pp. 1-2, 10; AGRL Exhibit (Ex.) 2 at p. 1, AGRL Ex. 5 at p. 1.

² AGRL at pp. 2, 4; AGRL Ex. 2 at pp. 11-12.

³ AGRL at p. 2; AGRL Ex. 2 at pp. 12-15.

⁴ AGRL at pp. 6, 12 n. 18; AGRL Ex. 4 at pp. 1, 11.

⁵ Pen. Code, §§ 4500, 245, 12403.7.

⁶ AGRL Ex. 4 at pp. 11-13, 25-27.

1 **C. Appellate Proceedings**

2 Meanwhile, McGinnis appealed his felony murder conviction in case number TA100236 to the
3 Second District Court of Appeal. McGinnis alleged, inter alia, that the evidence was insufficient to
4 support the special-circumstance finding under Penal Code section 190.2 for his felony murder
5 conviction. The appellate court disagreed in an unpublished decision filed on May 31, 2001. Applying
6 the law in effect at that time, the appellate court concluded there was substantial evidence to support
7 section 190.2's requisite elements that McGinnis (1) was a "major participant" in the underlying robbery
8 when the killing occurred and (2) he acted with "reckless indifference" to human life.⁷ With the
9 exception of awarding additional presentencing credit for good conduct, the appellate court affirmed
10 the judgment in all respects. The California Supreme Court denied review on September 12, 2001.⁸

11 McGinnis also appealed his unrelated assault convictions in case number BA192639. He
12 alleged, inter alia, that the evidence was insufficient to support three of his assault convictions because
13 one victim was unable to identify him as the assailant. The Second District Court of Appeal rejected
14 this argument in an unpublished decision filed on April 15, 2003, which affirmed the judgment overall
15 with minor sentencing corrections.⁹ Upon remand to the superior court, McGinnis was resentenced on
16 July 14, 2003, to 86 years to life.¹⁰

17 **D. Post-Conviction Proceedings**

18 Over the next decade, McGinnis filed multiple habeas petitions in the Los Angeles County
19 Superior Court challenging his murder conviction and unrelated assault convictions in case numbers
20 TA100236 and BA192639, respectively. All petitions were initially denied.¹¹ Then several changes to
21 the law ensued.

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24 ⁷ AGRL Ex. 1 at pp. 28-29.

25 ⁸ See Docket for *People v. Raymond Anthony McGinnis*, California Supreme Court case number
26 2099000, available online at <https://appellatecases.courtinfo.ca.gov/>; 2 Cal. Code Regs., tit. 2, § 617.8
(official notice).

27 ⁹ AGRL Ex. 3 at pp. 1-5.

28 ¹⁰ AGRL Ex. 4 at pp. 29-32.

¹¹ See AGRL Exs. 2 at pp. 17-31, 4 at pp. 33-34.

1 **1. Intervening Changes to the Law**

2 **a. Resentencing for LWOP Juveniles and Others**

3 In 2013, subdivision (d)(2) was added to Penal Code section 1170, which allows a defendant,
4 who has served at least 15 years of a LWOP sentence for a felony murder conviction that was
5 committed while under 18 years of age, to petition the court to recall the sentence upon a showing of
6 various mitigating factors.¹² Relatedly, subdivision (d)(1) of section 1170 was expanded in 2018 to
7 allow a court to resentence certain incarcerated defendants upon recommendation by the correctional
8 administrator “if it is in the interest of justice.”¹³ This provision was relocated in 2022 to Penal Code
9 section 1172.1 and further expanded to allow resentencing any defendant on the court’s own motion
10 after a favorable change in sentencing laws if “continued incarceration is no longer in the interest of
11 justice.”¹⁴

12 **b. Special-Circumstance Allegation for Felony murder**

13 Meanwhile, case law refined the requirements for a special-circumstance finding for felony
14 murder under Penal Code section 190.2. In 2015, the California Supreme Court’s decision in *People v.*
15 *Banks* (2015) 61 Cal.4th 788, 802-803, concluded that a “major participant” within the meaning of
16 section 190.2 requires consideration of multiple factors, including the extent of the accomplice’s
17 involvement in the planning of the underlying felony, supply or use of lethal weapons, awareness of the
18 particular danger posed, physical ability to prevent the killing, and actions immediately after lethal force
19 was used. In 2016, the California Supreme Court’s decision in *People v. Clarke* (2016) 63 Cal.4th 522,
20 618-623, held that “reckless indifference to human life” for purposes of section 190.2 is both a
21 subjective and objective inquiry that may include consideration of the accomplice’s use or awareness
22 of a weapon, physical ability either to aid the victim or restrain the killer, duration of the crime, and
23 knowledge of any threat posed by the killer. Combined, “*Banks* and *Clark* both substantially clarified
24 the law governing findings under [] section 190.2.”¹⁵

25 ¹² Former Pen. Code, § 1170, subd. (d)(2), as added by Stats.2012 (S.B.9), eff. Jan. 1, 2013.

26 ¹³ Former Pen. Code, § 1170, subd. (d)(1), as amended by Stats.2018 (A.B.1812), eff. Jun. 27, 2018.

27 ¹⁴ Pen. Code, § 1172.1, subd. (a)(5).

28 ¹⁵ *People v. Strong* (2022) 13 Cal.5th 698, 706-707.

1 **c. Juvenile Prosecutions**

2 In 2016, California voters adopted Proposition 57, which eliminated a prosecutor’s authority to
3 file criminal charges against a minor directly in adult court.¹⁶ Instead, the prosecution must petition the
4 juvenile court to declare the minor a ward and then move the juvenile court to transfer the minor to
5 adult court. If the transfer is denied, then the juvenile cannot be prosecuted in adult court and remains
6 under the juvenile court’s jurisdiction. In that scenario, the juvenile court conducts a “jurisdictional
7 hearing,” wherein the judge determines whether the alleged violation of criminal law is true beyond a
8 reasonable doubt, which results in a “juvenile adjudication” rather than a “criminal conviction.”¹⁷
9 Thereafter, the juvenile court conducts a “dispositional hearing,” similar to a sentencing hearing in
10 criminal court, at which the juvenile may be “committed” to juvenile hall or the Division of Juvenile
11 Justice for serious offenses only after considering less restrictive alternatives.¹⁸ These ameliorative
12 provisions of Proposition 57 applied retroactively to juveniles who had been prosecuted and convicted
13 in adult court without the benefit of a transfer hearing in juvenile court.¹⁹ When applicable, the
14 juvenile’s criminal conviction is conditionally reversed while the juvenile court conducts a juvenile
15 transfer hearing and, if the transfer is denied, then the juvenile court may treat the reversed conviction
16 as a juvenile adjudication and impose an appropriate disposition.²⁰

17 **d. Accomplice Liability for Felony murder**

18 Finally, in 2019, the Legislature narrowed the definition of felony murder for accomplices with
19 the passage of Senate Bill (SB) 1437. Among its provisions, SB 1437 amended the felony murder rule
20 to exclude any accomplice who was not the actual killer if the accomplice either (1) lacked a specific
21 intent to kill, or (2) was not a “major participant” in the underlying felony while acting with “reckless
22 indifference to human life” as defined by the California Supreme Court’s recent decisions in *Banks* and
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25 ¹⁶ *People v. Superior Court (Lara)* (2018) 4 Cal.5th 299, 305; Welf. & Inst. Code, §§ 602, 650, 707.

26 ¹⁷ *Lara, supra*, 4 Cal.4th at p. 306.

27 ¹⁸ *Lara, supra*, 4 Cal.4th at pp. 306-307.

28 ¹⁹ *Lara, supra*, 4 Cal.4th at p. 309.

²⁰ *Lara, supra*, 4 Cal.4th at p. 310.

1 *Clark*.²¹ SB 1437 added Penal Code section 1170.95, later renumbered as section 1172.6, to establish
2 a procedure for previously convicted accomplices to petition to vacate their conviction if they would
3 have been excluded under the new and narrowed definition for felony murder.²²

4 Viewed together, these statutory, judicial, and ballot changes to the law dramatically changed
5 the legal landscape surrounding McGinnis' convictions in case number TA100236 for special-
6 circumstance felony murder, robbery, and assault, as well as McGinnis' unrelated convictions in case
7 number BA192639 for assaulting four detention officers in juvenile hall. The impact of these legal
8 changes is detailed below.

