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BEFORE THE VICTIM COMPENSATION AND GOVERNMENT CLAIMS BOARD
OF THE STATE OF CALIFORNIA

In the Matter of the Claim of:
Daniel Del Castillo
Claim No. G518087

Notice of Decision

On October 29, 2004, the California Victim Compensation and Government Claims Board adopted the attached Proposed Decision as its Decision in the above-referenced matter. The Decision became effective on October 29, 2004.

Date: November 3, 2004


JUDITH A. KOPEC
Chief Counsel
California Victim Compensation
and Government Claims Board

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5 BEFORE THE VICTIM COMPENSATION AND GOVERNMENT CLAIMS BOARD
6 OF THE STATE OF CALIFORNIA
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8 In the Matter of the Claim of:

9 Daniel Del Castillo

10 Claim No. G518087

Proposed Decision

(Penal Code § 4900 et seq.)

11 A hearing based on the written record was conducted by Deborah Bain, Hearing Officer,
12 who was assigned to hear this matter by the Executive Officer of the Victim Compensation and
13 Government Claims Board (Board). The claimant Daniel Del Castillo is represented by the law firm
14 of Moreno, Becerra, Guerrero & Casillas. Attorney Arnoldo Casillas waived Mr. Del Castillo
15 appearance, waived 15 days' notice of the hearing pursuant to Penal Code section 4902 and agreed
16 to have an informal hearing conducted by the hearing officer upon the written record. Mr. Del Castillo
17 did not attend the hearing.

18 Deputy Attorney Michael P. Farrell represented the Attorney General in this matter. Mr.
19 Farrell also waived his appearance, waived 15 days' notice of the hearing pursuant to Penal Code
20 section 4902, and agreed to have an informal hearing conducted upon the written record.
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22 **Findings of Fact**

23 1. Mr. Del Castillo submitted a government claim for relief under Penal Code section 4900
24 *et seq.* on August 14, 2001. Mr. Del Castillo claims that he was erroneously convicted of a felony
25 charge of Assault on a Peace Officer, a violation of Penal Code section 243(c). The conviction
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1 stemmed from an incident that occurred on October 1, 1997.¹ Mr. Del Castillo is seeking an award of
2 \$12,700.

3 2. According to a Los Angeles Police Report, at approximately 11:00 p.m. on
4 October 1, 1997, Los Angeles Police officers responded to a dispatch report of a shooting and a
5 robbery. When the police arrived, Mr. Del Castillo was seen running from the area. They knew
6 Mr. Castillo as a member of the Rockwood street gang. Officer Liddy pursued Mr. Del Castillo.
7 Mr. Del Castillo climbed a security fence and attempted to escape into an apartment building. When he
8 was unable to gain access into the building, he began climbing up the front of the building. As he was
9 pulling himself onto the roof, the rain gutter broke and Mr. Del Castillo fell to the ground.
10 Mr. Del Castillo then got up and ran towards the back of the apartment building. Officer Liddy pursued
11 him and Mr. Del Castillo began to climb a 15 foot high razor wire fence.²

12 3. Officer Liddy grabbed Mr. Del Castillo's leg and pulled him off the fence. Mr. Del Castillo
13 armed himself with an approximately 20 inch long piece of wood and swung it at the officer.
14 Mr. Del Castillo struck Officer Liddy on the right side of his arm, shoulder, and head. Officer Liddy
15 backed away from Mr. Del Castillo and drew his weapon. Mr. Del Castillo dropped the wood and
16 climbed the fence. He fell to the ground headfirst. Mr. Del Castillo was bleeding. Mr. Del Castillo got
17 up and ran.³

18 4. The canine unit responded. Mr. Del Castillo was located hiding in a closet in an empty
19 apartment. Mr. Del Castillo kicked the dog and the dog was called off. Mr. Del Castillo was ordered to
20 come out of the closet. Mr. Del Castillo responded with a profanity. Additional officers were deployed to
21 the scene. Officer Lujan armed himself with a "less lethal" beanbag gun.⁴

22 5. Mr. Del Castillo was ordered to come out with his hands up. Mr. Del Castillo refused.
23 Officer Lujan fired the beanbag round at Mr. Del Castillo striking him in the abdomen. Mr. Del Castillo
24 was bleeding heavily and began moving in and out of the doorway. Mr. Del Castillo refused again to
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27 ¹ Mr. Del Castillo cited the date of July 9, 2001 as the incident date on his claim. However, July 9, 2001 is the date
28 the court dismissed his case.

