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

9 In the Matter of the Claim of:

10 **Scotty Hobbs**

11 Claim No. G 529707

Proposed Decision

(Penal Code § 4900 et seq.)

12 A hearing on this claim was held on March 9, 2004, in Sacramento, California, by
13 David Shaw, Hearing Officer, who was assigned to hear this matter by the Interim Executive Officer of
14 the California Victim Compensation and Government Claims Board (Board).

15 The claimant, Scotty Hobbs, was present.

16 The Attorney General was represented by Deputy Attorney General Jennifer M. Runte.

17 **Findings of Fact**

18 1. Scotty Hobbs was convicted by jury trial on October 6, 1998, of two counts of
19 committing a lewd act upon a child [Penal Code section 288(a)], both felonies. The jury also found
20 true, as to count 2, a special allegation that he had substantial sexual conduct with a child under the age
21 of 14 [Penal Code section 1203.066 (a)(8)]. On December 15, 1998, Mr. Hobbs was sentenced to 10
22 years in state prison.

23 2. In February 2001, the California Court of Appeal, Third Appellate District, granted his
24 Writ of Habeas Corpus, reversing Mr. Hobbs' conviction and remanding his case for a new trial.
25 According the California Department of Corrections, Mr. Hobbs was in State custody for a total of 792
26 days prior to his release. Mr. Hobbs filed this claim on May 14, 2002.

27 3. The Court of Appeal reversed Mr. Hobbs' conviction and remanded the case for a new
28 trial because the minor victim in the case partially recanted her trial testimony, including that Mr.
29 Hobbs had used force in the commission of the offenses and confusion over whether he had actually

1 9. Bonnie T. told Mr. Seaman that on/about July 17, 2000, her daughter Leea T. became
2 withdrawn and remorseful and said that she had something to tell her. Leea T. said that "Scotty didn't
3 rape me. It was not rape and it was not forcible." Leea T. also said that there were not two occasions
4 where this [sexual] activity took place, only one. Bonnie T. told Mr. Seaman, that "it sounded like
5 [during the sexual encounter] there was an exposure with some fondling, where Mr. Hobbs made
6 contact with Leea T.'s genitals with his penis, however when she told him to stop, he did."

7 10. Karlee J. told Mr. Seaman that Bonnie T. had called her and told her that she and Leea
8 T. wanted to come over to her house and see her. During this meeting, Leea T. told her that, "it wasn't
9 all of his fault," [referring to Scotty Hobbs]. Karlee J. said that Leea T. was confused; that it didn't
10 happen the way she had originally testified, that there was no force and only one incident. Karlee J.
11 asked Leea T. the following question, "Did he [Scotty Hobbs] come?" Leea T. responded, "He didn't
12 finish." Leea T. also said that he [Scotty Hobbs] stopped when she said to and it only happened one
13 time.

14 11. Karlee J. told Mr. Seaman that she also had a second discussion that day with Leea T.
15 concerning Scotty Hobbs, wherein she asked Leea T. in more detail what had taken place with Scotty
16 Hobbs. During this conversation, Leea T. told her that she had been babysitting and after putting her
17 two nephews down for a nap, she and Scotty Hobbs were watching TV on the bed. She and Mr. Hobbs
18 began roughhousing, during which Scotty Hobbs unzipped his pants, pulled himself out and exposed
19 himself to her. Leea T. further said that Scotty Hobbs pushed her shorts up from the back of one leg
20 and inserted his penis under her clothing, so that it was up against her or possibly slightly penetrating
21 her genitals. Leea T. further said that "he pushed into her slightly and she froze up." Leea T. further
22 said that she told Scotty Hobbs either "stop or no" and he stopped.

23 12. Karlee J. told Mr. Seaman that she believed that her sister Leea T. was telling the truth
24 about the sexual molestation by Scotty Hobbs and that in her opinion, it was more of a touching,
25 fondling or molestation without "real intercourse" being involved. Karlee J. also stated that part of the
26 reason that she believes that Leea T. is telling the truth is that "[T]his is the same activity that Scotty
27 Hobbs did to her when she was 16 years old and she was going with him. [Karlee J.] indicated that
28 this is how he got involved with her physically, by doing the same kind of activity, i.e. wrestling,
29 pulling his penis out and exposing himself." Karlee J. further said that, she had "never told Leea T. or