9 **2. Reversal of Felony murder Conviction (TA100236)**

10 On January 29, 2016, McGinnis filed a petition in the Los Angeles County Superior Court
11 seeking to recall the LWOP sentence for his special-circumstance, felony murder conviction pursuant
12 to Penal Code section 1170, subdivision (d)(2). In it, McGinnis alleged that "he is remorseful and has
13 engaged in efforts of rehabilitation."²³ The court summarily denied the petition on April 15, 2016.²⁴

14 On May 5, 2019, McGinnis filed another petition to recall his LWOP sentence pursuant to Penal
15 Code section 1170, subdivision (d)(2). McGinnis alleged, again, that "he is remorseful and has
16 engaged in efforts of rehabilitation."²⁵ Noting the recent amendment to this statutory provision, the Los
17 Angeles County Superior Court granted the petition on May 21, 2019, over the prosecution's
18 objection.²⁶ The court scheduled a resentencing hearing for August 20, 2019, which was postponed
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23 ²¹ See Pen. Code, §§ 188 (malice definition revised), 189 (degree classification revised).

24 ²² Former Pen. Code, § 1170.95, renumbered as Pen. Code, § 1172.6 by Stats.2022, c. 58 (AB 200),
25 eff. Jun. 30, 2022.

26 ²³ AGRL Ex. 2 at p. 34.

27 ²⁴ AGRL Ex. 2 at pp. 22, 34-35.

28 ²⁵ AGRL Ex. 2 at pp. 39-40.

²⁶ AGRL Ex. 2 at pp. 40-41

1 while McGinnis pursued an appeal for some of his other denied petitions. The appellate litigation was
2 initially stayed and eventually dismissed at McGinnis' request on August 31, 2021.²⁷

3 Meanwhile, on December 3, 2019, McGinnis filed a petition in the Los Angeles County Superior
4 Court seeking to vacate his felony murder conviction pursuant Penal Code section 1170.95, alleging
5 that he was not the actual killer or a major participant acting with reckless indifference to human life.²⁸
6 Relatedly, McGinnis filed a habeas petition in the Los Angeles County Superior Court on July 31,
7 2020, alleging insufficient evidence supported the special-circumstance finding for his felony murder
8 conviction after the California Supreme Court's clarification of the terms "major participant" and
9 "reckless indifference" to human life in *Banks* and *Clark*.²⁹

10 **a. Habeas Relief for Special-Circumstance Only**

11 On February 1, 2021, the superior court granted McGinnis' habeas petition. The superior court
12 concluded, based upon the recent clarification in *Banks* and *Clark*, that there was insufficient evidence
13 that McGinnis was a "major participant" in the underlying robbery or acted with "reckless indifference to
14 human life."³⁰ The court reached this conclusion despite its determination that McGinnis "was
15 physically present at the scene of the killing" and had "supplied the gun to the shooter...."³¹
16 Consequently, the superior court vacated McGinnis' special-circumstance finding under Penal Code
17 section 190.2, leaving intact his underlying felony murder conviction.

18 **b. Relief under Penal Code section 1170.95**

19 Immediately thereafter, based upon the same reasoning, the superior court vacated McGinnis'
20 felony murder conviction pursuant to Penal Code section 1170.95. The court concluded that McGinnis
21 was excluded from culpability under the new and narrowed definition for felony murder as an
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24 ²⁷ Docket for *People v. Raymond Anthony McGinnis*, Second District Court of Appeal case number
25 B299357, available online at <https://appellatecases.courtinfo.ca.gov/>; 2 Cal. Code Regs., tit. 2, § 617.8
(official notice).

26 ²⁸ AGRL at pp. 4-5; AGRL Ex. 2 at p. 48.

27 ²⁹ AGRL at p. 5; AGRL Ex. 2 at p. 47.

28 ³⁰ AGRL at pp. 5-6; AGRL Ex. 2 at pp. 62-67.

³¹ AGRL Ex. 2 at pp. 65, 66.

1 accomplice.³² The court reasoned that “there was insufficient evidence that [McGinnis] was a major
2 participant acting with reckless indifference to human life.”³³ Since McGinnis was a minor at the time of
3 the underlying offenses, the court also reversed McGinnis’ related convictions for robbery and assault
4 and remanded the case to the juvenile court in accordance with Proposition 57.³⁴

5 **c. Remaining Robbery and Assault Adjudications**

6 On April 30, 2021, all four counts from case number TA100236 were refiled in juvenile court as
7 case number TJ23940.³⁵ In a hearing before the juvenile court on May 25, 2021, the prosecution
8 declined to move the case to criminal court and, consequently, McGinnis was declared a ward of the
9 juvenile court. Immediately thereafter, the juvenile court dismissed the charge for felony murder (count
10 1) in the interest of justice and found true the remaining charges for robbery (counts 3 and 4) and
11 assault (count 2) based, at least in part, upon McGinnis’ admission.³⁶ Thus, McGinnis remains
12 adjudicated of two counts for robbery and one count for assault, despite his vacated conviction for
13 felony murder. In a dispositional hearing conducted that same day, the juvenile court granted probation
14 for all three of McGinnis’ juvenile adjudications as the least restrictive alternative to custodial
15 confinement. Nonetheless, McGinnis remained in custody for his unrelated assault convictions in case
16 number BA192639.³⁷

17 **3. Reversal of Unrelated Assault Convictions (BA192639)**

18 On June 14, 2021, McGinnis petitioned to recall his sentence in case number BA192639
19 pursuant to Penal Code section 1170, subdivision (d)(1), which allows a court to resentence a
20 defendant to a lesser term in the interests of justice.³⁸ In a supplemental petition filed September 20,
21 2021, McGinnis argued, inter alia, that three of his convictions for assault by a life prisoner (i.e., counts
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23 ³² AGRL at p. 6; AGRL Ex. 2 at p. 69.

24 ³³ AGRL Ex. 2 at p. 69.

25 ³⁴ AGRL at p. 6; AGRL Ex. 2 at pp. 72-73.

26 ³⁵ AGRL at p. 6; App. at p. 9.

27 ³⁶ AGRL at p. 6; App. at pp. 9-11.

28 ³⁷ AGRL at p. 6; App. at pp. 9-11.

³⁸ AGRL at p. 6; AGRL Ex. 4 at p. 34; Pen. Code, § 1170, subd. (d)(1).

1 1, 4, and 6) were no longer valid given his new and reduced sentence for probation in juvenile case
2 number TJ23940.³⁹

3 On May 25, 2022, the superior court agreed and dismissed all three convictions for assault by a
4 life prisoner (counts 1, 4, and 6) in case number BA192639. Immediately thereafter, the superior court
5 resentenced McGinnis on the remaining six convictions (counts 2, 3, 5, 7, 8, and 9) to an aggregate
6 term of 25 years imprisonment.⁴⁰ The court initially awarded 8,299 days custody credit, but then
7 corrected itself by issuing a nunc pro tunc order on May 26, 2022.⁴¹ As corrected, McGinnis received
8 credit for 8,264 days actually served, plus 950 days for good conduct, totaling 9,214 days overall.⁴²
9 Thus, McGinnis's custody for case number BA192639 commenced on October 9, 1999, and continued
10 until his release on May 25, 2022.⁴³ Given the total amount of McGinnis' accrued credits for actual and
11 good conduct credits (i.e., 25.2 years) in case number BA192639, the parties stipulated to his
12 immediate release from prison, followed by a two-year period of parole, which presumably concluded
13 in May 2024.⁴⁴

14 **E. CalVCB Proceedings**

15 On February 28, 2024, CalVCB received McGinnis' claim for compensation as an erroneously
16 convicted offender pursuant to Penal Code section 4900, which was forwarded to the hearing officer
17 for review on March 27, 2024.⁴⁵ The claim challenged McGinnis' felony murder conviction only and
18 initially requested compensation in the amount of \$1,136,600 for an unspecified duration of
19 imprisonment that apparently totaled 8,119 days. The claim did not challenge McGinnis' related
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21 ³⁹ AGRL Ex. 4 at p. 35; see also AGRL Ex. 3 at p. 4; Pen. Code, § 4500 (assault by life prisoner).

22 ⁴⁰ AGRL at p. 6; AGRL Ex. 4 at pp. 28, 40-42.

23 ⁴¹ AGRL Ex. 4 at p. 40.

24 ⁴² AGRL Ex. 4 at pp. 40-41.

25 ⁴³ Pen. Code, § 2900.5 ("Credit shall be given only once for a single period of custody attributable to
26 multiple offenses...."). This date was determined by subtracting 8,264 days from the sentencing hearing
27 on May 25, 2022, using the online "Date Calculator" located at [https://www.timeanddate.com/date/
dateadded.html](https://www.timeanddate.com/date/dateadded.html).

27 ⁴⁴ AGRL Ex. 4 at p. 40.

28 ⁴⁵ App. at pp. 1-19.

