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7 **BEFORE THE VICTIM COMPENSATION AND GOVERNMENT CLAIMS BOARD**
8 **OF THE STATE OF CALIFORNIA**
9

10 In the Matter of the Claim of:

11 **Dennis Cerrano**

12 Claim No. G 513586
13

Notice of Decision

14 On September 19, 2003, the California Victim Compensation and Government Claims
15 Board adopted the attached Proposed Decision of the Hearing Officer as its Decision in the above-
16 referenced matter. The Decision became effective on September 19, 2003.
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19 Date: September 22, 2003
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21 **CATHERINE CLOSE**
22 Interim Executive Officer
23 California Victim Compensation
24 and Government Claims Board
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9 In the Matter of the Claim of:

10 Dennis Cerrano

11 Claim No. G 513586

Proposed Decision
(Penal Code § 4900 *et seq.*)

12 A hearing on this claim was held on May 16, 2003, in Sacramento, California, by
13 Judith A. Kopec, Hearing Officer, who was assigned to hear this matter by the Executive Officer of the
14 Victim Compensation and Government Claims Board (Board).¹

15 The claimant, Dennis Cerrano, was present and was represented by George Alonso,
16 Attorney.

17 The Attorney General was represented by Deputy Attorney General Michael Farrell.

18 Findings of Fact

19 1. Dennis Cerrano was convicted of violating Penal Code section 288(a) [Lewd and
20 lascivious act upon a child under the age of 14] on May 26, 1998, and was sentenced to six years in
21 state prison. He was incarcerated until his temporary release on his own recognizance on October 27,
22 1999. On September 20, 2000, Mr. Cerrano was discharged from the jurisdiction of the Department of
23 Corrections by an order granting his petition for writ of habeas corpus.

24 2. Because the question of whether Mr. Cerrano filed a timely claim is at issue,
25 Mr. Cerrano's filings with the Board must be examined in detail. The first claim filed by Mr. Cerrano
26 is dated December 20, 2000, and was received by the Board on December 21, 2000. The first sentence
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29 ¹ This hearing resulted from a stipulated order dismissing a petition for writ of mandate in which the Board agreed to hear Mr. Cerrano's claim on the issue of timeliness and/or the merits.

1 of this claim states that Mr. Cerrano is making a claim against the California Department of
2 Corrections. It requested specific damages for Mr. Cerrano's treatment while in prison, such as not
3 calling his family when he suffered a heart attack, totaling \$88,000. The Board's Government Claims
4 Division responded to this claim in a variety of ways, all of them treating it as a tort claim against a
5 state or local government agency.²

6 3. Joshua A. Zlotlow, Attorney, filed a claim on behalf of Mr. Cerrano, dated
7 March 6, 2001, and received by the Board on March 7, 2001. The claim, addressed to the County of
8 Solano, California Department of Corrections and the California Board of Control, states that it is
9 based on injuries Mr. Cerrano sustained due to the conduct of the County of Solano and misconduct of
10 certain County employees and agents. It alleged that a writ of habeas corpus was granted on
11 September 20, 2000, based on evidence that Mr. Cerrano was convicted based on false testimony. It
12 alleged that the County knew or should have known that the testimony was false, was negligent in its
13 investigation, and falsely arrested and imprisoned Mr. Cerrano. It also alleged that the California
14 Department of Corrections falsely imprisoned Mr. Cerrano. The claim stated that Mr. Cerrano's
15 conviction was vacated because he was found to be factually innocent. The claim specifically named a
16 Deputy District Attorney and seeks general damages against Solano County. It also seeks special
17 damages, but does not expressly identify the entity or individuals from which they were sought.

18 4. Mr. Zlotlow filed another claim, dated and received by the Board on March 13, 2001,
19 that was substantially similar to the claim described above in paragraph 3. Unlike that claim, it stated
20 that Mr. Cerrano was entitled to statutory damages because he was imprisoned and subsequently found
21 innocent.

22 5. Mr. Zlotlow filed another claim, dated and received by the Board on April 26, 2001.
23 This claim was captioned "amended claim for damages," although the body of the document refers to
24 "this claim" and not "this amended claim." For the first time, a claim filed by or on behalf of Mr.
25 Cerrano specifically referenced Penal Code section 4904. As in the prior claims, it alleged
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29 ² The claim referenced the Solano County Court, the Vallejo police department, and the District Attorney, so Board staff
apparently treated it as a claim against local government agencies in Solano County as well as a claim against a State agency.