1 initially filed an application with the Victims of Crime Program (VCP) on May 14, 2002,
2 approximately 14 months following his release from custody. Board staff notified Mr. Hobbs on
3 September 17, 2002, that he did not qualify as a victim of a crime pursuant to Government Code
4 section 13950, et seq. and also that he submitted his claim late. Mr. Hobbs was advised that his claim
5 should have been filed with the Government Claims Program and he was provided with a claim form.
6 On September 13, 2002, Mr. Hobbs filed this Penal Code section 4900 claim with the Board as a
7 Government Claim and provided additional supporting material on December 19, 2002. Assuming
8 that the Board were to utilize the date in which Mr. Hobbs incorrectly filed his Penal Code section
9 4900 claim with the VCP, May 14, 2002, Mr. Hobbs filed his claim well beyond the six-month
10 statutory filing period established in Penal Code section 4900. Unlike the late filing provisions found
11 in Government Code section 13953, relating to the VCP and Government Code section 911.2, et seq.
12 relating to the California Tort's Claims Act, Penal Code section 4900 has no late filing provisions. It
13 therefore appears that Mr. Hobbs' delay in filing his claim necessarily prevents the Board from
14 considering his claim, as it lacks the lawful jurisdiction to do so. Although no equitable grounds
15 appear to be present in this case, should the Board should wish to treat Mr. Hobbs' claim as a claim in
16 equity, the following analysis is provided.

17 2. The claimant must prove that the crime with which he was charged was either not
18 committed at all, or, if committed, was not committed by him; that he did not by any act or omission
19 on his part, either intentionally or negligently, contribute to the bringing about of the arrest or
20 conviction for the crime; and the pecuniary injury sustained through his erroneous conviction and
21 imprisonment. (Pen. Code, § 4903.) The Board may consider any information that it deems relevant
22 to the issues. (Cal. Code Regs., tit. 2, § 641.) The claimant has the burden of proving his innocence
23 by a preponderance of the evidence. (*Diola v. Board of Control* (1982) 135 Cal.App.3d 580, 588 fn 7,
24 185 Cal.Rptr.2d 511, 516 fn 7.)

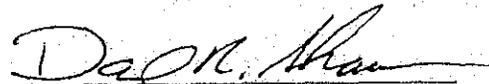
25 3. During the Hearing, Mr. Hobbs did not offer any testimony, explanation or argument
26 that he did not by any act or omission on his part, either intentionally or negligently, contribute to the
27 bringing about of the arrest or conviction for the crime; and the pecuniary injury sustained through his
28 erroneous conviction and imprisonment. On the contrary, he focused his brief testimony upon the
29 diminished credibility of the minor victim, the appellate court's granting of his Writ of Habeas Corpus,

1 and the legal expenses related to his release from state prison. Unlike a criminal proceeding in which
2 the prosecution has the burden of proving guilt, Mr. Hobbs has the burden to prove his innocence,
3 albeit by an easier standard of proof. Weighing the evidence in the record and drawing reasonable
4 inferences from it, there is insufficient evidence that Mr. Hobbs did not commit at least one of the
5 crimes for which he was convicted and that he did not contribute to his arrest and conviction. Mr.
6 Hobbs' testimony was not found to be credible in that it lacked sufficient detail, was vague and
7 conclusory and because he did not specifically deny that sexual conduct between he and the victim
8 occurred, rather that the victim has since recanted (albeit only partially) her testimony about the crime.
9 Furthermore, it is noted that Mr. Hobbs, exclusive of this case, is a twice-convicted felon with a
10 financial interest in the outcome of this claim. Conversely, the information contained in the record
11 indicates that the minor victim in this case has remained steadfast in her testimony that Mr. Hobbs and
12 she did in fact have skin-to-skin vaginal/penile contact on one occasion. Despite the victims' partial
13 recantation, her detailed and compelling statement concerning Mr. Hobbs' attempt to have sexual
14 intercourse with her is found to be more credible than Mr. Hobbs' nonspecific denial.

15 **Order**

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

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19 Date: March 29, 2004



20 DAVID R. SHAW
21 Hearing Officer
22 California Victim Compensation and
23 Government Claims Board
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1 anyone else about that activity, so that the only way that her sister would have known that was
2 something Scotty Hobbs did to her or to somebody else.”

3 13. Mr. Hobbs testified during the hearing that he had been convicted solely upon the word
4 of the minor victim, Leea T. and sent to prison for a crime that he didn't commit. Mr. Hobbs stated
5 that because Leea T. has admitted that she lied in court and that his conviction was overturned, the rest
6 of her story should not be believed. Mr. Hobbs provided the Hearing Officer and the Deputy Attorney
7 General with five pages from his petition for Writ of Habeas Corpus, containing the declaration of
8 Dane A. Cameron, his former trial counsel and attorney on his Writ of Habeas Corpus petition. Mr.
9 Cameron's declaration relates entirely to Mr. Hobbs' plea to the Appellate Court to reverse and
10 remand Mr. Hobbs' case for a new trial due to the newly obtained evidence. This Declaration
11 reiterates that Leea T. has steadfastly maintained that Mr. Hobbs placed his penis either into or up
12 against her bare vagina.

