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8 **BEFORE THE VICTIM COMPENSATION AND GOVERNMENT CLAIMS BOARD**
9 **OF THE STATE OF CALIFORNIA**
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11 In the Matter of the Claim of:
12 **John Smith**

Proposed Decision
(Penal Code § 4900 et seq.)

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15 **Introduction**

16 This claim for compensation as an erroneously convicted person was decided based on the
17 written record by considering all the evidence submitted and without a telephonic or in-person hearing.
18 Barbara J. Moore was assigned to hear this matter by the Executive Officer of the California Victim
19 Compensation and Government Claims Board. The claimant, John Smith, was represented by
20 attorney David McLane. The California Attorney General's Office was represented by Larenda Delaini,
21 Deputy Attorney General (AG).

22 As explained below, Smith has met the statutory requirements to receive compensation under
23 Penal Code section 4900 because he has proved by a preponderance of the evidence that he did not
24 commit the crimes with which he was charged. Smith is entitled to \$653,600 in compensation for being
25 incarcerated for 6,536 days after conviction.¹
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29 ¹ Smith was found guilty by a jury on November 2, 1994, and was released from prison on September 24, 2012.

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Procedural Background

On September 9, 1993, 16-year old DeAnthony Williams and 16-year old Landu Mvuemba were walking to school in the area of 17th Street and Rimpau Blvd., in Los Angeles, California. They were looking at the scene of a gang shooting that had occurred the previous night. While walking, a car drove by with a male leaning out the window with a firearm and fired multiple rounds toward Williams and Mvuemba. Williams was shot in the mouth, abdomen, and both legs, and died at the scene. Mvuemba was shot in the abdominal area and survived after emergency surgery.

On February 17, 1994, the Los Angeles County District Attorney's Office filed an information charging Smith with murder, attempted murder and enhancements of personal use of a firearm, personal discharge of a firearm from a vehicle, and intentional infliction of great bodily injury. On November 2, 1994, after trial, a jury found Smith guilty on both counts and found the enhancements true. Smith was sentenced to an aggregate term in prison of 29-years-to-life on May 23, 1995.

Post-Conviction and Penal Code Section 4900 Claim

On October 29, 2010, Smith filed a petition for writ of habeas corpus in the Los Angeles County Superior Court asserting, among other things, that false testimony was introduced in his trial identifying him as the shooter. The sole eyewitness, Mvuemba, recanted his statement identifying Smith as the shooter in this incident. The Los Angeles County District Attorney's Office conceded that Smith was entitled to relief as requested in the habeas corpus petition solely on the ground that Mvuemba testified falsely at trial. On September 24, 2012, the Superior Court found that Mvuemba perjured himself at trial and granted the habeas petition vacating Smith's convictions and sentencing, but declined to make any finding of factual innocence.

On or about September 18, 2014, Smith filed his claim for compensation under Penal Code section 4900 with the Board.

Smith filed a Motion for a Finding of Factual Innocence pursuant to Penal Code section 1485.55(b)² with the Los Angeles County Superior Court on September 22, 2014. The Los Angeles

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² Section 1485.55(b) provides: "If the court grants a writ of habeas corpus concerning a person who is unlawfully imprisoned or restrained on any ground other than new evidence that points unerringly to innocence or actual innocence, the petitioner may move for a finding of innocence by a preponderance of the evidence that the crime with which he or she was charged was either not committed at all or, if committed, was not committed by him or her."

1 District Attorney's Office opposed the motion on procedural grounds³ but did concede that Smith met
2 his burden of establishing his innocence by a preponderance of the evidence. The Superior Court
3 denied Smith's motion on procedural grounds, finding that Penal Code section 1485.55(b), did not
4 apply retroactively.⁴ The Superior Court found that there was substantial and reliable evidence
5 supporting Mvuemba's recantation and that without Mvuemba's false testimony, there was insufficient
6 evidence to convict Smith.

