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

In the Matter of the Claim of:

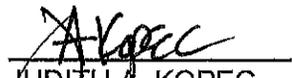
James Martell Land

Claim No. G532431

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

10 James Martell Land

11 Claim No. G532431

Proposed Decision

(Penal Code § 4900 et seq.)

12 A hearing based on the written record was conducted by Deborah Bain, Hearing Officer,
13 who was assigned to hear this matter by the Executive Officer of the Victim Compensation and
14 Government Claims Board (Board).

15 The law firm of Moreno, Becerra, Guerrero & Casillas represents the claimant James
16 Martell Land. Mr. Land, through his attorney, Arnolando Casillas, waived his appearance, waived 15
17 days' notice of the hearing pursuant to Penal Code section 4902 and agreed to have an informal
18 hearing conducted by the hearing officer upon the written record.

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

22 **Findings of Fact**

23 1. Mr. Land submitted a claim under Penal Code section 4900 *et seq.* on
24 December 27, 2002. Mr. Land claims that he was erroneously convicted of a violation of Health and
25 Safety Code section 11352(a), transportation/sale of a controlled substance. Mr. Land listed the date of
26 incident as June 28, 2002, and he is seeking an award of \$48,500.¹
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29 ¹ June 28, 2002 is the date the court heard Mr. Land's Writ.

1 2. In support of his Penal Code section 4900 claim, Mr. Land attached three documents: 1)
2 a police report; 2) his Petition for Writ of Habeas Corpus; and 3) a minute order from the Los Angeles
3 Superior Court for case number BA144976.

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

8 4. The minute order reflects that the Los Angeles Superior court heard Mr. Land's Writ of
9 Habeas Corpus in case number BA144976 on June 28, 2002. The District Attorney filed a non-
10 opposition and the court dismissed the case in the interest of justice.

11 5. According to police report number 970606777, Los Angeles Police Officer Beard was
12 working undercover on January 30, 1997. Officer Beard observed the claimant sitting in front of a
13 residence. Officer Beard approached the claimant and asked him, "Can I get a twenty?" A "twenty" is a
14 street term for \$20.00 of rock cocaine. The claimant asked Officer Beard if he was a police officer.
15 Officer Beard said he was not.

16 6. The claimant told Officer Beard that he could get the drugs from "Shorty." The claimant
17 asked Officer Beard for twenty dollars. Officer Beard gave Mr. Land the money, which was pre-
18 recorded. Officer Beard observed Mr. Land approach a female and hand her the twenty dollars. The
19 female (Yadira Serrato) then placed an object into Mr. Land's hand. Mr. Land placed the object into his
20 mouth.

21 7. Ms. Serrato turned and gave the twenty dollars to Ihaly Montiel. Mr. Land then
22 approached Officer Beard and asked him if he had a pipe. Officer Beard said no. Mr. Land raised his
23 hand to his mouth and spit out an item that resembled wrapped piece of rock cocaine. He asked
24 Officer Beard for a piece because he "didn't get anything out of the deal." The claimant was arrested
25 for the sale of rock cocaine. The police recovered the pre-recorded money. A subsequent analysis of
26 the wrapped item revealed that it contained cocaine.

1 8. On April 29, 1997, Mr. Land pled guilty to a violation of Health and Safety Code section
2 11352 (a), transportation/sale of a controlled substance, and was sentenced to three years in prison.
3 He was released and subsequently incarcerated for a 1998 parole violation.²

4 9. On February 14, 2002, Mr. Land filed a Petition for Writ of Habeas Corpus. The basis
5 for the petition was: (1) the claimant's due process rights were violated by non-disclosure of *Brady*
6 material; (2) false evidence was used against the petitioner; (3) the district attorney had lost confidence
7 in the credibility of material witnesses; (4) new evidence indicated the petitioner was innocent; and (5)
8 the petitioner's plea was not intelligent and voluntary given.

