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

8
9 In the Matter of:

10 **Horace Roberts**

11 PC 4900 Claim No. 19-ECO-01

Proposed Decision

(Penal Code § 4900 et seq.)

12 **Introduction**

13 On January 15, 2019, Horace Roberts (Roberts) submitted an application for compensation as
14 an erroneously convicted person to the California Victim Compensation Board (CalVCB) pursuant to
15 Penal Code section 4900. The application is based upon Roberts' 20 years of imprisonment for a
16 1999 conviction for second-degree murder, for which Roberts was found to be factually innocent.
17 Roberts is represented by attorney Michael Semanchik of the California Innocence Project. No
18 appearance has been requested by the California Attorney General. Senior Attorney Laura Simpton
19 of CalVCB was assigned to this matter. After reviewing the application and supporting
20 documentation, CalVCB is mandated to recommend that the Legislature appropriate \$1,044,820 as
21 payment to Roberts for being wrongfully imprisoned for 7,463 days.

22 **Procedural Background**

23 On April 14, 1998, Terry Cheek was forcibly struck on the top of her head and then strangled
24 to death, leaving three separate ligature marks along the front of her neck. Her body was abandoned
25 along the shoulder of Canyon Road, located in between Interstate 15 and Corona Lake, in Riverside
26 County. When discovered by authorities, Cheek was still clad in her jeans with a belt and a bra, but
27 her shirt was missing, and her left breast exposed. No evidence of a sexual assault was detected. A
28 watch resembling one owned by Roberts was discovered near Cheek's body. Also, Roberts' truck

1 was parked in the vicinity along Interstate 15. Roberts and Cheek worked together, and she often
2 borrowed his car. They were also having an affair, and Cheek's husband Googie Harris (Harris)
3 knew about it.

4 Roberts was arrested for Cheek's death on April 29, 1998. He was subsequently charged
5 with a single count of murder in Riverside County Superior Court case number RIF080455.¹ Two jury
6 trials ensued, both of which ended in a mistrial, one by a vote of six to six. Following a third jury trial,
7 Roberts was convicted of second-degree murder on July 16, 1999. On September 3, 1999, Roberts
8 was sentenced to an indeterminate term of 15 years to life. Thereafter, Roberts' conviction was
9 affirmed on direct appeal, and his state habeas petitions denied.²

10 In 2011, Roberts became eligible for parole. At his parole hearing, Harris appeared and
11 vehemently chastised Roberts for having an affair with his wife. Parole was ultimately denied.

12 Still maintaining his innocence, Roberts moved for DNA testing of the crime scene evidence,
13 which was granted on June 23, 2016. According to a laboratory report prepared by the California
14 Department of Justice on February 15, 2018, Roberts was definitively excluded as the source of
15 identifiable male DNA detected under three of Cheek's fingernails, as well as a blood stain on her
16 jeans. Significantly, the DNA from two of Cheek's fingernails was matched to Joaquin Leal (Leal),
17 who is the nephew of Cheek's husband Harris. Additional DNA testing of the watch found near
18 Cheek's body also excluded Roberts.

19 Based upon these DNA results, the Riverside County District Attorney readily agreed to
20 vacate Roberts' conviction and stipulated to his factual innocence. Consequently, on October 2,
21 2018, the Riverside County Superior Court "reversed in whole" Roberts' conviction in case number
22 RIF080455 and further ordered his immediate release from prison. Roberts was released the next
23 day on October 3, 2018, after having served a total of 7,463 days incarcerated. The entire duration of
24 Roberts' incarceration was solely attributable to his erroneous conviction for Cheek's murder, as he

25 ¹ Pen. Code, § 187.

26 ² *People v. Roberts* (E025874), decided Aug. 10, 2000; *People v. Roberts* (S091420), review denied
27 Nov. 21, 2000; *In re Roberts* (E028469), habeas petition denied Dec. 21, 2000; *In re Roberts*
28 (S094489), habeas petition denied June 27, 2001; *In re Roberts* (E031471), habeas petition denied
April 19, 2002; *In re Roberts* (S106692), habeas petition denied Nov. 13, 2002.

1 was not convicted of any other offenses. One week later on October 12, 2018, the Riverside County
2 Superior Court dismissed the entire case against Roberts upon the prosecution's motion. Finally, on
3 November 6, 2018, the court expressly found, within the meaning of Penal Code section 1485.55,
4 that "Roberts has demonstrated he is factually innocent by a preponderance of the evidence that the
5 crime with which he or she was charged was not committed by him."

6 Meanwhile, on October 15, 2018, the Riverside County District Attorney charged both Harris
7 and Leal with Cheek's murder.³ The case is ongoing.

8 On January 15, 2019, Roberts submitted the underlying application for compensation as an
9 erroneously convicted person under Penal Code section 4900. Additional supporting documentation
10 was submitted via email from Roberts' counsel on January 16 and 17, 2019. Based upon the
11 superior court's finding of factual innocence, Roberts requests an automatic recommendation of
12 compensation for \$1,044,820, representing \$140 for each of the 7,463 days that he was imprisoned.