1 convictions for robbery or assault or his unrelated convictions in case number BA192639. McGinnis
2 mailed a duplicate copy of the claim on April 1, 2024.⁴⁶

3 By letter dated April 3, 2024, the hearing officer notified McGinnis that his claim appeared to be
4 deficient due to omitted information and documentation to confirm his conviction, sentence, and
5 release from prison for the challenged offense, as well as his failure to allege factual innocence of
6 felony murder under penalty of perjury.⁴⁷ The letter further explained that relief is not available under
7 Penal Code section 4900 merely because a conviction was vacated due to a change in the legal
8 definition of the underlying crime; instead, relief is available only upon demonstration that the claimant
9 did not commit the crime as it was defined at the time it occurred.⁴⁸

10 McGinnis timely responded on May 3, 2024.⁴⁹ In it, McGinnis expressly declared that he did
11 not commit the crime of felony murder as it was defined when the killing occurred in 1998. Specifically,
12 he alleged that he was not present when the murder occurred and only aided the killer's commission of
13 the robbery after the murder occurred.⁵⁰ However, he failed to attach any additional documentation.

14 By letter dated June 5, 2024, the hearing officer took official notice of online docket information
15 for cases TA100236 and BA192639 and requested McGinnis' clarification concerning the amount of
16 compensation requested.⁵¹ McGinnis replied by letter received July 15, 2024, which summarily
17 affirmed his initial request for compensation in the amount of \$1,136,660 for 8,119 days.⁵²

18 On July 19, 2024, the hearing officer notified the parties that McGinnis had cured the identified
19 defects and deemed his claim filed pursuant to subdivision (a) of Penal Code section 4900.⁵³ The
20 hearing officer requested a response from the Attorney General within 60 days. Following two
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22 ⁴⁶ Duplicate App. at pp. 1-19.

23 ⁴⁷ CalVCB Deficiency Letter, dated Apr. 3, 2024.

24 ⁴⁸ *Ibid.*; Cal. Code Regs., tit. 2, § 642, subd. (a)(3).

25 ⁴⁹ Response, dated May 2, 2024, at pp. 1-7.

26 ⁵⁰ Response, at p. 6.

27 ⁵¹ CalVCB Clarification Letter, dated June 5, 2024.

28 ⁵² Clarification Reply, dated July 7, 2024.

⁵³ CalVCB Request for Attorney General Response, dated July 19, 2024, at pp. 1-2.

1 extensions for demonstrated good cause, the Attorney General timely submitted a response letter on
2 January 16, 2025, along with five exhibits spanning 163 pages. The Attorney General maintained that
3 McGinnis had failed to prove his innocence of felony murder by a preponderance of evidence and,
4 therefore, his claim must be denied. The Attorney General alternatively maintained that any
5 compensation must be denied because McGinnis had failed to prove any injury due to his overlapping
6 sentences for other convictions.⁵⁴

7 On January 21, 2025, the hearing officer confirmed receipt of the Attorney General's response
8 and requested the parties confer to determine whether McGinnis wished to proceed with a hearing
9 and, if so, the preferred timeframe and means of appearance. The hearing officer noted that a hearing
10 likely could not be held before April 2025. The hearing officer explained that the parties' optional pre-
11 hearing brief addressing the merits of the claim would be due approximately one month before the
12 hearing, while the parties' mandatory pre-hearing statement that identifies all witnesses to be
13 presented at the hearing would be due approximately two weeks before the hearing.⁵⁵

14 On February 4, 2025, the Attorney General notified CalVCB that McGinnis had failed to
15 respond to their attempt to meet and confer and, therefore, requested a hearing in June or thereafter
16 unless waived by McGinnis. The Attorney General added that they would appear remotely by
17 videoconference. On February 10, 2025, the hearing officer proposed scheduling the hearing by
18 videoconference on either July 30 or 31, 2025, requested confirmation of the parties' availability, and
19 noted that McGinnis may affirmatively waive the hearing and submit, instead, an optional reply brief to
20 the Attorney General's response.⁵⁶ The Attorney General replied on February 11, 2025, confirming
21 availability for the proposed hearing dates. However, McGinnis did not respond.

22 Instead, on or about February 17, 2025, McGinnis submitted a "Motion to Respond," which
23 included multiple exhibits, including a partial police report and partial reporter's transcript. The motion
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25 ⁵⁴ AGRL at pp. 1-14.

26 ⁵⁵ CalVCB email to parties, sent Jan. 21, 2025, with courtesy hardcopy sent by regular mail to
27 McGinnis; see also Cal. Code Regs., tit. 2, § 643, subds. (a) & (b).

28 ⁵⁶ CalVCB email to parties, sent Feb. 10, 2025, with courtesy hardcopy sent by regular mail to
McGinnis.

1 argued that McGinnis was innocent and entitled to compensation under Penal Code section 4900.⁵⁷
2 But contrary to his initial request, McGinnis insisted that he was entitled to compensation in the amount
3 of \$1,161,860 for his erroneous felony murder conviction in case number TA100236 based on the
4 superior court's order granting him custody credit for 8,299 days in case number BA192639.⁵⁸ The
5 motion did not address whether or not McGinnis wished to waive a hearing or appear for a hearing
6 either in person or by videoconference.

7 By email to the parties sent February 27, 2025, the hearing officer attached a copy of McGinnis'
8 "Motion to Respond," as well as a copy of the regulations governing Penal Code section 4900 claims.
9 The email noted McGinnis' lack of a response on the issue of a hearing and, therefore, set the hearing
10 via videoconference for July 31, 2025.⁵⁹

11 On April 1, 2025, the Attorney General asked to reset the hearing to either the week before or
12 after as a result of a scheduling conflict. The hearing officer granted the unopposed request on April 7,
13 2024. The hearing officer rescheduled the hearing for July 23, 2025, with the parties' optional pre-
14 hearing briefs due June 25, 2025, and the parties' mandatory pre-hearing statements due July 9,
15 2025.⁶⁰

16 Both parties declined to submit an optional pre-hearing brief and only the Attorney General
17 submitted the mandatory pre-hearing statement, which was timely received on July 9, 2025. One day
18 earlier on July 8, 2025, the hearing officer emailed a Zoom link to both parties in order to appear
19 remotely by videoconference for the upcoming hearing.⁶¹ The email included a reminder of the due
20 date to submit the mandatory pre-hearing statement and further noted recent updates to the
21 regulations governing Penal Code section 4900 claims.

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24 ⁵⁷ Motion to Respond (MTR), signed Feb. 17, 2025, sent via US Mail and received on Feb. 26, 2025.

25 ⁵⁸ MTR at pp. 36-37.

26 ⁵⁹ CalVCB email to parties, sent Feb. 27, 2025, with attachments and courtesy hardcopy sent by
27 regular mail to McGinnis.

28 ⁶⁰ CalVCB email to parties, sent Apr. 7, 2025, with courtesy hardcopy sent by regular mail to McGinnis;
Cal. Code Regs., tit. 2, § 643, subds. (a) & (b).

⁶¹ CalVCB email to parties, sent Jul. 8, 2025, with courtesy hardcopy sent by regular mail to McGinnis.

1 The hearing ensued on July 23, 2025. McGinnis and the Attorney General's representatives
2 appeared remotely. Despite his failure to submit a pre-hearing statement, the hearing officer allowed
3 McGinnis to testify over the Attorney General's objection as the sole witness in support of his claim.
4 The record closed at the conclusion of the hearing, as neither party requested an opportunity to
5 present additional evidence or argument.⁶²

6 III. Factual Summary

7 A. Murder, Robbery, and Assault (TA100236)

8 Around 10:00 p.m. on the evening of March 4, 1998, Yeon Kim (Mr. Kim) was fatally shot in the
9 head. Immediately before the shooting, Mr. Kim was in the process of locking the front door of the
10 liquor store that he and his wife (Mrs. Kim) managed in Compton.⁶³ Their stock clerk Rodney M.
11 (Rodney) was standing next to Mr. Kim. Mrs. Kim exited the store and was walking toward the store's
12 parking lot while carrying two cash bags. One of those bags was blue and contained approximately
13 \$3,000.⁶⁴

14 As Rodney helped Mr. Kim padlock the front door, a gunman approached from the side of the
15 store and fired three shots toward them. Two struck Mr. Kim in the head, killing him instantly, and the
16 third struck Rodney in the leg. Then the shooter pointed the gun at Mrs. Kim, who ducked between her
17 car and Mr. Kim's truck. As the shooter chased Mrs. Kim, McGinnis "emerged from the street"
18 unarmed.⁶⁵ Together, McGinnis and the shooter struggled with Mrs. Kim. When Mrs. Kim refused to
19 relinquish the cash bags, both McGinnis and the shooter "dragged her to the curb, kicking and hitting
20 her."⁶⁶ The shooter hit Mrs. Kim in the head with the gun, badly cutting her, and she finally released
21 the bags. McGinnis grabbed the blue bag, and then he fled across the street with the shooter.⁶⁷

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23 ⁶² CalVCB PC 4900 Hearing Zoom Recording (Hearing), MP4 video file, at 00:01:30-1:01:49.

24 ⁶³ In an effort to protect her privacy, the surviving victim is referred to by last name only.

25 ⁶⁴ AGRL Ex. 1 at pp. 2-3.