1 wrongdoing by the County of Solano and its employees, but, for the first time, it alleged the specific
2 elements required by a claim under Penal Code section 4900 *et seq.*

3 6. At trial, nine-year-old Falon John testified that Mr. Cerrano touched her with his hand
4 outside her clothing in her pubic area while she was in her bedroom. Falon also testified that
5 Mr. Cerrano touched her a prior time when they lived at another house. On that occasion, Mr. Cerrano
6 came into her bedroom to help her with a computer game. She was laying down, half asleep. She felt
7 something touch her over her clothes between her legs.

8 7. According to the crime report, Falon told an officer that Mr. Cerrano came into her
9 bedroom and touched her vaginal area with his hand. She told the officer that Mr. Cerrano touched her
10 under her panties and put his finger in her vaginal area. This occurred a week before the report. She
11 later told the officer that Mr. Cerrano touched her vaginal area over her clothing that day. Falon's
12 mother told the officer that she was in her bedroom, heard a muffled scream from Falon's room, went
13 to Falon's room, and saw Mr. Cerrano "streak by." She took Falon into the bathroom and inspected
14 her vagina, which was red and raw. She sent Falon to a neighbor's house and confronted Mr. Cerrano.
15 She and Mr. Cerrano got into a heated argument and a neighbor called the police. Mr. Cerrano was
16 arrested.

17 8. On the same day the police came to the house, Falon was examined at Sutter-Solano
18 Medical Center. The Suspected Child Abuse Medical Report noted that Falon reported that she got
19 touched in her "privates" and was touched on top of her clothes. The medical report noted redness
20 around the vaginal area. The report indicated that there were physical findings consistent with the
21 history.

22 9. Two weeks' later, Falon told a detective a similar account about Mr. Cerrano touching
23 her over her clothes in her vaginal area. Falon told the detective that at their new house, Mr. Cerrano
24 touched her vaginal area and put his fingers in her vagina.

25 10. Mr. Cerrano has consistently and repeatedly denied touching Falon. The day after he
26 was arrested, he took a computer voice stress analyzer examination which did not show any deception
27 when he was asked if he touched Falon's vagina.

28 11. In a statement dated June 22, 1999, while Falon was living in North Carolina, she
29 recanted her prior statements and testimony. She stated that the night the police were called to the

1 house, her mother called her into the bathroom, told her to pull down her pants and underwear, and
2 asked who had been touching her. When Falon answered, "Nobody," her mother slapped her. Her
3 mother repeated the same question and slapped Falon when she said that nobody touched her. Falon
4 stated that she blurted out the name, "Dennis," so that her mother would not hit her anymore. She said
5 that Dennis was the first name she thought of. Falon stated she told the police that Dennis touched her
6 because she was afraid that if her mother found out she lied, she would beat her up again.

7 12. In a statement dated June 22, 1999, Joyce Williams, a mental health counselor, stated
8 that Falon told her that Mr. Cerrano never did anything to her. Falon reported to Ms. Williams that her
9 mother often checked Falon's genital area and asked who was doing things to her. Falon was getting
10 terrified by these questions and realized she could stop them by naming a name. She chose
11 Mr. Cerrano's name because he sometimes took care of her and he lived in the house with them.
12 Ms. Williams opined that based on the information she had from Falon and her observations of her,
13 Mr. Cerrano did not abuse Falon. Ms. Williams reported that after Falon disclosed that she had lied,
14 Falon's mood improved and she stopped having the type of nightmares she had before. Ms. Williams
15 believes that Falon was now telling the truth because she is living in a safe place with her
16 grandmother.

17 13. Mr. Cerrano testified that when his daughter moved out of the house, he invited
18 Louise John and her daughter, Falon, to live in the house with him and his wife. He testified that he
19 knew Falon's mother as an acquaintance through mutual friends. He felt sorry for Falon because he
20 saw her sleeping on the floor at various houses. Although he saw Falon 10 or 12 times before she
21 lived in his house, he never spoke with her before she and her mother moved in.

