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

In the Matter of the Claim of:

Joseph Robinson

Claim No. G 543868

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

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A telephone hearing on this claim was held on January 6, 2005, in Sacramento, California, by Julia V. Johnson, Hearing Officer, who was assigned to hear this matter by the Executive Officer of the Victim Compensation and Government Claims Board (Board).

The claimant, Joseph Robinson, was present and represented himself.

The Attorney General's Office appeared through Deputy Attorney General Michael Farrell.

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Evidence and Arguments Presented

1. On August 1, 2001, Joseph Robinson was convicted of possessing marijuana for sale and transporting and/or selling marijuana, all while being armed with a firearm, in violation of Health and Safety Code sections 11359 and 11360, subd. (a), and Penal Code section 12022, subd. (a)(1). The court sentenced Mr. Robinson to three years in prison. On February 18, 2003, Mr. Robinson was placed on parole. Mr. Robinson was, therefore, incarcerated for 567 days.

2. The Third District Court of Appeal reversed Mr. Robinson's conviction on March 18, 2003, concluding that the trial court committed reversible error by admitting Mr. Robinson's pro per preliminary hearing testimony at trial. The appellate court concluded that it was reversible error because Mr. Robinson was permitted to testify at the preliminary hearing, even though Mr. Robinson had not waived his right to counsel and the court had denied Mr. Robinson's request for counsel.

3. At his preliminary hearing, Mr. Robinson testified that he had obtained approval from his

1 physician to use marijuana under the Compassionate Use Act of 1996, also known as Proposition
2 215.¹ Additionally, Mr. Robinson testified that he grew marijuana for his own use, but that he grew
3 more marijuana than he or his coworkers could use. Mr. Robinson further testified that he was
4 planning on selling his excess marijuana to the California Medical Research Center (CMRC) for
5 between \$2,000.00 and \$3,000.00 per pound, less than the market price of \$4,000.00 per pound, so
6 that he could provide medical marijuana to individuals unable to grow marijuana themselves. Mr.
7 Robinson's preliminary hearing testimony was admitted into evidence at trial, and the appellate court
8 found that such testimony was impermissibly used to prove that Mr. Robinson transported, offered to
9 furnish, and intended to sell marijuana. Mr. Robinson did not testify at trial.

10 4. On May 22, 2003, the appellate court remitted Mr. Robinson's case back to the Plumas
11 County Superior Court for further proceedings. The Plumas County District Attorney later re-filed the
12 same criminal charges against Mr. Robinson in an untimely fashion. On September 3, 2003, Mr.
13 Robinson's conviction was dismissed in the interest of justice.

14 5. On September 27, 2000, Mr. Robinson, Jonathan R., Zeke L., Joshua H., and Brenda V.
15 were arrested at Mr. Robinson's residence for cultivating, processing, and possessing marijuana for
16 sale. On that day, law enforcement located a large amount of marijuana, three guns, at least two of
17 which were loaded, and materials used to cultivate and process marijuana on Mr. Robinson's
18 property. The record contains pictures of Mr. Robinson's house on or about September 27, 2000,
19 which demonstrate that there was a large amount of marijuana and three guns found in his house.
20 Law enforcement also observed that Mr. Robinson had \$6,000.00 cash on his person.

21 6. In documents submitted to the Board, Mr. Robinson indicated that he, Joshua H.,
22 Jonathan R., and Brenda V. were all processing marijuana on September 27, 2000, and that they all
23 had medical substantiation to use such marijuana. Mr. Robinson also testified that he had
24 transported marijuana from his gardens and that he produced marijuana for himself and others.

25 7. The exact amount of marijuana that was located on Mr. Robinson's property on September
26 27, 2000 is in dispute. U.S. Forest Service investigator Tony Magarell testified at Mr. Robinson's
27 preliminary hearing that law enforcement located approximately fifty pounds of marijuana bud in Mr.

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29 ¹ The Compassionate Use Act of 1996 is codified in Health and Safety Code section 11362.5.

1 Robinson's house and the equivalent of fifty pounds of marijuana bud in Mr. Robinson's gardens.
2 During the hearing, Mr. Robinson testified that, on September 27, 2000, there was approximately
3 thirty pounds of dried marijuana in his house.

4 8. Mr. Robinson testified that he did have more marijuana at his house than he or the other
5 individuals with whom he grew marijuana could use, but that the majority of the marijuana was going
6 to be used by Mr. Robinson and other individuals (who had medical substantiation to use medical
7 marijuana) with whom he grew marijuana. Mr. Robinson also testified that he had offered to sell any
8 excess medical marijuana he might have for a price below market to CMRC for individuals who could
9 lawfully use it. In addition, Mr. Robinson admitted in a January 9, 2001 letter to the prosecutor in his
10 case that he "...cultivated the marijuana, transported the marijuana and possessed the marijuana
11 for sale."