26 ⁶⁵ AGRL Ex. 1 at p. 3; see also MTR at pp. 13, 15-21.

27 ⁶⁶ AGRL Ex. 1 at p. 3; MTR at p. 21 ["so they drug her from the grass of the store to the curb of the
street. She got hit. She got kicked.").

28 ⁶⁷ AGRL Ex. 1 at pp. 3-4.

1 When police responded, Rodney initially stated he was unable to identify either assailant
2 because the crime scene was too dark. A few days later, after thinking about the crimes and hearing
3 talk in the neighborhood, Rodney identified McGinnis as the second, unarmed assailant. Mrs. Kim
4 knew McGinnis from his daily visits to the store and considered him “like family.”⁶⁸ However, Mrs. Kim
5 did not see the assailants’ faces and was unable to identify either of them.⁶⁹

6 **1. McGinnis’ Confession**

7 After learning that police were looking for him, McGinnis went to the police station with his
8 father. McGinnis initially denied any involvement in the crimes. But after detectives placed him under
9 oath, McGinnis admitted that he was the second assailant and had robbed Mrs. Kim of her “blue bag”
10 containing money.⁷⁰ According to McGinnis, he and another gang member called “Wolfie” wanted
11 money, and “Wolfie” proposed they rob the Kim’s liquor store. “McGinnis gave Wolfie a borrowed .9-
12 millimeter gun before they went to commit the robbery.”⁷¹ Next, “McGinnis and Wolfie walked to the
13 liquor store.”⁷² When they arrived, Rodney was standing outside of the store, but the Kims were still
14 inside. Once Mrs. Kim walked outside with the cash bag, Wolfie “came from the side” and shot Mr. Kim
15 as he was locking the door.⁷³ Then Wolfie hit Mrs. Kim in the head with the gun. “McGinnis joined in
16 the attack, running to Mrs. Kim and pulling her bag away from her.”⁷⁴ Afterward, McGinnis and Wolfie
17 “went to McGinnis’ grandmother’s house, where McGinnis took the money and discarded the bag.”⁷⁵
18 These statements by McGinnis were recorded by videotape and played for the jury at trial.⁷⁶

21 ⁶⁸ AGRL Ex. 1 at p. 2.

22 ⁶⁹ AGRL Ex. 1 at p. 3.

23 ⁷⁰ AGRL Ex. 1 at p. 4.

24 ⁷¹ AGRL Ex. 1 at p. 4.

25 ⁷² AGRL Ex. 1 at p. 4.

26 ⁷³ AGRL Ex. 1 at p. 4.

27 ⁷⁴ AGRL Ex. 1 at p. 4.

28 ⁷⁵ AGRL Ex. 1 at pp. 4-5.

⁷⁶ AGRL Ex. 1 at p. 5.

2. McGinnis' Trial Testimony

At trial, McGinnis testified under oath and denied any involvement in the crimes. McGinnis further denied knowing Wolfie or anything about the crimes. McGinnis claimed that he had falsely confessed after being pressured by police. According to McGinnis, he "was unhappy about lying on the videotape, because he 'was lying on people ... just to get myself out. But people did the same thing, so, you know, I was going to do the same thing.'" ⁷⁷

The jury necessarily rejected McGinnis' account when finding him guilty as charged of special-circumstance felony murder, robbery, and assault. Instead, the jury implicitly found McGinnis' confession to be more credible, which was corroborated by Rodney's eyewitness account.

3. Habeas Decision

Decades later, when granting habeas relief to vacate McGinnis' special-circumstance finding, the superior court made several observations about McGinnis' involvement in the underlying felony murder. Specifically, McGinnis, who "was 16 years old," "supplied the gun to the shooter," "walked to the liquor store" with the shooter, and "was physically present at the scene of the killing...." ⁷⁸ Immediately after the killing, when "the shooter attempted to steal the cash bag from Mrs. Kim," McGinnis "assaulted Mrs. Kim and assisted the shooter in taking the bag." ⁷⁹ "After they obtained the bag of cash, the shooter and [McGinnis] ran to his grandmother's house to divvy up the cash." ⁸⁰ Nonetheless, the court found "there was no direct evidence of an 'agreed-upon' plan" to commit murder," and McGinnis "had no opportunity to contribute to or prevent the actual killing." ⁸¹

B. Unrelated Assaults (BA192639)

Three days after being sentenced to LWOP for felony murder in case number TA100236, McGinnis violently assaulted four detention officers in juvenile hall on September 5, 1999. The assaults

⁷⁷ AGRL Ex. 1 at p. 5.

⁷⁸ AGRL Ex. 2 at pp. 65-66.

⁷⁹ AGRL Ex. 2 at p. 66.

⁸⁰ AGRL Ex. 2 at p. 66.

⁸¹ AGRL Ex. 2 at p. 64.

1 started around 7:30 p.m., when McGinnis was standing in line inside the day room with other inmates,
2 awaiting an escort back to his cell. McGinnis started to walk out the door toward the hallway when
3 Officer H. told McGinnis to wait his turn. McGinnis assaulted Officer H., who only recalled waking up in
4 the hospital with a cervical collar.⁸²

5 McGinnis next ran into the control room, where he encountered Officer S. McGinnis punched
6 Officer S., knocking him to the floor, and continued to hit him with his fists and then a chair.⁸³

7 Officers J. and M. heard the commotion and ran to the control room, where they attempted to
8 subdue McGinnis. Officers J. and M. used their pepper spray against McGinnis, but he managed to
9 grab Officer M.'s canister and sprayed both officers instead. Officers M. and J. ran out of the control
10 room, where they encountered Officer H. still lying unconscious in the hallway.⁸⁴

11 McGinnis followed Officers M. and J. into the hallway. He stopped to remove some keys from
12 Officer H.'s pocket. Officer J. struggled with McGinnis over the keys, finally wrestling them away from
13 McGinnis after using her pepper spray. McGinnis ran to the restroom to wash his eyes, where he was
14 finally subdued by Officer S. All four officers (i.e., Officers H., S., J. and M.) sustained significant
15 injuries as a result of this altercation.⁸⁵

16 McGinnis was tried by a jury and convicted of nine counts of assault. Specifically, the jury found
17 McGinnis guilty of three counts of assault by a LWOP inmate against Officers H., S., and M. (counts 1,
18 4, and 6), three counts of assault against correctional Officers H., S., and M. (counts 2, 5, and 7), one
19 count of battery causing serious bodily injury against Officer H. (count 3), and two counts of using tear
20 gas against Officers M. and J. (counts 8 and 9). Three counts were reversed in 2022 after McGinnis'
21 LWOP sentence was vacated (counts 1, 4, and 6), leaving the remaining six counts intact (counts 2, 3,
22 5, 7, 8 and 9).

23
24
25 ⁸² AGRL Ex. 3 at p. 1. The victims are referred to by the initial of their last name only in an effort to
26 protect their privacy.

27 ⁸³ AGRL Ex. 3 at pp. 1-2.

28 ⁸⁴ AGRL Ex. 3 at p. 2.

⁸⁵ AGRL Ex. 3 at p. 2.

1 **D. CalVCB Evidence**

2 In this administrative proceeding, McGinnis presented various documents and his own
3 testimony in an effort to demonstrate his innocence by a preponderance of the evidence. Each is
4 summarized below.

5 **1. Documentary Evidence**

6 McGinnis submitted his own written declaration to support his claim. In it, he denies being
7 present at the crime scene during the time of the murder.⁸⁶ McGinnis also submitted excerpts from
8 several documents, including (1) a police report wherein Rodney described seeing the second
9 assailant appear “suddenly out from no where [sic]” after all three shots were fired, (2) Rodney’s
10 testimony in which he described the “second guy come from off the street” just after the gunman
11 “started to chase after” Mrs. Kim, and (3) the factual summary from the appellate court’s decision,
12 which noted that “an unarmed assailant emerged from the street” just as the shooter commenced
13 chasing Mrs. Kim.⁸⁷ In addition, McGinnis submitted an excerpt of the superior court’s decision to grant
14 relief under Penal Code section 1170.95, emphasizing the court’s determination of insufficient
15 evidence that McGinnis was a major participant or acted with reckless indifference.⁸⁸ Finally,
16 McGinnis’s response argues that he and the shooter were not “jointly engaged at the time of the killing”
17 in the commission of the robbery as required for felony murder accomplice liability under *People v.*
18 *Pulido* (1997) 15 Cal.4th 713, 729, which concluded that felony murder liability does “does not apply to
19 a person who aids and abets the perpetrator of the crime only after the killing has been completed.”⁸⁹

20 **2. Hearing Testimony**

21 At the hearing, McGinnis testified as the sole witness in support of his claim.⁹⁰ McGinnis
22 admitted to robbing Mrs. Kim but insisted that he “was not a part of the robbery” when Mr. Kim was
23

24
25 ⁸⁶ Response at p. 2.