22 14. Mr. Cerrano testified that after Falon and her mother moved in, he was never alone with
23 Falon. After further cross examination, he testified that he often took Falon to school and picked her
24 up. He described himself as being a "taxi cab" for Falon. He then stated that the only time he was
25 ever alone with Falon was when he took her to and from school. Mr. Cerrano testified that he never
26 talked with Falon when he was driving her to or from school. He testified that he never went into
27 Falon's room. Mr. Cerrano testified that the only time he ever touched Falon was one or two times on
28 the shoulder so that he could pass by as he walked past her in the hallway.

1 3. Penal Code section 4903 does not indicate what constitutes a discharge for the purpose
2 of triggering the filing period. The term is used in a variety of sections in the Penal Code. A
3 defendant is discharged after a preliminary hearing if there is insufficient evidence that a public
4 offense was committed or that the defendant committed it. (Pen. Code, §871.) A defendant is
5 discharged after the jury is discharged because the charged offense occurred outside the jurisdiction of
6 the State. (Pen. Code, § 1114.) A defendant is discharged if the jury is discharged because the
7 charged facts do not constitute a punishable offense, unless a new information or indictment can be
8 framed upon which the defendant could be convicted. (Pen. Code, §1117.) As used in these
9 circumstances, discharge of the defendant is synonymous with the dismissal of the criminal charge. In
10 other circumstances, discharge connotes discharge from custody. If a demurrer is sustained and an
11 amendment is not permitted to the accusatory pleading, the defendant is discharged if he is in custody.
12 (Pen. Code, § 1008.) If a motion to set aside an indictment or information is granted and the defendant
13 is in custody, the defendant is discharged. (Pen. Code, § 997.) If discharge was used in Penal Code
14 section 4903 to connote discharge from physical custody, it would be redundant, since release from
15 imprisonment independently starts the time period for filing a claim. Accordingly, discharge for the
16 purpose of triggering the filing period under Penal Code section 4903 is the dismissal of charges
17 discharging a defendant from a pending criminal proceeding.

18 4. Mr. Cerrano was discharged on September 20, 2000, when the writ of habeas corpus
19 was granted, his judgment of conviction was vacated, and the action was dismissed. Six months from
20 his discharge was March 19, 2001. Since six months from Mr. Cerrano's release from prison was
21 April 27, 2000, he needed to file his claim no later than March 19, 2001, six months from his
22 discharge.

23 5. The first claim filed that specifically stated that it was filed under Penal Code section
24 4904 was received by the Board on April 26, 2001. In order to find that Mr. Cerrano filed a timely
25 claim under Penal Code section 4900 *et seq.*, it must be determined that either one of the earlier filed
26 claims was a cognizable claim, or the claim filed on April 26, 2001, was a permissible amendment of
27 an earlier claim.

28 7. Penal Code section 4903 establishes the requirements for a successful claim. The
29 claimant must prove (1) that the crime with which he was charged was either not committed at all, or,

1 if committed, was not committed by him; (2) that he did not by any act or omission on his part, either
2 intentionally or negligently, contribute to the bringing about of the arrest or conviction for the crime;
3 and (3) the pecuniary injury he sustained through his erroneous conviction and imprisonment.

4 8. A claim must be filed in substantially the form established in the Board's regulations.
5 (Cal. Code Regs., tit. 2, § 640.) It must include the amount of the claim; the name of the felony for
6 which the person was convicted; the title of the court in which the conviction occurred; the date of
7 conviction; the length of sentence imposed; the prison in which the sentence was served; the length of
8 time and dates of incarceration; facts showing the three elements required by Penal Code section 4903;
9 and the date of the judgment of acquittal, discharge, grant of pardon, or release from imprisonment,
10 whichever is latest. (*Ibid.*)

11 9. This claim is not governed by the Tort Claims Act. Nevertheless, the law governing
12 other claims against the State may offer guidance. The purpose of the government claims filing
13 requirements is to provide the public entity sufficient information to allow it to investigate claims and
14 settle them without the expense of litigation. (*City of San Jose v. Superior Court* (1974) 12 Cal.3d
15 447, 455, 115 Cal.Rptr. 797, 802.) In spite of this need to get sufficient information from a claim,
16 substantial compliance with the claim filing requirement, rather than perfect compliance, may be
17 sufficient. (*Id.*, 12 Cal.3d at p. 456, 115 Cal.Rptr. at p. 803.) Even so, failure to comply with a
18 particular statutory requirement is not substantial compliance: "... [S]ubstantial compliance cannot be
19 predicated upon no compliance. [Citations omitted.]" (*Ibid.*) The following standard governs the
20 sufficiency of a government claim: "Is there some compliance with all of the statutory requirements;
21 and, if so, is this compliance sufficient to constitute substantial compliance?" (*Id.* 12 Cal.3d at p. 457,
22 115 Cal.Rptr. at p. 803.) This seems a reasonable standard to apply to claims filed under
23 Penal Code section 4900 *et seq.*