29 ² Los Angeles Police Report number 970233258.

³ Los Angeles Police Report number 970233258.

⁴ Los Angeles Police Report number 970233258.

1 comply with orders and Officer Lujan shot five additional beanbag rounds.⁵ Mr. Del Castillo was struck
2 twice in the legs and was knocked to the floor. He then yelled, "I give up."⁶

3 6. Mr. Del Castillo was arrested for assault on an officer and transported to the hospital for
4 treatment. He received treatment for scratches, bruises, and contusions to his body and head. Officer
5 Liddy sustained scratches and abrasions to the right side of his head.⁷

6 7. At the hospital, Mr. Del Castillo waived his *Miranda* rights and was questioned. He told
7 the officer that he had been "sniffing meth and smoking primos all day." He said that he was a parolee
8 at large and was armed with a mac-10 assault rifle when he ran. He stated that he did not want to go
9 back to prison and that he was a three strike candidate.⁸

10 8. On May 20, 1998, Mr. Del Castillo pled guilty to a felony charge of assault on a peace
11 officer and was sentenced to 16 months state prison.⁹

12 9. In support of his Penal Code section 4900 claim, Mr. Del Castillo provided two
13 documents: 1) a copy of a Claim for Money Damages and; 2) a minute order from the Los Angeles
14 Superior Court for case number BA157370.

15 10. On June 18, 2004, the Board's Claim Chief Counsel, Judith A. Kopec, sent a letter to
16 Mr. Casillas of the law firm of Moreno, Becerra, Guerrero & Casillas. In the letter, Ms. Kopec informed
17 Mr. Casillas that if he wished to submit any additional information supporting Mr. Del Castillo's claim,
18 he must submit it by July 1, 2004. To date, no additional information has been received.

19 11. The minute order reflects that the Los Angeles Superior court heard
20 Mr. Del Castillo's Writ of Habeas Corpus in case number BA157370 on July 9, 2001. On that date,
21 the People having filed no opposition, the court dismissed the case in the interest of justice.

22 12. The Claim for Money Damages lists Mr. Del Castillo as the claimant and the City of Los
23 Angeles as the respondent. Mr. Del Castillo states in the complaint that Los Angeles Police Officers
24 Nino Durden, Brian Liddy, Camerino Mesino, Mike Buchanon, Paul Harper, Christopher Warren,
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27 ⁵ A beanbag round is a non-lethal round.

28 ⁶ Los Angeles Police Report number 970233258.

29 ⁷ Los Angeles Police Report number 970233258.

⁸ Los Angeles Police Report number 970233258

⁹ Attorney General Farrell letter of August 26, 2002.

1 Mark Wilbur, Daniel Lujan, Magdaleno Gomez, and other unknown officers chased Mr. Del Castillo and
2 wrongfully shot him as he was surrendering. Mr. Del Castillo alleged that these officers, along with their
3 supervisors, deliberately conspired to falsely accuse him of assault. As a result of the conviction, he
4 was wrongfully imprisoned for a period of 366 days.¹⁰

5 13. Attorney General Michael Farrell reviewed Mr. Del Castillo's claim, the police report, the
6 Writ of Habeas Corpus, and Mr. Del Castillo's criminal record and recommended denial of the claim.

7 14. Mr. Del Castillo's writ is based on the allegation that Officer Liddy and Mesina were
8 assigned to the RAMPART CRASH anti-gang unit and that they committed misconduct. Officer Perez,
9 an officer who had been assigned to that unit, had previously testified to the widespread misconduct by
10 officers assigned to that unit.

11 15. Mr. Del Castillo admits in his writ that he ran from police officers because he was on
12 parole and had absconded from parole supervision.¹¹ When he was interviewed he admitted that he
13 climbed the face of the building and fell to the ground when the rain gutter broke. When he got up, he
14 saw Officer Liddy on the other side of the fence. Officer Liddy pointed a gun at him and ordered him to
15 stop. Mr. Del Castillo did not comply. Instead, he claims that he displayed his hands and said, "I don't
16 got nothing." Mr. Del Castillo then jumped or scaled over at least two fences.