26 ⁸⁷ MTR at pp. 13, 21, 26.

27 ⁸⁸ MTR at pp. 28-29, 32-33.

28 ⁸⁹ MTR at pp. 32, 34-36; *People v. Pulido, supra*, 15 Cal.4th at p. 726.

⁹⁰ CalVCB Hearing Zoom Recording, MP4 video file (Hearing), at 1:30-01:01:49.

1 murdered.⁹¹ McGinnis claimed that he was not present at the scene when the murder occurred,
2 despite the superior court's contrary determination when granting habeas relief.⁹² McGinnis
3 acknowledged walking toward the liquor store with the shooter, whom he called "Wolfie," before the
4 murder occurred.⁹³ But according to McGinnis, he was standing on the porch of a home where Rodney
5 lived, approximately 100 feet away from the liquor store, when he heard the fatal shots fired.⁹⁴ Then
6 McGinnis supposedly ran across the street to the liquor store, where he saw Wolfie hit Mrs. Kim's head
7 with the gun while trying to take her money bag.⁹⁵ McGinnis admitted that he grabbed the money bag
8 from Mrs. Kim and then fled the scene with Wolfie to his grandmother's house, where they may have
9 split the money.⁹⁶ McGinnis denied seeing Mr. Kim lying on the ground with a bullet wound in his
10 head.⁹⁷ On cross-examination, McGinnis admitted telling police that Wolfie had proposed robbing the
11 liquor store about two weeks earlier and that he (McGinnis) had given Wolfie a borrowed handgun.⁹⁸

12 Throughout the hearing, McGinnis also alleged various legal errors arose during the criminal
13 proceeding, including ineffective assistance of counsel and prosecutorial misconduct. For example,
14 when the hearing officer noted several portions of the superior court's habeas decision that appeared
15 to amount to a binding determination that McGinnis was present at the scene, McGinnis claimed that
16 the district attorney had fabricated evidence.⁹⁹ McGinnis also asserted that a legal brief filed by his
17 defense attorney in the superior court confirmed that he was not present at the scene, but after the
18 hearing officer noted its absence in the administrative record, McGinnis declined to submit a copy.¹⁰⁰

21 ⁹¹ Hearing at 15:45-15:54, 27:43-27:55.

22 ⁹² Hearing at 13:18-13:28, 18:14-18:29, 25:51-26:18.

23 ⁹³ Hearing at 23:66-24:55.

24 ⁹⁴ Hearing at 33:48-34:53.

25 ⁹⁵ Hearing at 26:56-27:48, 27:58-28:30

26 ⁹⁶ Hearing at 27:48-29:41, 26:56-27:01, 28:21-28:57.

27 ⁹⁷ Hearing at 26:12-26:51.

28 ⁹⁸ Hearing at 24:17-24:19.

⁹⁹ Hearing at 35:00-36:06.

¹⁰⁰ Hearing at 36:26-38:45.

IV. Determination of Issues

Penal Code section 4900 allows a person, who has been erroneously convicted and imprisoned for a felony offense that they did not commit, to submit a claim for compensation to CalVCB for the injury sustained. Under subdivision (a) of section 4900, claimants bear the burden to prove by a preponderance that (1) the crime with which they were convicted either did not occur or was not committed by them and (2) they suffered injury as a result of their erroneous conviction.¹⁰¹ Pursuant to Penal Code section 4901, the claim must be submitted within ten years after release from prison but not until 60 days after the reversal of a conviction.¹⁰²

Once such a claim is timely received and filed, Penal Code section 4902 requires the Attorney General to submit a written response.¹⁰³ Thereafter, under Penal Code section 4903, an informal hearing before a hearing officer ensues, at which the claimant and Attorney General may present evidence concerning innocence and injury.¹⁰⁴ Upon the requisite showing, CalVCB shall approve payment pursuant to Penal Code section 4904 for the purpose of indemnifying the claimant for the injury sustained if sufficient funds are available, upon appropriation by the Legislature, at a rate of \$140 per day for their erroneous imprisonment.¹⁰⁵

In limited circumstances, a different and expediated procedure may apply to claims filed by claimants whose convictions were reversed under specified circumstances. First, under Penal Code section 1485.55 or 851.865, if the claimant received a court finding of factual innocence, then CalVCB must approve the claim, without a hearing and within 90 days, for the demonstrated injury.¹⁰⁶ A finding of factual innocence “must be made by at least a preponderance of the evidence and must reflect a

¹⁰¹ Pen. Code, §§ 4900, subd. (a); 4903, subd. (a).

¹⁰² Pen. Code, § 4901, subds. (a), (c).

¹⁰³ Pen. Code, § 4902, subd. (a); Cal Code of Regs., tit. 2, § 640.

¹⁰⁴ Pen. Code, § 4903, subd. (a); Cal Code of Regs., tit. 2, § 644.

¹⁰⁵ Pen. Code, § 4904, as amended by Stats.2022, c. 58 (A.B.200), § 19, eff. June 30, 2022.

¹⁰⁶ Pen. Code, §§ 851.865; 1485.55, subds. (a), (b), and (e), 4902, subd. (a); see also Cal. Code of Regs., tit. 2, § 640, subds. (e)(1)-(2).

determination that the person charged and convicted of an offense did not commit the crime.”¹⁰⁷ Second, under subdivision (b) of Penal Code section 4900, if the claimant’s conviction was vacated by a grant of habeas relief or pursuant to Penal Code section 1473.6 or 1473.7, subdivision (a)(2), and the charges were dismissed or acquitted on remand, and the Attorney General declined to object with clear and convincing proof of guilt, then CalVCB must approve the claim, without a hearing and within 90 days, for the demonstrated injury.¹⁰⁸ Third, under subdivision (d) of section 1485.55, if a court granted a motion for administrative relief based upon a conviction that was vacated by a grant of habeas relief or pursuant to Penal Code section 1473.6 or 1473.7, subdivision (a)(2), the charges were dismissed or acquitted on remand, and the district attorney failed to timely object with clear and convincing proof of the claimant’s guilt, then CalVCB must approve the claim, without a hearing and within 90 days, for the demonstrated injury.¹⁰⁹ Unless one of these statutory exceptions applies, then the claimant bears the burden to prove innocence and injury by a preponderance of the evidence under subdivision (a) of Penal Code section 4900.

When determining whether the claimant has satisfied their burden of proof, the Board may consider the “claimant’s denial of the commission of the crime; reversal of the judgment of conviction; acquittal of claimant on retrial; or the decision of the prosecuting authority not to retry claimant of the crime....”¹¹⁰ The Board may also “consider as substantive evidence the prior testimony of witnesses [that] claimant had an opportunity to cross-examine, and evidence admitted in prior proceedings for which claimant had an opportunity to object.”¹¹¹ Ultimately, the Board may consider “any other information that it deems relevant to the issue before it,” even if inadmissible under the traditional rules

¹⁰⁷ *Larsen v. CalVCB* (2021) 64 Cal.App.5th 112, 129 (interpreting Pen. Code, § 1485.55, subd. (a)).

¹⁰⁸ Pen. Code, §§ 4900, subd. (b), 4902, subd. (d); 4904.

¹⁰⁹ Pen. Code, § 1485.55, subd. (e). While a court order under subdivision (d) of section 1485.55 does not constitute a finding of factual innocence, it nevertheless requires expedited approval of a filed claim.

¹¹⁰ Cal. Code Regs., tit. 2, § 641, subd. (a).

¹¹¹ Cal. Code Regs., tit. 2, § 641, subd. (b).

1 of evidence, so long as “it is the sort of evidence on which reasonable persons are accustomed to rely
2 in the conduct of serious affairs.”¹¹²

3 CalVCB’s broad authority to consider all relevant evidence may be limited by various court
4 decisions during the criminal proceedings. By statute, CalVCB is bound by “factual findings” and
5 “credibility determinations” rendered by a court during proceedings on a claimant’s petition for habeas
6 corpus, motion to vacate judgment pursuant to Penal Code section 1473.6 or 1473.7, subdivision
7 (a)(2), or an application for a certificate of factual innocence.¹¹³ Nonetheless, CalVCB is not bound by
8 a court’s “summary of, observations about, and characterizations of the trial record when the [court] is
9 *not finding facts* after entertaining new evidence....”¹¹⁴ Finally, a claim under Penal Code section 4900
10 may not be denied solely because the claimant failed to obtain a court finding of factual innocence.¹¹⁵

11 **A. Penal Code Section 4900, subdivision (a), Applies**

12 McGinnis’ claim is governed by subdivision (a) of Penal Code section 4900. Although McGinnis
13 received habeas relief, it solely resulted in vacating the special-circumstance finding, which triggered
14 an enhanced sentence of LWOP, instead of the base sentence of 25 years to life for the underlying
15 felony murder conviction.¹¹⁶ Significantly, this grant of habeas relief did not have any impact upon
16 McGinnis’ underlying conviction for felony murder. Instead, this felony murder conviction was reversed
17 pursuant to Penal Code section 1170.95 as a result of legislative changes defining accomplice liability.
18 Because the reversal of McGinnis’ challenged conviction was not based upon a grant of habeas relief
19 or pursuant to Penal Code section 1473.6 or 1473.7, subdivision (a)(2), the burden-shifting provision in
20 subdivision (b) of Penal Code section 4900 does not apply to his claim.¹¹⁷ Similarly, the mandated

22 ¹¹² Cal. Code Regs., tit. 2, § 641, subds. (c), (d), and (f).