12 9. Mr. Robinson testified that there were three guns in his house on September 27, 2000.
13 Mr. Robinson testified that he owned two of the guns, a handgun and rifle, which were loaded. Mr.
14 Robinson further testified that he kept the guns for his protection.

15 10. Mr. Robinson testified that the \$6,000.00 cash that he had on his person on
16 September 27, 2000, was from an individual who was giving him money to loan to third parties.

17 11. During the Board's hearing and in documents presented to the Board, Mr. Robinson
18 emphasized that the purpose of the Compassionate Use Act is to ensure that patients with medical
19 substantiation are able to obtain medical marijuana. Mr. Robinson asserted that in 2000, there was
20 no mechanism to distribute medical marijuana, even though the Compassionate Use Act
21 contemplated that the government would implement a plan to distribute medical marijuana. Mr.
22 Robinson further argued that most patients in 2000 were unable to produce marijuana. Mr. Robinson
23 also argued that, even if the patients were able to produce marijuana, the patients could not do so
24 instantaneously, so the only manner in which the patients could obtain marijuana was by purchasing
25 it from a distributor of marijuana. Mr. Robinson maintained that he was merely distributing medical
26 marijuana to those people who are legally authorized to use it and was, therefore, not committing an
27 illegal act, or if he was committing an illegal act, he was justified or had a medical necessity to do so.

28 12. Mr. Robinson maintained that the two Health and Safety Code sections that he was
29 convicted of violating (11359 and 11360) both contain language making an exception for actions that

1 are otherwise provided by law.² Mr. Robinson asserted that the Compassionate Use Act makes
2 possessing and transporting marijuana legal and, therefore, provides an exception under both Health
3 and Safety Code section 11359 and 11360.

4 13. Mr. Robinson contended that he has met his burden of proof that he is an erroneously
5 convicted felon under Penal Code section 4900 based simply on the facts that: 1) his conviction was
6 overturned, and 2) the criminal charges against him were dismissed.

7 14. Mr. Robinson testified that his source of income in September and October was from
8 retirement savings. Mr. Robinson also testified that he has a degree in economics from the Wharton
9 School of Finance, University of Pennsylvania, and argued that, based upon his education, he could
10 have earned \$100.00 a day doing something while he was incarcerated. Mr. Robinson asserted that
11 his educational background is proof that he sustained a pecuniary injury. Mr. Robinson also argued
12 that he will never be the same since serving time in prison, and that what he went through was worth
13 more than \$100.00 a day.

14 15. The testimony that Mr. Robinson provided regarding the \$6,000.00 cash that he had on
15 his person on September 27, 2000, was found to be not credible. Additionally, some of Mr.
16 Robinson's responses to Mr. Farrell's questions about the underlying criminal prosecution in this
17 case were found to be not credible.

18 Findings of Fact

19 Based on the testimony of Joseph Robinson during the hearing and on the documentary
20 evidence contained in the Board's file, substantial evidence supports each of the following findings of
21 fact:

22 1. On September 2000, Mr. Robinson possessed, cultivated, and transported marijuana
23 with at least two loaded firearms in his possession. At least thirty pounds of marijuana were found on
24 Mr. Robinson's property on September 27, 2000. Mr. Robinson had offered to sell some of the

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26 ² Health and Safety Code section 11359 states:

"Every person who possesses for sale any marijuana, except as otherwise provided by law, shall be
27 punished by imprisonment in the state prison."

Health and Safety Code section 11360(a) states:

28 "Except as otherwise provided by this section or as authorized by law, every person who transports,
29 imports into this state, sells, furnishes, administers, or gives away, or offers to transport, import into this
state, sell, furnish, administer, or give away, or attempts to import into this state or transport any marijuana
shall be punished by imprisonment in the state prison for a period of two, three or four years."

1 marijuana that he possessed, cultivated, and transported to the California Medical Research Center.
2 At the time of his arrest on September 27, 2000, Mr. Robinson had \$6,000.00 in his possession.

3 2. As of September 27, 2000, Mr. Robinson was not employed.