13 **Determination of Issues**

14 Penal Code section 4900 allows a person, who has been erroneously convicted and imprisoned
15 for a felony offense, to apply for compensation from CalVCB.⁴ Once an application has been properly
16 filed, CalVCB typically requests a written response from the Attorney General pursuant to Penal Code
17 section 4902, and then an informal evidentiary hearing ensues in accordance with Penal Code section
18 4903.⁵ Throughout these proceedings, the claimant bears the burden to prove, by a preponderance of
19 the evidence, that (1) the crime with which he was charged was either not committed at all, or, if
20 committed, was not committed by him, and (2) he sustained injury through his erroneous conviction and
21 imprisonment.⁶

22 If the claimant satisfies his burden of persuasion for both elements, then pursuant to Penal
23 Code section 4904, CalVCB shall recommend to the Legislature an award of compensation. Under
24

25 ³ *People v. Joaquin Lateee Leal and Googie Rene Harris, Sr.*, Riverside County Superior Court case
26 number RIF1804461.

27 ⁴ Pen. Code, § 4900.

28 ⁵ Pen. Code, §§ 4902, subds. (a)-(b), 4903, subd. (a); Cal. Code Regs., tit. 2, § 615.1, subd. (a).

⁶ Pen. Code, §§ 4903, subd. (a), 4904.

1 Penal Code section 4904, compensation is calculated at the rate of \$140 per day for pre-and post-
2 conviction confinement.⁷

3 An exception to CalVCB's standard procedure occurs when a claimant has obtained a
4 finding of factual innocence for each and every conviction underlying his incarceration. As set
5 forth in Penal Code section 1485.55:

6 In a contested proceeding, if the court has granted a writ of habeas corpus or when,
7 pursuant to Section 1473.6, the court vacates a judgment, and if the court has found that
8 the person is factually innocent, that finding shall be binding on the California Victim
9 Compensation Board for a claim presented to the board, and upon application by the
person, the board shall, without a hearing, recommend to the Legislature that an
appropriation be made and the claim paid pursuant to Section 4904.⁸

10 In effect, section 1485.55 compels CalVCB to assume both requisite elements of innocence and injury
11 for a successful claim under Penal Code section 4900 and to recommend compensation accordingly.

12 This construction is confirmed by Penal Code section 4902, which provides in relevant part:

13 "If the provisions of Sections 851.865 or 1485.55 apply in any claim, the California Victim
14 Compensation Board shall, within 30 days of the presentation of the claim, calculate the
15 compensation for the claimant pursuant to Section 4904 and recommend to the
Legislature payment of that sum."⁹

16 Consequently, not only must CalVCB automatically recommend payment without a hearing or response
17 from the Attorney General whenever an applicant has obtained the requisite findings of factual
18 innocence, but CalVCB must do so within 30 days after the application is filed.

19 Here, Roberts was confined for a total of 7,463 days for the murder of Terry Cheek. This period
20 of confinement consists of 443 days pre-conviction from April 29, 1998, to July 15, 1999, plus an
21 additional 7,020 days post-conviction from July 16, 1999, to October 3, 2018. The entire duration of
22 Roberts' incarceration was solely attributable to Cheek's murder, and no other convictions or sentences
23 were imposed or stayed at any time. The Riverside County Superior Court vacated this conviction
24 based upon exonerating DNA tests and further found, by a preponderance of the evidence, that
25 Roberts was factually innocent. Consequently, Penal Code section 1485.55 applies. CalVCB

26 ⁷ Pen. Code, § 4904, added by Stats.2015, c. 422 (S.B.635), § 1, eff. Jan. 1, 2016.

27 ⁸ Pen. Code, § 1485.55, subd. (a).

28 ⁹ Pen. Code, § 4902, subd. (a).

1 unequivocally accepts that Roberts is actually innocent of Cheek’s murder, for which he was
2 erroneously incarcerated over 20 years. CalVCB recognizes that, but for this conviction, Roberts would
3 not have spent 7,463 days “illegally behind bars, away from society, employment, and [his] loved
4 ones.”¹⁰ Therefore, Roberts is entitled to a recommendation of compensation in the amount of
5 \$1,044,820, representing \$140 for each day of his erroneous incarceration.

6 **Conclusion**

7 CalVCB hereby grants Roberts’ application for compensation under Penal Code section 4900
8 as mandated by Penal Code section 1485.55 and, therefore, recommends that the Legislature
9 appropriate \$1,044,820 as payment to Roberts for his 7,463 days of erroneous incarceration.

10 Date: January 17, 2019

11 _____
12 Laura Simpton
13 Senior Attorney
14 California Victim Compensation Board

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28 ¹⁰ *Holmes v. California Victim Compensation & Government Claims Bd.* (2015) 239 Cal.App.4th 1400.

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

In the Matter of:

Horace Roberts

PC 4900 Claim No. 19-ECO-01

Notice of Decision

(Penal Code § 4900 et seq.)

On February 21, 2019, the California Victim Compensation Board adopted the attached Proposed Decision of the Hearing Officer as its Decision in the above-referenced matter.

Date: February 25, 2019

Michelle Greer
Board Liaison
California Victim Compensation Board