23 ¹¹³ Pen. Code, §§ 1485.5, subd. (c); 4903, subd. (c).

24 ¹¹⁴ *Gonzales v. CalVCB* (2023) 98 Cal.App.5th 427, 447, italics in original.

25 ¹¹⁵ Pen. Code, § 1485.55, subd. (d); Cal. Code of Regs., tit. 2, § 645, subd. (f).

26 ¹¹⁶ Pen. Code, § 190.2, subd. (a)(17).

27 ¹¹⁷ Pen. Code, § 4900, subds. (a) & (b) (allowing claim by any person “convicted of any crime against
28 the state amounting to a felony” and shifting the burden of proof when a “court has granted a writ of
habeas or ... motion to vacate pursuant to Section 1473.6 or paragraph (2) of subdivision (a) of
Section 1473.7”); see also Pen. Code, § 4902, subd. (d) (confirming that section 4900, subdivision (b)

provisions of Penal Code sections 851.865 and 1485.55 do not apply because McGinnis did not seek a court finding of factual innocence or an order for mandated administrative relief under subdivision (d) of section 1485.55. Accordingly, McGinnis' claim does not fall within any of the limited statutory exceptions of subdivision (a) of Penal Code section 4900. Under this subdivision, McGinnis therefore bears the burden to demonstrate his innocence by a preponderance of the evidence.

B. Binding Determinations

When considering whether McGinnis has satisfied his burden of proof, CalVCB is bound by any factual findings or credibility determinations rendered by a court when considering new evidence for a petition for writ of habeas corpus, motion to vacate pursuant to Penal Code section 1473.6 or 1473.7, subdivision (a)(2), or an application for a certificate of factual innocence.¹¹⁸ This enumerated list excludes an appellate court's opinion rendered on direct appeal. Thus, the appellate court's opinion that originally affirmed McGinnis' challenged conviction is not binding in this administrative proceeding, although it may be considered as relevant evidence.¹¹⁹

By comparison, the superior court's decision granting habeas relief to vacate McGinnis' special-circumstance finding is binding to the extent it reflects a factual finding or credibility determination rendered after consideration of new evidence.¹²⁰ Under this standard, it appears the superior court's determination that McGinnis was present at the scene when the murder occurred may be binding, despite McGinnis' contrary testimony during the administrative hearing. However, from the limited administrative record, it is unclear whether this determination was based upon new evidence, which would be binding upon CalVCB, or merely a summary of the trial record, which would not.¹²¹ In

claims, "the Attorney General shall bear the burden of proving by clear and convincing evidence that the claimant committed the acts constituting the offense").

¹¹⁸ Pen. Code, §§ 1485.5, subd. (c); 4903, subd. (c); *Gonzales v. CalVCB* (2023) 98 Cal.App.5th 427, 447 (explaining that a binding finding is "made after the court has entertained new evidence that the court has observed firsthand during the habeas proceeding" and excludes a mere summary by the habeas court of the trial record).

¹¹⁹ Cal. Code Regs., tit. 2, § 641, subd. (f).

¹²⁰ Pen. Code, §§ 1485.5, subd. (c); 4903, subd. (c); *Gonzales, supra*, 98 Cal.App.5th at p. 447.

¹²¹ *Ibid.*

1 an abundance of caution, this hearing officer assumes the habeas decision is not binding but may
2 nevertheless be considered as relevant evidence.¹²²

3 Overall, no binding court finding compels or precludes CalVCB's approval of McGinnis' claim.
4 CalVCB therefore remains free to determine the likelihood of McGinnis' professed innocence after
5 careful consideration of all relevant evidence presented in this administrative proceeding.¹²³ No
6 presumption is made by the absence of a finding of factual innocence.¹²⁴

7 **C. Insufficient Proof of Innocence**

8 McGinnis fails to satisfy his burden to demonstrate his innocence of felony murder by a
9 preponderance of the evidence. On balance, the weight of inculpatory evidence far exceeds the
10 proffered exculpatory evidence. As detailed below, the inculpatory evidence includes the jury's verdict
11 finding McGinnis guilty of first-degree felony murder with a special-circumstance, the appellate court's
12 affirmance of this conviction on direct appeal, and McGinnis' own admissions. By comparison, the
13 exculpatory evidence largely consists of McGinnis' inconsistent and implausible testimony and a
14 mistaken understanding of the law. Accordingly, McGinnis' claim must be denied due to insufficient
15 proof of innocence.

16 **1. Law of Accomplice Liability for Felony murder in 1998**

17 In 1998, at the time of Mr. Kim's death, any killing that occurred during the commission of a
18 robbery amounted to first-degree felony murder, regardless of whether the killing was intentional or
19 accidental.¹²⁵ The same level of culpability applied regardless of whether the defendant was the killer
20 or merely an accomplice to the robbery when the murder occurred.¹²⁶ So long as the accomplice aided
21 the robbery, the accomplice was guilty of first-degree felony murder.¹²⁷ Of course, the accomplice must

23 ¹²² Cal. Code Regs., tit. 2, § 641, subd. (f).

24 ¹²³ Pen. Code, §§ 4903, subds. (a) & (c); 4904.

25 ¹²⁴ Pen Code, § 1485.55, subd. (d).

26 ¹²⁵ Former Pen. Code, § 189 (1999).

27 ¹²⁶ *Ibid.*; *Strong, supra*, 13 Cal.5th at p. 704 (describing felony murder doctrine before SB 1437 in 2017).

28 ¹²⁷ Pen. Code, § 190, subd. (a).

1 have already commenced aiding the robbery by the time of the killing occurred.¹²⁸ Nonetheless, an
2 accomplice may aid the robbery, even if not physically present during its commission, by encouraging
3 or instigating the perpetrator's commission of that crime.¹²⁹

4 A conviction for first-degree, felony murder is punishable by a mandatory base sentence of 25
5 years to life imprisonment, regardless of whether the defendant was the killer or accomplice.¹³⁰ An
6 accomplice's sentence may be enhanced to LWOP or death by a special-circumstance finding that the
7 accomplice was a "major participant" in the robbery and acted with "reckless indifference to human
8 life."¹³¹ These undefined terms were subject to broad interpretation in 1998, long before the California
9 Supreme Court articulated multiple factors to clarify the meaning of each when deciding *Banks* and
10 *Clark* in 2015 and 2016, respectively.¹³²

11 **2. Inculcating Evidence**

12 Under the law governing accomplice liability for felony murder in 1998, overwhelming evidence
13 incriminates McGinnis. For starters, a jury found McGinnis guilty after a criminal trial, at which live
14 witnesses testified, physical evidence was presented, and the formal rules of evidence applied. The
15 live witnesses included McGinnis himself, whose credibility was necessarily rejected by the jury after
16 he denied any involvement or knowledge of the shooter. No court has ever found the jury's verdict to
17 be in error or the trial itself unfair. Although the jury's verdict was eventually reversed, this reversal was
18 solely due to subsequent changes in the law defining accomplice liability. Under these circumstances,
19 the jury's guilty verdict carries significant incriminating weight in this informal administrative
20 proceeding.

21 Similarly, the appellate court's unanimous decision affirming McGinnis' conviction is equally
22 incriminating. The decision includes a detailed factual summary, based upon the court's careful review
23

24 ¹²⁸ *People v. Pulido, supra*, 15 Cal.4th at p. 726.

25 ¹²⁹ Pen. Code, § 31; CALCRIM Nos. 400, 401 (aider and abettor principles).

26 ¹³⁰ Pen. Code, § 190, subd. (a).

27 ¹³¹ Pen. Code, § 190.2, subd. (a)(17).

28 ¹³² *Strong, supra*, 13 Cal.5th at pp. 705-707 (describing impact of *Banks, supra*, 61 Cal.4th 788 and
Clark, supra, 63 Cal.4th 522).