4 3. On August 1, 2001, Mr. Robinson was convicted of possessing marijuana for sale and
5 transporting and/or selling marijuana, all while being armed with a firearm. Mr. Robinson was
6 incarcerated for 567 days, until February 18, 2003. The Third District Court of Appeal reversed Mr.
7 Robinson's conviction on March 18, 2003, based on its finding that Mr. Robinson was permitted to
8 testify at his preliminary hearing, even though he had not waived his right to counsel and the court had
9 denied Mr. Robinson's request for counsel. On September 3, 2003, Mr. Robinson's conviction was
10 dismissed.

11 **Determination of Issues**

12 1. Penal Code section 4903 establishes the requirements for a successful claim for an
13 erroneously convicted felon. The claimant must prove: 1) that the crime with which he was charged
14 was either not committed at all, or, if committed, was not committed by him; 2) that he did not by any
15 act or omission on his part, either intentionally or negligently, contribute to the bringing about of the
16 arrest or conviction for the crime; and 3) that he sustained a pecuniary injury through his erroneous
17 conviction and imprisonment. (Pen. Code, § 4903.) If the claimant meets his burden of proof, the
18 Board shall recommend to the legislature that an appropriation of \$100.00 per day of incarceration be
19 made for the claimant. (Pen. Code, § 4904.)

20 2. "Pecuniary" is defined as monetary or relating to money. (See Black's Law Dict. (6th ed.
21 1990) p. 1131, col.1.) The fact that the injury that is required to be proved is "pecuniary" suggests
22 that the injury must be based upon monetary damages.

23 3. In 2000, the erroneously convicted felons' rate of compensation was changed to \$100.00
24 per day, which was based upon the amount of compensation that the California Department of
25 Corrections (CDC) pays when it is unable to release a prisoner on his scheduled release date.
26 (Assem. Com. On Public Safety, Analysis of Assem. Bill No. 1799 (1999-2000 Reg. Sess.) Feb. 29,
27 2000, p.2.) Despite the fact that the legislature changed its rate of compensation to be based on the
28 CDC rate (which does not require a showing of pecuniary loss), the legislature did not modify the
29 requirement in Penal Code section 4903 that the claimant demonstrate that he suffered pecuniary

1 injury. Therefore, it is concluded that that the pecuniary injury set forth in Penal Code section 4903 is
2 not presumed and must be proven.

3 4. The claimant has the burden of proving his innocence by a preponderance of the
4 evidence. (*Diola v. Board of Control* (1982) 135 Cal.App.3d 580, 588, fn 7.)

5 5. In reaching its determination of the merits of the claim, the Board may consider the
6 following, but the following will not be deemed sufficient evidence to warrant the Board's
7 recommendation that the claimant be indemnified in the absence of substantial independent
8 corroborating evidence that the claimant is innocent of the crime charged: 1) claimant's mere denial
9 of commission of the crime for which he was convicted; 2) reversal of the judgment of conviction on
10 appeal; 3) acquittal of claimant on retrial; or 4) the failure of the prosecuting authority to retry
11 claimant for the crime. (Cal. Code Regs., tit. 2, § 641.³)

12 6. Testimony of witnesses claimant had an opportunity to cross-examine, and evidence to
13 which claimant had an opportunity to object, admitted in prior proceedings relating to the claimant
14 and the crime with which he was charged, may be considered by the Board as substantive evidence.
15 The Board may also consider any information that it may deem relevant to the issue before it. (Reg.,
16 § 641.)

17 7. Health and Safety Code section 11359 prohibits possession of marijuana for sale.

18 8. Health and Safety Code section 11360 prohibits transporting, importing into the state,
19 selling, furnishing, administering, giving away, or attempting to import into this state or transport
20 marijuana.

21 9. Penal Code section 12022, subdivision (a)(1) states that any person who is armed with a
22 firearm in the commission or attempted commission of a felony shall be punished an additional term
23 of one year, unless the arming is an element of the offense of which he or she was convicted.

24 10. Based upon Finding of Fact number 1, there is sufficient evidence that Mr. Robinson
25 violated Health and Safety Code sections 11359 and 11360 and Penal Code section 12022, subd.
26 (a)(1). Additionally, based upon Finding of Fact number 2 and the lack of evidence regarding any
27 pecuniary injury suffered by Mr. Robinson, there is insufficient evidence that Mr. Robinson sustained
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29 ³ All citations to regulations are to California Code of Regulations, title 2.

1 a pecuniary injury as a result of his incarceration. Nevertheless, because Mr. Robinson has asserted
2 two legal defenses for his conduct (the Compassionate Use Act and the medical necessity defense),
3 those defenses will be addressed in turn.