24 10. Based on Findings of Fact, paragraph 2, it is found that the claim filed by Mr. Cerrano
25 on December 21, 2000, did not substantially comply with the claim filing requirements for a claim
26 under Penal Code section 4900 *et seq.* It sought compensation for wrongdoing by Solano County and
27 the CDC. Although it alluded to Mr. Cerrano's unlawful incarceration, the gravamen of the claim
28 requested tort damages against Solano County and the CDC. Even if viewed in the light most
29 favorable to Mr. Cerrano, the claim did not allege the requisite facts. It included the amount being

1 requested, the name of two prisons in which he was incarcerated, and the date his conviction was
2 vacated. However, the most important facts, those necessary to establish the required statutory
3 elements, were not alleged.

4 11. Based on Findings of Fact, paragraph 3, it is found that the claim filed on
5 March 7, 2001, by Mr. Zlotlow on behalf of Mr. Cerrano did not substantially comply with the claim
6 filing requirements. Even when viewed most favorably to Mr. Cerrano, the claim did not allege the
7 requisite facts. It alleged the amount requested; the felony; the date of conviction; the sentence;
8 pecuniary injury; and the date of discharge. It did not include the prisons in which he was
9 incarcerated, the length of time or dates of incarceration, or facts showing that he neither intentionally
10 nor negligently contributed to his arrest and conviction. It is a claim based on negligence and
11 intentional torts of false arrest and false imprisonment, which involve factual and legal issues separate
12 and independent from the factual and legal issues involved in a claim under Penal Code section 4900
13 *et seq.* (See *Janis v. California State Lottery Commission* (1998) 68 Cal.App.4th 824, 833, 80
14 Cal.Rptr.2d 549, 554.)

15 12. Based on Findings of Fact, paragraphs 3 and 4, it is found that the claim filed on
16 March 13, 2001, by Mr. Zlotlow on behalf of Mr. Cerrano did not substantially comply with the claim
17 filing requirements. Its statement that the claimant was entitled to statutory damages because he was
18 imprisoned and found innocent did not cure the defects described above in paragraph 11.

19 13. In contrast with the provisions of the Tort Claims Act, there is no provision authorizing
20 a claim filed after the statutory filing period to amend and relate back to a previously-filed claim. (See
21 Gov. Code, § 910.6.) This failure to authorize such an amendment indicates legislative intent not to
22 permit it. (See *City of Port Hueneme v. City of Oxnard* (1959) 52 Cal.2d 385, 395, 341 P.2d 318, 395.)
23 In addition, allowing a series of filings to collectively constitute a claim under the circumstances found
24 here would make it difficult to determine which statute of limitation applied or when the statute of
25 limitations began to run. (See *Shaefer Dixon Associates v. Santa Ana Watershed Project Authority*
26 (1996) 48 Cal.App.4th 524, 535, 55 Cal.Rptr.2d 698, 705.) It is determined that the claim filed on
27 April 26, 2001, was not timely filed.

28 14. Assuming for the sake of argument that Mr. Cerrano filed a timely claim, it must be
29 determined whether he met his burden of proof. The claimant has the burden of proving his innocence

1 by a preponderance of the evidence. (*Diola v. Board of Control* (1982) 135 Cal.App.3d 580, 588 fn 7,
2 185 Cal.Rptr.2d 511, 516 fn 7.) The Board may consider any information that it deems relevant to the
3 issues. (Cal. Code Regs., tit. 2, § 641.)