1 of the entire trial record, that documents McGinnis' guilt for felony murder with a special-circumstance
2 finding. This summary, alone, heavily inculpatates McGinnis.¹³³

3 Even more inculpatating, the appellate court's decision expressly affirmed McGinnis' special-
4 circumstance finding for felony murder under then-applicable law. As the appellate court concluded,
5 the trial evidence "overwhelmingly suggested McGinnis acted as a major participant in the robbery and
6 with reckless indifference to human life."¹³⁴ Specifically, McGinnis "helped plan the crime, provided the
7 gun, and personally attacked Mrs. Kim and pulled the cash bag from her."¹³⁵ In addition, McGinnis
8 "was present at the scene and actively involved in the robbery."¹³⁶ "When Wolfie shot Mr. Kim, an
9 unarmed, innocent victim, McGinnis did not attempt to assist Mr. Kim or call for help. Instead, he
10 continued with the preplanned robbery, brutally attacking Mrs. Kim as her husband lay bleeding on the
11 ground."¹³⁷ Afterwards, McGinnis "fled with his co-perpetrator and the cash."¹³⁸ Because "McGinnis
12 knew the Kims well," he "would certainly have feared being recognized by Mr. or Mrs. Kim, thus
13 increasing the chance of violence had he been seen."¹³⁹ The appellate court characterized McGinnis'
14 "conduct in committing the crimes at issue [as] egregious. His motive was greed alone. The crimes
15 were coldly calculated and violent."¹⁴⁰ Overall, the appellate court's decision constitutes compelling
16 evidence of McGinnis' guilt for felony murder with a special-circumstance finding under the law in
17 effect at the time of Mr. Kim's death.

18 In addition, McGinnis' own admissions to police are incriminating. As summarized by the
19 appellate court and acknowledged by McGinnis during the administrative hearing, McGinnis admitted
20 to planning the robbery with Wolfie, providing the gun to Wolfie, walking with Wolfie to the liquor store
21

22 ¹³³ Cal. Code Regs., tit. 2, § 641, subds. (c) & (f).

23 ¹³⁴ AGRL Ex. 1 at p. 16.

24 ¹³⁵ AGRL Ex. 1 at p. 10.

25 ¹³⁶ AGRL Ex. 1 at p. 10.

26 ¹³⁷ AGRL Ex. 1 at p. 22.

27 ¹³⁸ AGRL Ex. 1 at p. 22.

28 ¹³⁹ AGRL Ex. 1 at p. 10.

¹⁴⁰ AGRL Ex. 1 at p. 22.

1 before the shooting, physically assaulting Mrs. Kim immediately after the shooting, robbing Mrs. Kim of
2 her cash bag, and then fleeing the liquor store with Wolfie to his grandmother's home. Based upon
3 these admissions, it may be readily inferred that McGinnis commenced aiding the commission of the
4 robbery before Mr. Kim's fatal shooting, which, in turn, renders McGinnis guilty of felony murder under
5 the law in effect at that time.

6 In sum, the administrative record contains overwhelming proof of McGinnis' guilt for felony
7 murder with a special-circumstance finding.

8 **3. Proffered Exculpating Evidence**

9 McGinnis' proffered exculpating evidence pales in comparison. He largely relies upon his own
10 proclamations of innocence and a misunderstanding of the applicable law to support his claim. But as
11 explained below, none of the submitted evidence, whether considered separately or as a whole,
12 demonstrates McGinnis' innocence by a preponderance.

13 In his declaration and testimony during the administrative hearing, McGinnis insisted that he
14 was innocent of Mr. Kim's felony murder because he was not present at the liquor store when the fatal
15 shots were fired. According to McGinnis, he only started to aid the robbery after Wolfie fatally shot Mr.
16 Kim, when McGinnis arrived at the liquor store and began chasing Mrs. Kim to grab her cash bag. As
17 support, McGinnis invokes *People v. Pulido, supra*, 15 Cal.4th at p. 726, which held that "latecomer"
18 aiders and abettors "who join the felonious enterprise only after the murder has been completed" are
19 excluded from felony murder liability.¹⁴¹

20 However, McGinnis' implausible version of events is not credible. It is not reasonably likely that
21 McGinnis simply happened to stumble upon a robbery-in-progress at the liquor store, seconds after
22 shots were fired there, when he suddenly commenced aiding the shooter by grabbing the money and
23 then ran off with the shooter. A rational reaction by an innocent bystander would be to stay away from
24 the scene of the shooting for fear of becoming the next victim, rather than to join in the robbery. But by
25 his own admission, McGinnis was not an innocent bystander. Rather, McGinnis knew the shooter
26 planned to rob the liquor store, provided the gun to the shooter, and walked with the shooter to the
27

28 ¹⁴¹ Response at pp. 2-5; MTR at pp. 34-36 (citing *People v. Pulido, supra*, 15 Cal.4th 713).

1 liquor store. Even assuming McGinnis was not present at the liquor store when Mr. Kim was killed, he
2 had already provided sufficient advice and encouragement to be an accomplice to robbery by then.¹⁴²
3 Indeed, it appears more likely that McGinnis was acting as a lookout for the shooter if, in fact, he was
4 not present at the liquor store when shots were fired, given his actions immediately before and after.¹⁴³

5 On this record, McGinnis was not a latecomer to the robbery after the shooting. Instead,
6 McGinnis commenced aiding the robbery before any shots were fired. McGinnis' aid included providing
7 the gun to the shooter knowing of the shooter's intent to commit the robbery and walking with the
8 shooter to the scene of the robbery. McGinnis was therefore guilty of felony murder as an accomplice
9 to robbery in accordance with *Pulido*, even if he was not present when the shooting occurred.
10 McGinnis' contrary version of events in his declaration and testimony is not credible. Any exculpatory
11 weight is, therefore, de minimis in this administrative proceeding.

12 McGinnis' implausible account is further impeached by his inconsistent statements concerning
13 the robbery and murder. When speaking to police, McGinnis initially denied any involvement in the
14 crimes, but then he admitted to assisting Wolfie plan and commit the robbery during which the murder
15 occurred. However, when testifying at his criminal trial, McGinnis denied knowing Wolfie or having any
16 involvement in the murder or robbery and further claimed to have falsely confessed to police. Decades
17 later, McGinnis implicitly admitted his guilt when he professed remorse for his involvement in the felony
18 murder when asking the court to vacate the special-circumstance finding under Penal Code section
19 1170, subdivision (d)(2).¹⁴⁴ And now, in this administrative proceeding, McGinnis has yet again
20 changed his account. He acknowledges that Wolfie, whom he knew, shot Mr. Kim during the robbery
21 and further admits to robbing Mrs. Kim, but he insists that he only started to aid Wolfie commit the
22 robbery after Mr. Kim was shot. These diametrically inconsistent versions of events, some given by
23 McGinnis under penalty of perjury, raise serious concerns about his credibility.¹⁴⁵ In addition,

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25 ¹⁴² Pen. Code, § 31 (defining principal of a crime to include persons who "aid and abet in its
26 commission, or not being present, have advised and encouraged its commission").

27 ¹⁴³ Evid. Code, § 600, subd. (b) (defining inference).

28 ¹⁴⁴ AGRL Ex. 2 at pp. 34, 39-40.

¹⁴⁵ Evid. Code, § 780; CALCRIM No. 226.

1 McGinnis' credibility is generally impeached by his multiple, still-valid felony convictions for assault in
2 his unrelated case BA192639.¹⁴⁶ Overall, McGinnis lacks credibility in this administrative proceeding.

3 In a related effort, McGinnis submitted various documentary excerpts to bolster his testimony
4 that he was not present at the liquor store when Mr. Kim was shot. This includes a partial police report
5 noting the second assailant appeared "suddenly out from no where [*sic*]", an excerpt of Rodney's
6 testimony stating the "second guy come from off the street," and the appellate court's decision noting
7 McGinnis "emerged from the street" after the shooting.¹⁴⁷ Of course, the habeas court determined
8 otherwise, expressly concluding that McGinnis "was physically present at the scene of the killing."¹⁴⁸
9 But even assuming McGinnis was standing 100 feet away from the liquor store when the shooting
10 occurred, he was still guilty of felony murder. As explained above, McGinnis was liable for felony
11 murder, even if he was not in the immediate vicinity of the liquor store when the shooting occurred,
12 because he had already commenced aiding the robbery before the shooting occurred.¹⁴⁹ Accordingly,
13 these documentary excerpts are not exculpating of McGinnis' guilt for felony murder.

14 Nor is the superior court's reversal of McGinnis' felony murder conviction. Typically, reversal of
15 a conviction may be considered as exculpating evidence in a claim under Penal Code section 4900.¹⁵⁰
16 But even though McGinnis' conviction for first-degree felony murder was reversed, it was solely due to
17 a change in the law defining felony murder for accomplices pursuant to Penal Code section 1170.95.
18 Consequently, the superior court's reversal is not exculpating evidence of McGinnis' guilt for felony
19 murder under the law in effect when the crime occurred in 1998. Indeed, the reversal is ultimately
20 inconsequential in this administrative proceeding because it merely reflects the court's determination
21 that the trial evidence fails to demonstrate McGinnis' guilt of felony murder under the current law.
22 Accordingly, it lacks any exculpating weight.