17 16. Mr. Del Castillo knocked on the front of an apartment building. A woman opened the
18 door. He went inside and hid in the closet of an abandoned apartment. When the officers approached,
19 he jumped on to a shelf inside the closet with each foot against the wall of the closet. According to
20 Mr. Del Castillo, when the officers ordered him out, he complied. The officers then shot him with
21 beanbags. As he lay on the ground they struck him with an unknown hard object and kicked him in the
22 face.¹²

23 17. Mr. Del Castillo stated that Officer Liddy falsely claimed that he was a parolee at large
24 with a Mac-10 assault rifle, that he was assaulted, and that he was sniffing methamphetamine and
25 smoking primos.¹³ Mr. Del Castillo claims that Officer Liddy was inconsistent with respect to his injuries
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27 ¹⁰ Mr. Del Castillo's Claim for Money Damages, page 3.

28 ¹¹ Mr. Del Castillo's Writ, page 2.

29 ¹² Mr. Del Castillo's Writ, page 7.

¹³ Mr. Del Castillo's Writ, pages 3 & 7 and Civil Complaint.

1 and the medical treatment he received and these inconsistencies were revealed during the preliminary
2 hearing. Mr. Del Castillo did not provide a copy of the preliminary hearing.

3 18. Mr. Del Castillo claims in his writ that his friend Cesar Garcia observed him run from
4 police several times that day. Mr. Garcia observed Officer Liddy chasing Mr. Del Castillo. It is alleged
5 that Mr. Garcia saw Mr. Del Castillo scale the fence, fall and he saw that Mr. Del Castillo did not
6 sustained any injuries. Subsequently, after Mr. Del Castillo was being arrested, Mr. Garcia observed
7 Mr. Del Castillo bleeding from the face. Allegedly, other individuals – the woman who opened the door
8 in the apartment building and the doctor at the hospital - confirmed that the injuries Mr. Del Castillo
9 sustained were not a result of falling from a third story building or a fifteen-foot fence. According to
10 Mr. Del Castillo the treating doctor believed his injuries were consistent with being beat up.
11 Mr. Del Castillo did not provide declarations from any of these witnesses.

12 19. Mr. Del Castillo asserts that he accepted the plea bargain because he believed he would be
13 convicted as it was his word against Officer's Liddy's.¹⁴

14 20. The AG reviewed Officer Perez's deposition. Officer Perez was asked about this specific
15 case. Officer Perez said that he had "no idea" if the assault in this case was true or false.

16 21. The AG recommended denial of Mr. Del Castillo's claim based on: 1) there is no
17 evidence that these officers committed misconduct in this specific case; 2) Mr. Del Castillo has two
18 prior felony convictions for assaultive behavior;¹⁵ 3) Mr. Del Castillo's prior felony convictions are moral
19 turpitude which impacts Mr. Del Castillo's credibility¹⁶; and; 4) Mr. Del Castillo pled guilty to the offense,
20 thereby contributing to his conviction and not allowing a jury to assess his credibility.¹⁷

21 **Determination of Issues**

22 1. A person convicted and imprisoned for a felony may submit a claim to the Board for
23 pecuniary injury sustained through his erroneous conviction and imprisonment. (Pen. Code, § 4900.)

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26 ¹⁴ Mr. Del Castillo's writ, page 7.

27 ¹⁵ Mr. Del Castillo has a prior 1992 felony conviction for battery with serious bodily injury and a prior 1994 felony
28 conviction for battery with serious bodily injury. According to CDC, Mr. Del Castillo has subsequently been
29 convicted of a new felony offense and is currently incarcerated for Possession of Materials to make Explosives.

¹⁶ Attorney General Farrell letter of August 26, 2002 and *People v. Elwell* (1988) 206 Cal.App.3d 171.).

¹⁷ Attorney General Farrell letter of August 26, 2002.

1 The claim must be filed within six months judgment of acquittal or discharge, or after pardon granted,
2 or after release from imprisonment. (Pen. Code, § 4901.)