7 On July 23, 2015, the Attorney General's Office (AG) submitted a response to the Smith's
8 Penal Code section 4900 claim. The AG interviewed Smith and found him to be credible and in
9 conjunction with Mvuemba's inconsistent statement, the Superior Court's determination that
10 Mvuemba committed perjury, and the lack of other evidence linking Smith to the crimes, the AG
11 believes that Smith met his burden under the statute. Consequently, the AG did not introduce
12 evidence in opposition to Smith's claim.

13 **Summary of Evidence**

14 **A. Pre-Trial and Trial statements by Mvuemba**

15 DeAnthony Williams and Landu Mvuemba, both 16-years old, were walking to school on the
16 morning of September 9, 1993.⁵ While walking to school, they looked at the scene of a gang-related
17 shooting which had occurred the previous night. A car drove into the area and a male leaned out of
18 the car and started firing a weapon, striking both Williams and Mvuemba. Williams died at the scene
19 from multiple gunshot wounds. Mvuemba was shot once and was rushed to emergency surgery.

20 While in the hospital, Mvuemba gave a statement to police stating the Bloods were
21 responsible for the shooting and the shooter was in a red car. Mvuemba described the shooter as a
22 young guy with a "fade" hair cut with a braid that hung over his forehead. Two months later, in
23 November 1993, Mvuemba viewed a photo lineup and identified Smith as the person who shot him
24 and Williams. Mvuemba told police the shooter was alone in the vehicle and was about 17-18 years
25 old with braided hair.

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27 ³ The Los Angeles District Attorney's Office argued that Penal Code section 1485.55(b) does not apply
28 to cases where Habeas Corpus relief was granted before the statute took effect, January 1, 2014.

29 ⁴ Smith's appeal on this issue is pending before the California Court of Appeal, Second Appellate
District.

⁵ The criminal investigation confirmed that neither Williams nor Mvuemba were gang members.

1 At the preliminary hearing, on February 2, 1994, Mvuemba testified that he saw Smith holding
2 a gun and heard "a lot" of gunshots. Smith was sitting in the driver's seat of a black, two-door
3 Nissan. During previous interviews with police, Mvuemba told police the car was red. He further
4 testified that Smith was hanging out of the driver's window from the waist up while shooting at
5 Mvuemba and Williams and that he had a "fade" cut, meaning the hair was shorter on the sides.

6 At jury trial in October 1994, Mvuemba testified he saw a red car drive by while he and
7 Williams were walking to school. Mvuemba further testified that after hearing gunshots, he ran. He
8 thought someone was playing a prank on him, so he stopped running and turned to look at the
9 shooter. Mvuemba testified that he saw Smith hanging out of a black car from the chest up and
10 recognized him right away as they attended elementary school together.

11 **B. Post-Conviction Statements by Mvuemba**

12 **a. Statements to Smith's attorneys**

13 On July 30, 2010, attorneys for Smith interviewed Mvuemba, who stated he and Williams
14 were standing on the street when shots rang out. He stated he did not see "anything about the
15 people in the car" and never got a good enough look to identify the shooter. Mvuemba stated that
16 when police picked him up at his high school in November 1993, and took him to the police station,
17 he told police he did not know who did the shooting. Mvuemba stated the police told him other
18 witnesses had identified Smith as the shooter and also showed him a picture of his friend, Williams,
19 after his death. Mvuemba stated that he felt a lot of pressure to go along with the story the police
20 told him. Mvuemba identified Smith in a photo lineup and signed this statement.

21 Mvuemba told the attorneys for Smith that about a month after the November 1993
22 statement, he called Los Angeles Police Department (LAPD) Internal Affairs Division to try to "get out
23 of the situation." In 1997, while incarcerated in a county detention center, people from Internal Affairs
24 visited him.⁶ Mvuemba stated they talked with him about the shooting for about 45 minutes.
25 Mvuemba told the internal affairs people that he did not see the shooter.

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29 ⁶ LAPD Internal Affairs had no record of contact with Mvuemba and the detention center does not maintain visitor logs for law enforcement officials.

1 Mvuemba also told the attorneys for Smith that just before testifying at trial, he told the bailiff
2 he did not know enough to testify and tried to get out of testifying because he knew his statement
3 was not the truth. When he got to the witness stand, Mvuemba saw Williams's mom and she was
4 crying. He did not want to turn his back on her.

