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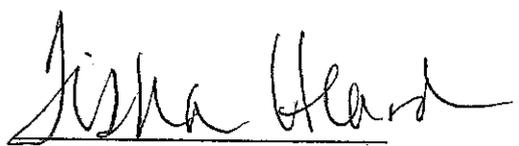
BEFORE THE VICTIM COMPENSATION AND GOVERNMENT CLAIMS BOARD
OF THE STATE OF CALIFORNIA

In the Matter of the Claim of:
Connie R.

Notice of Decision

On May 17, 2012, 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: May 21, 2012


Tisha Heard
Board Liaison
Victim Compensation and
Government Claims Board

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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 **Connie R.**¹

Proposed Decision

(Penal Code § 4900 et seq.)

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14 **Introduction**

15 An in-person hearing on this claim for compensation as an erroneously convicted person was
16 conducted on January 25, 2012, by Kyle Hedum, the Hearing Officer assigned to hear this matter by
17 the Executive Officer of the Victim Compensation and Government Claims Board. Connie R. did not
18 appear at the hearing.² Michael Farrell, Supervising Deputy Attorney General, represented the
19 California Department of Justice, Office of the Attorney General.

20 After considering all the evidence,³ it is determined that Connie R. has not proven by a
21 preponderance of the evidence that she did not intentionally contribute to the bringing about of her
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24 ¹ Connie R.'s last name is being withheld in order to assure privacy for her daughters.

25 ² On September 8, 2011, a letter was mailed to the Attorney General and to Connie R. requesting that
26 the parties choose a hearing date from a list of available dates. The Attorney General responded via
27 email on September 9, 2011. No response was received from Connie R. On September 20, 2011,
28 both parties were informed by mail that the hearing would take place on January 25, 2012.

³ Pursuant to Cal. Code Regs., tit. 2, § 644(f), if a claimant fails to appear at the hearing, the Board may
base its decision on previously submitted evidence.

1 arrest or conviction for the crime. Therefore, it is recommended that Connie R.'s claim for
2 compensation pursuant to Penal Code section 4900 et seq. be denied.

3 **Background⁴**

4 In July of 2003, Connie R. entered a guilty plea in Kentucky state court to "facilitating sodomy,
5 first-degree" as defined by section 506.080 of the Kentucky Revised Statutes.⁵ A post-plea probation
6 report recounted statements made by Connie R. to the police during their initial investigation of the
7 crime. She told the police that her live-in boyfriend, Randy S., had repeatedly expressed sexual
8 interest in her seven-year-old and eleven-year-old daughters. For three months, her boyfriend
9 persistently asked her for permission to have sex with the girls. Connie R. steadfastly refused.
10 However, she later relented and allowed her boyfriend to sexually molest her young daughters
11 approximately "one hundred and thirty times."

12 Connie R. moved to California during her probationary period, as allowed by an interstate
13 compact between Kentucky and California. Her California probation officer informed her that the
14 Kentucky conviction required her to register as a sex offender in California. Connie R., however,
15 refused to register as a sex offender. In September of 2008, the Butte County District Attorney filed a
16 felony complaint charging Connie R. with various offenses including failure to register as a sex offender
17 within five days of moving to the county. Connie R. entered a plea of not guilty at her arraignment.⁶

18 During the preliminary hearing in Butte County on November 6, 2008, Connie R.'s attorney
19 argued that the Kentucky offense did not qualify as an offense for which registration as a sex offender
20 is required by subdivision (c) of Section 290 of the Penal Code. However, the trial court determined
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24 ⁴ The background is based on a published appellate opinion, the crime report, investigative reports, trial
testimony, court transcripts, and other claim-related documents.

25 ⁵ Connie R. was not required to register as a sex offender in Kentucky.

26 ⁶ Connie R. was represented by counsel at her arraignment, preliminary hearing, plea, and subsequent
27 appeal.

1 that Connie R.'s Kentucky conviction was equivalent to a violation of Penal Code section 266j,⁷ for
2 which registration was required. Connie R. was held to answer and a court trial was set for April 21,
3 2009.

4 On April 21, 2009, instead of proceeding to trial, Connie R. entered guilty pleas to misdemeanor
5 child abuse⁸ and felony failure to register as a sex offender. The trial court subsequently sentenced
6 Connie R. to three years in state prison for the felony and one year in jail for the misdemeanor.

7 Connie R. later appealed her conviction and filed a petition for writ of habeas corpus. She
8 contended that she pled guilty to failing to register as a sex offender that, as a matter of law, this was a
9 crime that she did not commit. On June 29, 2010, the Court of Appeal, Third Appellate District, agreed
10 with her. The Court explained that an out-of-state conviction requires a defendant to register in
11 California only when (1) the foreign jurisdiction requires registration (with five exceptions) or (2) the
12 least adjudicated elements of the offense satisfy all of the elements of a registerable crime as listed in
13 Penal Code section 290, subdivision (c). In this case, Connie R. had not been required to register in
14 Kentucky and the elements of the Kentucky conviction did not satisfy the elements of any of the crimes
15 listed in section 290, subdivision (c). Thus, Connie R. was not required to register as a sex offender in
16 California. She was released from prison on July 31, 2010.

17 **Hearing Evidence⁹**

18 The Attorney General conceded that Connie R. met the first prong of the test because she
19 proved that she did not commit the crime of failing to register as a sex offender. However, the Attorney
20 General argued that Connie R. is not eligible for compensation because she entered a guilty plea to
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22 ⁷ Section 266j provides, in part: "Any person who intentionally gives, transports, provides, or makes
23 available, or who offers to give, transport, provide, or make available to another person, a child under
24 the age of 16 for the purpose of any lewd or lascivious act as defined in Section 288, or who causes,
25 induces, or persuades a child under the age of 16 to engage in such an act with another person, is
26 guilty of a felony."