13 14. The Attorney General recommended that the claim be denied because although the
14 Habeas petition demonstrated sufficient grounds for the court to grant Mr. Hobbs' relief from
15 incarceration, it is not sufficient to support a claim for indemnity under Penal Code Section 4900.
16 Deputy Attorney General Jennifer Runte argued at the hearing that even if Leea T's new statement
17 does not support the offense alleged in Count 1, it continues to support the allegation that Mr. Hobbs
18 had unlawful sexual intercourse with the minor victim as alleged in count 2. Under these
19 circumstances, Mr. Hobbs contributed to both his arrest and conviction.

20 15. At the time of his 1998 conviction, Mr. Hobbs was on parole from the California
21 Department of Corrections resulting from a 1995 felony conviction for Burglary [Penal Code section
22 459] and a 1996 felony conviction for being a felon in possession of a firearm [Penal Code section
23 12021(a)(1)].

24 25 **Determination of Issues**

26 1. A person convicted and imprisoned for a felony may submit a claim to the Board for
27 pecuniary injury sustained through his erroneous conviction and imprisonment. (Pen. Code, § 4900.)
28 The claim must be filed within six months after release from imprisonment. (Pen. Code, § 4901.)
29 Mr. Hobbs, however did not file this claim within six months of his release from prison. Mr. Hobbs

1 completed an act of sexual intercourse with her. The Butte County District Attorney's Office elected
2 not to retry Mr. Hobbs and he was released from prison on February 22, 2001.

3 4. According to the Deputy District Attorney who originally prosecuted the case, the Butte
4 County District Attorney chose not to re-try Mr. Hobbs for several reasons. First, the victim's partial
5 recantation of her trial testimony concerning the use of force and the extent of sexual contact between
6 Mr. Hobbs significantly lessened the likelihood of a second conviction. Additionally, the prosecutor
7 felt that the young victim's age and her emotional state following the first trial would make it unlikely
8 that she would hold up under the mental strain of a second protracted trial.

9 5. The minor victim in this case, Leea T., testified at trial that in June or July of 1995, she
10 (then age 13) was babysitting at the home of her then brother in law (Mr. Hobbs) and sister, Karlee J.
11 Mr. Hobbs and Leea T. began playfully wrestling on the bed while watching TV, whereupon Mr.
12 Hobbs straddled her on the bed. Mr. Hobbs put on a condom, pulled down her shorts and penetrated
13 her vagina first with his finger and subsequently with his penis. Leea T. also testified that
14 approximately two weeks later, also while babysitting, Mr. Hobbs grabbed her arm and pushed her
15 onto the bed. Mr. Hobbs then pulled down her shorts and inserted his penis into her vagina "just a
16 little bit, maybe an inch." Mr. Hobbs thereupon became frustrated at Leea's attempts to fight him off
17 and stopped.

18 6. In August 2000, Leea T. told her mother, Bonnie T., that she had partially lied during
19 trial testimony at Mr. Hobbs's trial. Bonnie T. immediately contacted Butte County District
20 Attorney's investigator Kevin MacPhail, as well as the California Attorney General's Office.

21 7. Investigator MacPhail subsequently interviewed Leea T., who told him that although
22 she and Mr. Hobbs did have a sexual encounter, he did not fondle her vagina with his fingers, did not
23 use force, and did not use a condom. Leea T. stated that during the one sexual encounter which did
24 occur, Mr. Hobbs succeeded in placing his penis into her vagina "a little bit" and that when she told
25 him to stop, he did so.

26 8. On August 24, 2000, a private investigator, James Seaman hired by Mr. Hobbs's
27 appellate counsel, interviewed both Bonnie T. and Karlee J. about prior statements that Leea T. had
28 made to them concerning her partial recantation and about the sexual act with Mr. Hobbs.

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12 Claim No. G 529707
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Notice of Decision

14 On April 23, 2004, the California Victim Compensation and Government Claims Board
15 adopted the attached Proposed Decision of the Hearing Officer as its Decision in the above-referenced
16 matter. The Decision became effective on _____, 2004.
17

18 Date: April __, 2004

19 _____
20 JUDITH KOPEC
21 Chief Counsel
22 California Victim Compensation
23 and Government Claims Board
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