9 10. Mr. Land alleged in his writ that Officer Beard's report was false. In support of this
10 assertion, Mr. Land stated that Officer Beard was indicted for perjuring himself in the case of
11 *People v. Thyjuan Taplin*. In addition, Mr. Land stated that the "LAPD sustained a two-count complaint
12 against Beard for making false and/ or misleading statements on two separate occasions (one in 1999,
13 the other in 2000) to officers conducting an official investigation related to the *Taplin* incident.
14 Officer Beard was terminated from his employment with the LAPD as a result of the finding of guilty on
15 this complaint." The *Taplin* case was subsequently overturned.³

16 11. Mr. Land argued that the District Attorney had loss confidence in Officer Beard and that
17 this was demonstrated by the dismissal of the case of *In re Jacquelyn Williams*. In that case, while the
18 People did not concede all the factual allegations contained in the Petition of Writ of Habeas Corpus,
19 they did not oppose the Petition.⁴

20 12. Mr. Land further alleged that the District Attorney suppressed information by failing to
21 disclose Officer Beard's misconduct. He alleged that this was newly discovered evidence, which tended
22 to establish innocence. Further, Mr. Land alleged that he would not have entered a plea if he had
23 known of this information.

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28 ² Deputy Attorney General Runte's letter of May 27, 2003, page 2.

29 ³ Mr. Land's Petition for Writ of Habeas Corpus, page 7.

⁴ Mr. Land's Writ of Habeas Corpus, page 8.

1 deems relevant to the issues. (Cal. Code Regs., tit. 2, § 641.) The claimant has the burden of
2 proving his innocence by a preponderance of the evidence. (*Diola v. State Board of Control* (1982)
3 13 Cal. App.3d 580.)

4 4. The claimant submitted two documents, his Writ of Habeas Corpus and the dismissal
5 from the court. The mere fact that the charge was dismissed did not conclusively prove claimant was
6 innocent. The court in dismissing the case did not comment on Mr. Land's innocence or guilt. Case
7 law has held that a habeas proceeding is not a determination of innocence and the granting of the
8 writ does not constitute an acquittal. (*In re Cruz* (2003) 104 Cal.App.4th 1339, 1246, 129 Cal.Rptr.3d
9 31, 37.)

10 5. The claimant submitted his writ without any supporting declarations. Mr. Land has not
11 put forth any evidence showing that Officer Beard committed misconduct in this case. The fact that
12 Officer Beard was false in other cases, does not prove by preponderance of evidence that he was
13 false in this case.

14 6. Mr. Land pled guilty to the offense which prohibited the jury from assessing his and
15 Officer Beard's credibility.

16 7. Based on the findings of fact in paragraphs 5 - 15, the claim is denied because the
17 claimant has not has not carried the burden of proving his innocence by a preponderance of the
18 evidence.

19 8. Based on the findings of fact in paragraph 8 the claim is denied because the claimant
20 intentionally contributed to his conviction by pleading guilty.

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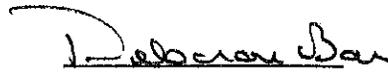
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BEFORE THE VICTIM COMPENSATION AND GOVERNMENT CLAIMS BOARD
OF THE STATE OF CALIFORNIA

Order

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

Date: October 29, 2004


DEBORAH BAIN
Hearing Officer

⁸ Any person who, having been convicted of any crime against the State of California amounting to a felony, and having been imprisoned therefore in a State prison of this State shall hereafter be granted a pardon by the Governor of this State for the reason that the crime with which he was charged was either not committed at all or, if committed, was not committed by him, or who, being innocent of the crime with which he was charged for either of the foregoing reasons, shall have served the term or any part thereof for which he was imprisoned, may, under the conditions hereinafter provided, present a claim against the State to the State Board of Control for the pecuniary injury sustained by him through such erroneous conviction and imprisonment. (Penal Code section 4900.)