5 **b. Mvuemba's polygraph statements**

6 On September 3, 2010, Mvuemba underwent a polygraph examination conducted by a
7 polygrapher hired by Smith's attorneys. Mvuemba provided a statement of events consistent with
8 what he told Smith's attorneys. When asked if Smith shot him, Mvuemba stated "I couldn't tell you. I
9 still don't know. 'Cause I don't know if he did shoot me or not – what not. But, I know I didn't see
10 nothing." At the end of the polygraph, Mvuemba was asked "well, you're saying that – that you didn't
11 actually see him do the shooting?" Mvuemba responded, "Nope." The polygrapher concluded that
12 Mvuemba was not attempting deception during questioning and did not see the person who shot him
13 and Williams.

14 **c. Statements to District Attorney's Office**

15 A Los Angeles District Attorney Office (DA) investigator and deputy district attorney
16 interviewed Mvuemba after he had recanted to Smith's attorneys.⁷ The interview appears to have
17 taken place sometime in May 2011 and the report of the interview written in August 2011. Mvuemba
18 initially indicated he did not wish to be involved in the Smith case any further, but he would answer
19 their questions.

20 Mvuemba told the DA while walking with Williams on the morning of September 9, 1993, a
21 "gang of shots" rang out from a car behind him. He did not see the car. He saw Williams get shot
22 and he ran for cover and was struck by a bullet. About a month later, in October 1993, a friend
23 named Willie Rainey told Mvuemba that "One Punch"⁸ was responsible for the shooting. Mvuemba
24 denied calling and telling the detectives that "One Punch" was the shooter and told the DA that even
25 if he had information about the shooting, he probably would not have called the detectives.

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28 ⁷ Mvuemba was incarcerated in California Department of Corrections and Rehabilitation – High Desert
State Prison at the time of the interviews by Smith's attorneys in 2010 and the DA interview in 2011.

29 ⁸ "One Punch" was later identified as Roy Clarke, a Blood gang member.

1 Mvuemba recalled being shown a photo lineup including "One Punch" by the investigating detective,
2 but stated "One Punch" was not the shooter on that morning.

3 Mvuemba next told the DA that during his statement to LAPD on November 2, 1993, the
4 detectives told him, "it was confirmed that Smith did the shooting", so Mvuemba signed the statement
5 and photo lineup, picking Smith's photo. When asked by the DA if the signature below the statement
6 was his, Mvuemba stated "I wouldn't claim that signature." Mvuemba said he "signed the statement
7 out of stupidity."

8 Mvuemba told the DA that about a week or so after identifying Smith as the shooter, he
9 started to have guilty feelings and asked his mother what he should do since he was not sure that
10 Smith had done the shooting, and that he did not see the shooter. His mother did not want to get
11 involved. Mvuemba then called LAPD Internal Affairs in early 1994 (before the preliminary hearing),
12 and indicated he spoke with an investigator, stating he wanted to change his story because he did
13 not see anything and did not know who killed Williams. Mvuemba did not hear anything from Internal
14 Affairs for several years.

15 With regard to his testimony at the preliminary hearing, Mvuemba told the DA that his
16 testimony as to what he saw was all false. Mvuemba stated that he could say those things because
17 that's the way a drive-by shooting would have happened had he seen it.

18 Mvuemba stated to the DA that before testifying in the jury trial against Smith, he spoke with
19 the bailiff and tried to get out of testifying. When he did testify, he saw Williams's mother crying and
20 felt the pressure of the trial, so stayed with his original story, identifying Smith as the shooter.
21 Mvuemba said that he was Williams's friend and he had to do the right thing. He stated "it was a
22 mess when I signed those papers because I don't know who shot me." When asked by the DA if he
23 felt remorse for lying about Smith being the shooter, Mvuemba said, "Smith was gang bangin' it. He
24 would have been convicted for 25-years-to-life or something. He put himself in these conditions, they
25 do killings. I wouldn't want to say I am sorry because if he really did do it I would look stupid. I didn't
26 want to pursue this any further but Smith's attorney said it was done and over and he was out [of
27 prison]."