27 ⁸ This crime was originally charged as a felony, but the judge reduced it to a misdemeanor prior to trial.

28 ⁹ At the conclusion of the hearing, the Attorney General moved into evidence exhibits AG-1 through
AG-7. Connie R.'s evidence consisted of a claim form and a copy of the appellate decision that granted
her release from prison. This evidence was also admitted.

1 one misdemeanor and one felony. At the hearing, the Attorney General argued that because Penal
2 Code section 4900 is a "no fault" statute and does not allow compensation to those who freely admit to
3 committing the offenses for which they are later imprisoned, Connie R.'s claim must be denied.

4 The Attorney General also argued that had Connie R. appeared at her hearing for
5 compensation as an erroneously convicted person, it is likely that she would have claimed that the trial
6 court's misunderstanding of the law induced her to plead guilty. However, the record is clear that from
7 the time she entered California following her felony conviction in Kentucky, Connie R. steadfastly
8 believed that she was not required to register as a sex offender in California. On more than one
9 occasion she told her California probation officer that she would not register. After she was arrested
10 and charged, Connie R.'s attorney argued at the preliminary hearing that she was not required to
11 register.

12 Rather than pleading to a crime that she did not commit, the Attorney General stated that
13 Connie R. could have filed a motion pursuant to Penal Code section 995 and challenged the court's
14 conclusion. This section states that the information¹⁰ shall be set aside if the defendant is committed
15 without reasonable cause. Connie R. could also have sought a pre-trial writ in the Court of Appeal.¹¹
16 She likely would have succeeded in these efforts and avoided prison time altogether given that the
17 same Court of Appeal later ruled in her favor when she appealed after her conviction.

18 **Determination of Issues**

19 Penal Code section 4903 establishes the requirements for a successful claim for an erroneously
20 convicted felon. A person erroneously convicted and imprisoned for a felony may submit a claim to the
21 Board for pecuniary injury sustained as a result of her erroneous conviction and imprisonment.¹²
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25 ¹⁰ After a preliminary examination, if the case is bound over for trial, the complaint (the document
26 setting forth the charges against a defendant) is deemed an "information."

27 ¹¹ Pen. Code, § 999a.

28 ¹² Pen. Code, § 4900.

1 In order to be successful on such a claim, a person must prove the following, by a preponderance of
2 the evidence:

- 3 (1) that the crime with which she was charged was either not committed at all, or, if committed,
4 was not committed by her;
- 5 (2) that she did not by any act or omission on her part, intentionally contribute to the bringing
6 about of her arrest or conviction for the crime; and
- 7 (3) that she sustained a pecuniary injury through her erroneous conviction and imprisonment.¹³

8 "Preponderance of the evidence" means evidence that has more convincing force than that
9 opposed to it.¹⁴ If Connie R. satisfies her burden of proof, the Board shall recommend to the legislature
10 that an appropriation of \$100 be made for each day of incarceration served subsequent to her
11 conviction.¹⁵

12 Because the purpose of these administrative hearings is to determine whether the claimant has
13 met her burden of proving that she is innocent of the crime for which she was convicted and
14 incarcerated, all relevant evidence is admissible, irrespective of whether it would be admitted at a
15 criminal jury trial or in a civil or administrative proceeding, so long as the evidence is probative to the
16 claimant's assertion that she is innocent.¹⁶ The formal hearing rules of the Administrative Procedures
17 Act are not applicable.¹⁷

18 Connie R. was convicted in Kentucky of facilitating sodomy, first-degree, when she allowed her
19 boyfriend to sexually molest her two young daughters on more than 100 occasions. She came to
20 California and was told by her California probation officer that she was required to register as a sex
21 offender. She refused and was subsequently prosecuted.

22 ¹³ Pen. Code, § 4903, *Diola v. Board of Control* (1982) 135 Cal.App.3d 580, 588, fn 7; *Tennison v.*
23 *Victim Compensation and Government Claims Board* (2000) 152 Cal. App. 4th 1164.

24 ¹⁴ *People v. Miller* (1916) 171 Cal. 649, 652.

25 ¹⁵ Pen. Code, § 4904.

26 ¹⁶ Cal. Code Regs., tit. 2, § 641.

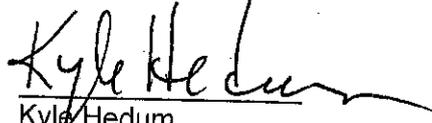
27 ¹⁷ Cal. Code Regs., tit. 2, § 615.1.
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1 On April 21, 2009, after being advised of her constitutional rights, Connie R. entered a guilty
2 plea to misdemeanor child abuse and felony failure to register as a sex offender. She was sentenced
3 to three years in state prison for the felony and a concurrent year in jail for the misdemeanor. On June
4 29, 2010, the Court of Appeal, Third Appellate District determined that Connie R. was not required to
5 register as a sex offender in California. She was released from prison on July 31, 2010.

6 Because Connie R. knowingly and willingly entered a guilty plea to a felony, it is determined by
7 a preponderance of the evidence that she has not proven that she did not, by any act or omission on
8 her part, intentionally contribute to the bringing about of her arrest or conviction for the crime. Whether
9 she incurred pecuniary injury as a result of her conviction need not be determined.

10 Connie R. is not eligible for compensation as an erroneously convicted person.

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12 Date: March 22, 2012

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14 Kyle Hedum
15 Hearing Officer
16 California Victim Compensation and
17 Government Claims Board
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