4 11. First, the Compassionate Use Act proclaims that Health and Safety Code section 11357,
5 relating to the possession of marijuana, and section 11358, relating to the cultivation of marijuana,
6 shall not apply to a patient, or to a patient's primary caregiver, who possesses or cultivates marijuana
7 for the personal medical purposes of the patient upon the written or oral recommendation or approval
8 of a physician. (Health & Saf. Code, § 11362.5, subd. (d).)

9 12. The purposes of the Compassionate Use Act are:

10 (A) To ensure that seriously ill Californians have the right to obtain and use
11 marijuana for medical purposes where that medical use is deemed appropriate
12 and has been recommended by a physician who has determined that the
13 person's health would benefit from the use of marijuana....

14 (B) To ensure that patients and their primary caregivers who obtain and use
15 marijuana for medical purposes upon the recommendation of a physician are
16 not subject to criminal prosecution or sanction.

17 (C) To encourage the federal and state governments to implement a plan to
18 provide for the safe and affordable distribution of marijuana to all patients in
19 medical need of marijuana.

20 (Health & Saf. Code, § 11362.5, subd. (b)(1).)

21 13. "[The] [q]uantity [of marijuana] is relevant to a Compassionate Use Act defense because
22 the law authorizes the cultivation and possession of marijuana only 'for the personal medical
23 purposes of the patient.'" (*People v. Jones* (2003) 112 Cal.App.4th 341, 346, fn. 2.) "If a person
24 cultivates or possesses marijuana for any other purpose, the defense is not available." (*Ibid.*) The
25 acts of selling, giving away, transporting, and growing large quantities of marijuana remain criminal.
26 (*People v. Rigo* (1999) 69 Cal.App.4th 409, 415; *People v. Young* (2001) 92 Cal.App.4th 229, 237.)

27 14. Therefore, based upon California statutory and case law, the Compassionate Use Act
28 does not apply to the acts that Mr. Robinson committed here – possessing, cultivating, and
29 transporting large quantities of marijuana, some of which was to be sold.

15. Second, to establish a defense of necessity, a person must establish that he violated the
law: "(1) to prevent a significant and imminent evil, (2) with no reasonable legal alternative, (3)

1 without creating a greater danger than the one avoided, (4) with a good faith belief that the criminal
2 act was necessary to prevent the greater harm, (5) with such belief being objectively reasonable, and
3 (6) under the circumstances to which [he] did not substantially contribute to the emergency.

4 [Citations.]" (*People v. Galambos* (2002) 104 Cal.App.4th 1147, 1160.)

5 16. The Third District Court of Appeal has found that the limited immunity afforded by the
6 Compassionate Use Act is incompatible with the common law defense of medical necessity. (*People*
7 *v. Galambos, supra*, 104 Cal.App.4th at 1159.) "Judicial recognition of the broader and different
8 immunity afforded by a medical necessity defense ... would break faith with the voters' adoption of a
9 narrow legislative exception to [the] criminal drug prohibitions in the form of Proposition 215." (*Id.* at
10 1160.)

11 17. Based upon the court's holding in *Galambos*, the medical necessity defense is not
12 applicable to Mr. Robinson's case. Nevertheless, even if the defense was available, Mr. Robinson
13 has failed to establish that his possession, cultivation, and transportation of the marijuana for sale
14 was to prevent a significant and imminent evil, with no reasonable legal alternative, without creating a
15 greater danger than the one avoided, with a good faith, objectively reasonable, belief that the criminal
16 act was necessary to prevent the greater harm.

17 19. After careful evaluation of all of the evidence, there is insufficient evidence that Mr.
18 Robinson: 1) did not violate Health and Safety Code sections 11359 and 11360 and Penal Code
19 section 12022, 2) did not, either intentionally or negligently, contribute to his arrest or conviction for
20 those offenses, and 3) sustained pecuniary injury through his erroneous conviction and
21 imprisonment.

22 **Order**

23 Mr. Robinson's claim under Penal Code sections 4900 *et seq.* is denied.

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26 Date: May 19, 2005

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JULIA V. JOHNSON
Hearing Officer

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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:

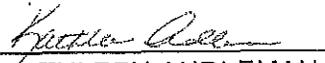
9 **Joseph Robinson**

10 **Claim No. G 543868**
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Notice of Decision
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13 On June 16, 2005, the California Victim Compensation and Government Claims Board
14 adopted the attached Proposed Decision as its Decision in the above-referenced matter. The
15 Decision became effective on June 16, 2005.
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18 Date: June 30, 2005


19 KATHLEEN ANDLEMAN
20 Chief Counsel
21 California Victim Compensation
22 and Government Claims Board
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