28 Mvuemba told the DA that between May and November 1997, while in a county detention
29 center, two detectives from LAPD interviewed him. He thought this was the follow-up to his call to

1 LAPD Internal Affairs in early 1994 and he told them that he did not see the shooter. The interview
2 lasted about 45 minutes and he has not heard from anyone since then.

3 **C. Statements by John Smith**

4 **a. Time of arrest**

5 Smith was arrested on the murder and attempted murder charges on December 6, 1993,
6 while incarcerated in the county jail on other charges. He wrote a limited statement for LAPD
7 investigators listing his relatives, attorney's name and also wrote that his "mom told me about
8 Williams's 187" and that he "was in jail until 9-10-93."

9 **b. Pre-Conviction Probation Report**

10 In the Pre-Conviction Probation Report completed in March 1994 by the Los Angeles County
11 Probation Department, Smith declined to talk about the facts of the case on advice of counsel, but
12 did voluntarily state that "he wants to go all the way to jury trial to prove his innocence in this case..."

13 **c. Testimony at jury trial**

14 Smith testified on direct examination on November 1, 1994 during the jury trial. Smith
15 testified that he did not shoot Williams or Mvuemba on September 9, 1993, and that he was at his
16 grandmother's home until 11 a.m. He further testified that he heard about the shooting from his
17 mother in a phone call the morning of the shooting.

18 **d. Declaration in support of Motion for New Trial after jury verdict**

19 On May 19, 1995, Smith signed a six-page declaration in support of his motion for new trial
20 after the jury verdict. He states in the declaration that "I was not there and I did not commit these
21 shootings. I will deny that I committed these acts until the day I die, whether I am wrongfully
22 incarcerated in prison, or whether I am living my life in freedom."

23 **e. First Polygraph Report**

24 On July 27, 2010, Smith was examined by a polygrapher⁹ regarding the shooting on
25 September 9, 1993. This polygraph was conducted at the request of *Innocence Matters* in
26 preparation for the filing of a writ of habeas corpus. Smith was incarcerated by the California
27 Department of Corrections and Rehabilitation at Calipatria State Prison at the time of the polygraph.

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29 ⁹ The same polygrapher conducted the polygraph examinations of Mvuemba and Smith.

1 Smith answered "no" to the following questions: Did you fire one or more of the shots that resulted in
2 the death of DeAnthony Williams? Are you in any way involved in the 1993 shooting of DeAnthony
3 Williams? The polygrapher concluded that Smith was not attempting deception when he answered
4 "no" to the above relevant questions.

5 **f. Declaration in support of Writ of Habeas Corpus**

6 On October 27, 2010, Smith signed a declaration prepared in support of his Writ of Habeas
7 Corpus and stated "I did not kill DeAnthony Williams or shoot Landu Mvuemba. I was not there when
8 they were shot."

9 **g. Statement to the Attorney General's Office**

10 On June 19, 2015, the Attorney General's Office interviewed Smith at the office of *Innocence*
11 *Matters*. Smith stated that on the morning of September 9, 1993, he was at his grandmother's house
12 with his girlfriend and his cousin and his girlfriend. Smith's mother called the house and told him that
13 a shooting had just occurred near her house.¹⁰ Smith went about his day after receiving this
14 information. Smith stated he did not participate in the shooting in anyway.

15 **Determination of Issues**

16 A person erroneously convicted and imprisoned for a felony may submit a claim to the Board for
17 pecuniary injury sustained as a result of his erroneous conviction and imprisonment.¹¹ Penal Code
18 section 4903 provides that in order to state a successful claim for compensation, the claimant must
19 prove the following by a preponderance of the evidence:¹²

- 20 1. That the crime with which he was charged was either not committed at all, or, if committed,
21 was not committed by him; and
22 2. That he sustained a pecuniary injury through his erroneous conviction and imprisonment.