3 2. Mr. Del Castillo pled guilty on May 20, 1998, he was sentenced to 16 months in state
4 prison. The court granted Mr. Del Castillo's Writ of Habeas Corpus on July 9, 2001, and dismissed
5 the case.¹⁸ The Board received the claim on August 14, 2001. For purposes of this claim the Board
6 is treating a "dismissal" the same as a "discharge". Mr. Del Castillo filed a timely claim.

7 3. The claimant must prove the following: (1) that the crime with which he was charged
8 was either not committed at all, or, if committed, was not committed by him; (2) that he did not by any
9 act or omission on his part, either intentionally or negligently, contribute to the bringing about of the
10 arrest or conviction for the crime; and (3) he sustained pecuniary injury through the erroneous
11 conviction and imprisonment. (Pen. Code, § 4903.) The Board may consider any information that it
12 deems relevant to the issues. (Cal. Code Regs., tit. 2, § 641.) The claimant has the burden of
13 proving his innocence by a preponderance of the evidence.

14 4. If a claimant meets the requirement of Penal Code section 4903, the Board shall
15 report the facts of the case and its conclusion to the Legislature with a recommendation that the
16 Legislature make an appropriation to indemnify the claimant for his pecuniary injury.
17 (Pen. Code, §4904.) The appropriation recommended shall be a sum equal to \$100 per day of
18 incarceration served after the claimant's conviction.

19 5. Mr. Del Castillo submitted two documents: 1) the dismissal from the court, and 2) a
20 copy of the civil complaint.

21 6. The police report reflects that, even minus the assault, Mr. Del Castillo resorted to
22 extreme measures to evade the police. By his own admission he scaled the front of an apartment
23 building, got up and ran after falling a significant distance, traversed at least three fences and
24 scurried up a closet all to invade arrest. It is reasonable to infer that given the behavior he admits to,
25 and his two previous arrests for felony assaults, to believe that Mr. Del Castillo assaulted
26 Officer Liddy.

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29 ¹⁸ According to Department of Corrections records, Mr. Del Castillo was released from prison on August 28, 1998.
Mr. Del Castillo filed his Writ after his release.

1 7. The claimant alleges misconduct and, in part, relies on the testimony of Officer Perez.
2 However, when Officer Perez was specifically questioned regarding this case, he stated that he had
3 "no idea" if the assault charge was true or false.

4 8. Even assuming the allegations of misconduct by the officers on other occasions are
5 true, that does not prove Mr. Del Castillo is innocent in this case. The mere fact that this charge was
6 dismissed does not prove the claimant is innocent. A habeas proceeding is not a determination of
7 innocence and the granting of the writ does not constitute an acquittal. (*In re Cruz* (2003) 104
8 Cal.App.4th 1339, 1246; 129 Cal.Rptr.3d 31, 37.) There has been no finding of factual innocence.

9 9. Mr. Del Castillo must show that he did not by any act or omission on his part, either
10 intentionally or negligently, contribute to the bringing about of the arrest or conviction for the crime.
11 Castillo pled guilty to the offense. He disallowed a jury from reviewing the evidence and weighing his
12 credibility and the officer's credibility.

13 10. Mr. Del Castillo's civil complaint does not provide any facts that support his claim of
14 innocence. The complaint consists of conclusionary statements. Mr. Del Castillo has failed to provide
15 any compelling information supporting his claim that he was falsely accused of assault.

16 11. To prevail, the claimant must carry the burden of proof of innocence by a
17 preponderance of the evidence. (*Diola v. State Board of Control* (1982) 13 Cal. App.3d 580.) Based
18 on the findings, in paragraphs 2 - 8 and 15 - 21, it is found that Mr. Del Castillo's claim is denied
19 because the claimant has not has not carried the burden of proving his innocence by a
20 preponderance of the evidence.

21 12. Based on the findings of fact in paragraph 8, it is found that Mr. Del Castillo pled guilty
22 to the offense and therefore, by his act of admission directly contributed to the conviction.

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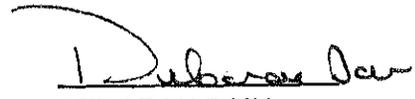
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BEFORE THE VICTIM COMPENSATION AND GOVERNMENT CLAIMS BOARD
OF THE STATE OF CALIFORNIA

Order

The claim under Penal Code section 4900 *et seq.* is denied.

Date: *October 20, 2004*


DEBORAH BAIN
Hearing Officer

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