4 15. Contrary to Mr. Cerrano's repeated allegations in his many filings, he has never been
5 determined to be innocent of the crime for which he was convicted. The writ of habeas corpus was
6 granted based on new evidence that cast fundamental doubt on the accuracy and reliability of the
7 earlier conviction and pointed unerringly to the innocence of the defendant. But a habeas proceeding
8 is not a determination of innocence and the granting of the writ does not constitute an acquittal.
9 (*In re Cruz* (2003) 104 Cal.App.4th 1339, 1346, 129 Cal.Rptr.2d 31, 37.) The proceeding is designed
10 to correct an erroneous conviction by invalidating the conviction and restoring the defendant to the
11 position he would have been in if there had been no trial and conviction. (*Ibid.*) The granting of the
12 writ vacating the conviction is found to be justified because the newly-discovered evidence was not
13 presented to the jury, not because the evidence would have compelled an acquittal if the jury had
14 considered it. (*Ibid.*) In essence, by granting the writ of habeas corpus, the court determined that a
15 conviction without the jury considering the new evidence was an injustice. (*Id.*, 104 Cal.App.4th at p.
16 1348, 129 Cal.Rptr.2d at p. 38.) When it granted the writ, the Court did not find that the evidence at
17 trial was insufficient to support a conviction, or that a reasonable jury could not convict Mr. Cerrano if
18 it had considered the newly-discovered evidence. (*Id.*, 104 Cal.App.4th at p. 1348, 129 Cal.Rptr.2d at
19 p. 39.)

20 16. Also contrary to what Mr. Cerrano repeatedly alleged, the writ of habeas corpus was not
21 granted because his conviction was based on false testimony. While a writ of habeas corpus may be
22 granted on the basis of false evidence, this is a distinct basis for relief that was not at issue in this case.
23 (Pen. Code, § 1473; *In re Wright* (1978) 78 Cal.App.3d 788, 802, 144 Cal.Rptr. 535, 544.)

24 17. The record includes a transcript of Falon's testimony at trial as well as the testimony of
25 the Vallejo police officer who reported to the scene and interviewed Falon. Their testimony was
26 subject to cross examination. The record also includes a notarized statement by Falon recanting her
27 allegations and a notarized statement by her mental health counselor opining that Falon was not abused
28 by Mr. Cerrano. Although these notarized statements call into question Falon's sworn testimony, their
29 weight is diminished because they were not subject to cross examination. The therapist's opinion that

1 Falon's subsequent statement is trustworthy because she feels safe because she no longer lives with he
2 mother is undercut by the information that Falon did not want to return to her mother's custody.

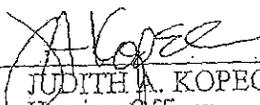
3 18. Mr. Cerrano's testimony is given little weight. His bias is obvious, since he would be
4 awarded a significant sum of money if the claim were allowed. His expression of concern for Falon
5 that led him to invite her and her mother to live with him cannot be reconciled by his seeming
6 disregard for her once she moved into his home. He initially testified that he was never alone with
7 Falon; he changed this to say that he was a "taxi cab" for her, regularly driving her to and from school.
8 In spite of this, according to Mr. Cerrano, he never talked with her while driving her around; he never
9 went into her room; and he only touched her once or twice as he passed her in the hallway. This is
10 inherently unbelievable. It defies reason that while having seemingly sincere concern about Falon to
11 welcome her into his house, he would virtually ignore her because, as he testified, he "didn't want to
12 get in their business."

13 19. After carefully and thoroughly examining all of the evidence in this case, there is
14 insufficient evidence that Mr. Cerrano is innocent of the crime for which he was convicted.

15 Order

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

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19 Date: September 7, 2002

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21 JUDITH A. KOPEC
22 Hearing Officer
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COPY



STATE OF CALIFORNIA

GRAY DAVIS, Governor

VICTIM COMPENSATION AND GOVERNMENT CLAIMS BOARD

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Senior Advisor to the Governor,
Governor's Office
And Board Member

CATHERINE A. CLOSE
Interim Executive Officer

September 29, 2003

George Alonzo, Esq.
THE ALONZO LAW FIRM
2827 North G Street
Merced, CA 95340

RE: Claim of Dennis Cerrano, G513586

Dear Mr. Alonzo:

Enclosed is a copy of the proposed decision and notice of decision concerning Mr. Walker's claim. Should you have any concerns or questions, please feel free to contact our office.

Sincerely,

Jennifer Shaffer
Staff Counsel

Encl.