23 If the claimant satisfies this burden of proof, the Board shall recommend to the legislature that
24 an appropriation of \$100.00 per day of incarceration served subsequent to conviction be made for the
25 claimant.¹³ A claimant's mere denial of the commission of the crime or reversal of the judgment of
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27 ¹⁰ The investigation and trial record indicate the shooting was within a block of Smith's mother's house.
¹¹ Pen. Code, § 4900.

28 ¹² *Diola v. Board of Control* (1982) 135 Cal.App.3d 580, 588, fn. 7; *Tennison v. Victim Compensation*
and Government Claims Board (2000) 152 Cal.App.4th 1164.

29 ¹³ Pen. Code, § 4904.

1 conviction on appeal may be considered by the Board, but it will not be sufficient evidence that the
2 claimant is innocent of the crime charged.¹⁴ In this matter, Smith's claim should be approved as there
3 is a preponderance of the evidence that he did not commit the crime with which he was charged and
4 convicted.

5 The Los Angeles Superior Court, in granting habeas relief to Smith, determined that "the
6 evidence in support of Mvuemba's recantation is both substantial and reliable." The Superior Court
7 determined that Mvuemba, the only witness to identify Smith, made many inconsistent and admittedly
8 false statements and perjured himself at trial when he identified Smith. There was no other evidence
9 presented at trial connecting Smith to the murder of Williams and attempted murder of Mvuemba on
10 September 9, 1993. These factual findings and credibility determinations establishing the court's basis
11 for granting a writ of habeas corpus are binding on the Board in this 4900 proceeding.¹⁵

12 Based on the totality of the evidence, Smith has met his burden of proving that he did not
13 commit the murder and attempted murder as charged and convicted and there is a preponderance of
14 the evidence that Smith is innocent of the crime.

15 **Pecuniary Injury**

16 Smith states he was in and out of incarceration in the county juvenile detention center and the
17 county jail prior to the date of his conviction. He was 18-years-old when arrested on the charges.
18 While incarcerated, Smith earned his General Education Degree. Since his release from custody on
19 September 24, 2012, he has been regularly employed working as day labor for a temporary
20 employment agency, as a security guard at a condominium complex, and provides care for his elderly
21 grandmother and niece and nephew in their residence. Smith has attended West Los Angeles Junior
22 College studying business, is on the Board of *Innocence Matters*, and was a visiting mentor at
23 Marymount University.

24 Based on the evidence, it is determined that Smith has provided sufficient proof to find that he
25 has suffered a pecuniary loss due to his incarceration. Although he may not have been employed full-
26 time due to his age at the time of his conviction, his education and employment since his release, as
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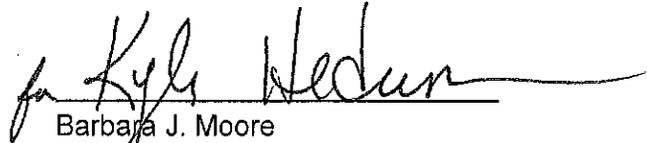
28 ¹⁴ Cal. Code of Regs., title 2, §641. All Regulations citations are to California Code of Regulations,
title 2.

29 ¹⁵ Pen. Code, §§ 1485.5(c), 4903(b).

1 indicated by both the Attorney General's Office and Smith's counsel, provide a preponderance of
2 evidence that he likely would have obtained employment if not for his erroneous conviction.

3 Smith was released from prison on September 24, 2012, after serving 6,536 days since his
4 conviction on November 2, 1994. It is recommended to the Legislature that an appropriation be made
5 to pay the claim of John Smith in the sum of \$653,600.

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8 Dated: August 12, 2015

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10 Barbara J. Moore
11 Hearing Officer
12 California Victim Compensation and
13 Government Claims Board
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**BEFORE THE VICTIM COMPENSATION AND GOVERNMENT CLAIMS BOARD
OF THE STATE OF CALIFORNIA**

In the Matter of the Application of:

John Smith

Notice of Decision

On September 17, 2015, the California Victim Compensation and Government Claims Board adopted the attached Proposed Decision of the Hearing Officer as its Decision in the above-referenced matter.

Date: September 18, 2015



Tisha Heard
Board Liaison
California Victim Compensation and
Government Claims Board