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25 ¹⁴⁶ Evid. Code, § 788; CALCRIM No. 316.

26 ¹⁴⁷ MTR at pp. 13, 15-21, 26.

27 ¹⁴⁸ AGRL Ex. 3 at pp. 65, 66.

28 ¹⁴⁹ Pen. Code, § 31.

¹⁵⁰ Cal. Code Regs., tit. 2, § 641, subd. (a).

1 Finally, McGinnis alleges, in conclusory fashion, several legal errors by his defense counsel
2 and the prosecutor during the trial. For example, at the administrative hearing, McGinnis summarily
3 testified that the district attorney had fabricated evidence, but McGinnis expressly declined to present
4 any support for this baseless accusation. By comparison, the Court of Appeal affirmed McGinnis'
5 judgment on direct appeal and the California Supreme Court declined review, thereby undermining
6 McGinnis' allegations of any legal error. In any event, relief under Penal Code section 4900 is limited
7 to persons who were erroneously convicted of a crime that they did not commit.¹⁵¹ It is not available for
8 any alleged legal errors that might have occurred during the criminal proceedings. Accordingly,
9 McGinnis' conclusory assertions of legal error are not exculpating.

10 **4. Comparative Analysis**

11 On balance, the evidence fails to prove that McGinnis is more likely innocent, than guilty, of his
12 challenged conviction for felony murder with a special-circumstance finding. The inculpatory evidence
13 includes the jury's guilty verdict, the appellate court's summary of the trial evidence, and the appellate
14 court's determination that overwhelming evidence in the trial record supported the special-
15 circumstance finding under then-existing law. It also includes McGinnis' admissions to aiding the killer
16 by giving him a gun to rob the liquor store, walking with the killer to the liquor store, personally
17 grabbing the cash bag within minutes after the shooting, and then fleeing the scene with the shooter.
18 Combined, the incriminating evidence against McGinnis is compelling.

19 By comparison, McGinnis' evidence of innocence is minimal at best. His self-serving
20 declaration and inconsistent testimonial claims of innocence lack credibility. His version of events is
21 not only inherently implausible but also contradicted by his own prior statements. His reliance upon
22 *Pulido* is similarly unavailing, as McGinnis commenced aiding the robbery before the shooting
23 occurred, even assuming he was not physically present at that specific moment. For this same reason,
24 any documentary excerpts that tend to show that McGinnis was not present when the shooting
25 occurred ultimately fail to negate his culpability. Finally, the reversal of his felony murder conviction
26 solely based upon a change in the law lacks any exculpatory weight.

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28 ¹⁵¹ Pen. Code, §§ 4900, subd. (a); 4904.

1 All in all, the evidence fails to prove that McGinnis is more likely innocent, than guilty, of his
2 conviction for felony murder with a special-circumstance finding. His proffered evidence of innocence
3 fails to overcome the convincing evidence of his guilt. Indeed, McGinnis' guilt appears much more
4 likely, given the overwhelming weight of inculpatory evidence detailed above. On this record, McGinnis
5 fails to satisfy his burden of proof to show innocence by a preponderance of the evidence. His claim for
6 compensation as an erroneously convicted person under subdivision (a) of Penal Code section 4900
7 must therefore be denied on this basis.

8 **D. Insufficient Proof of Injury**

9 McGinnis' claim must also be denied on a separate basis for lack of injury. In this context, injury
10 requires a showing that, but for the erroneous conviction, McGinnis would have been free from
11 custody.¹⁵² Injury is therefore lacking "for any concurrent period of incarceration attributable to another
12 conviction."¹⁵³

13 As detailed above, McGinnis was confined as a result of his convictions for murder, robbery,
14 and assault in case number TA100236 for a total of 571 days, commencing with the date of his arrest
15 on March 17, 1998, to and including his arraignment on October 8, 1999, for the unrelated assault
16 charges in case number BA192639. But during those 571 days (i.e., 1.6 years), McGinnis was serving
17 an LWOP sentence for his special-circumstance, felony murder conviction, as well as a 10-year
18 sentence for his related convictions for robbery and assault. Thus, even if McGinnis had never been
19 convicted of felony murder, he still would have been confined during those 571 days for his other
20 convictions in case number TA100236. Thereafter, from October 9, 1999, until his release from prison
21 on May 25, 2022, McGinnis remained confined for 8,264 additional days (i.e., 22.6 years) as a result of
22 his unrelated assault convictions in case number BA192639, for which he was resentenced in 2022 to
23 a determinate term of 25 years.¹⁵⁴

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26 ¹⁵² Pen. Code, § 4904; Cal. Code Regs., tit. 2, § 640, subd. (f).

27 ¹⁵³ Cal. Code Regs., tit. 2, § 640, subd. (f).

28 ¹⁵⁴ Pen. Code, § 2900.5 (awarding presentencing credit "only once for a single period of custody attributable to multiple offenses").

1 Thus, at no time was McGinnis confined solely as a result of his felony murder conviction. He
2 therefore fails to demonstrate any injury sustained as a result of this conviction as required for relief
3 under Penal Code section 4900.

4 **V. CONCLUSION**

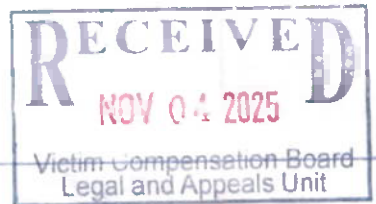
5 In accordance with subdivision (a) of Penal Code section 4900, the hearing officer
6 recommends that CalVCB deny McGinnis' claim. He failed to demonstrate by a preponderance of
7 evidence that he did not commit first-degree felony murder with a special-circumstance as that crime
8 was defined at the time of its commission. He further failed to demonstrate any injury resulting from his
9 conviction for this crime due to his overlapping sentences for other related and unrelated convictions.
10 McGinnis is, therefore, ineligible for compensation as an erroneously convicted person.

11 Date: October 14, 2025

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13 Laura Simpton
14 Senior Attorney
15 California Victim Compensation Board
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RESPONSE RECEIVED



Raymond McGinnis
1115 N. Wilmington Blvd Unit 1 PMB#387
Compton, Ca 90222

Before The Victim Compensation Board
of The state of California

In the Matter of	Claim NO. 24-ECO 23
Raymond McGinnis	Motion to present Fabrication of evidence by the pro- secution Under California Penal code § 4900
Claimant	

On July 23, 2025 A Zoom Hearing was conducted
where the above mention claimant was able
to conduct a hearing by way of word of
Mouth with Hearing officer Laura Simpton
And others.

During this hearing I explained
to hearing officer Laura Simpton that this
claimant filed his Motion to Respond.

In this petition I was able to rely on the record
of conviction or offer new or additional
evidence to meet my respective burden And the
evidence that it offered consist of prosecution
witness Rodney M. [REDACTED] police report and Trial
Transcripts of His statement on the stand.

At this
July 23, 2025 hearing I explained to hearing officer
that the District Attorney in this criminal case

Fabricated Evidence saying that this claimant was at the scene when Mr. Kim was shot and Killed only to make it sufficient evidence to file Murder charges against me the claimant Raymond McGinnis

During this July 23, 2025 Hearing I explained to Hearing officer Laura Simpton that during my penal code section 1170.95 hearing my Attorney Mojbon Abhai made it known as my Defense that Raymond McGinnis arrived at the scene when Mrs. Kim was at her vehicle and shots had already been fired and that I was not present when Mr Kim was shot and Killed.

According to "Injury" under penal code § 4900 Wrongful Conviction and Imprisonment: IF a prosecution fabricates evidence and it leads to a conviction the individual is wrongfully imprisoned for a crime they did not commit. The fabricated evidence could be anything from falsified witness statements to altered physical evidence or even entirely fake documents.

Proof of Innocence: To establish injury the claimant must demonstrate their innocence of the underlying crime that resulted in the wrongful conviction. The fabricated evidence by the prosecution would have directly contributed to the erroneous conviction and its exposure would then become the basis for proving factual innocence.

According to Laura Simpton Proposed Decision Under Penal Code § 4900 Subd (a) she mention that claimant Raymond McGinnis claim was that Prosecution Fabricated of Evidence; But she never explained my same Defense which was the Prosecution made his own Theory that claimant Raymond McGinnis was physically present at the scene of the Killing of Mr. Kim in which claimant Raymond McGinnis Objected to the Fabricated evidence during my Motion to Respond and at this hearing.

Conclusion

Attorney Laura Simpton has Failed to provide me claimant with a Fair Hearing claimant object to Laura Simpton Determination Therefore I ask that the Board compensate this Claimant under § 4900-4904

Sincerely,

Date: 10-31-25

Raymond McGinnis

©

Raymond McEnnis
1115 N. Wilmington Blvd Unit 1 PMB#387
Compton, Ca. 90222

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Andrea Burrell

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