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

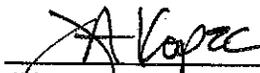
Notice of Decision

10 **Reginald Rene Simmons**

11 Claim No. G524887

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13 On October 29, 2004, 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 October 29, 2004.

16 Date: December 7, 2004

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18 _____
19 JUDITH A. KOPEC
20 Chief Counsel
21 California Victim Compensation and
22 Government Claims Board
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1 BEFORE THE VICTIM COMPENSATION AND GOVERNMENT CLAIMS BOARD OF THE STATE OF
2 CALIFORNIA

3 In the Matter of the Claim of:

4 **Reginald Rene Simmons**

5 Claim No. G524887

Proposed Decision
(Penal Code § 4900 et seq.)

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7 On September 13, 2004, a hearing on this claim was held in Sacramento, California, by
8 Deborah Bain, Hearing Officer, who was assigned to hear this matter by the Executive Officer of the
9 Victim Compensation and Government Claims Board (Board).
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11 Deputy Attorney Michael P. Farrell, representing the Attorney General in this matter, was
12 present on September 13, 2004 for the hearing.

13 The law firm of Moreno, Becerra, Guerrero & Casillas represents the claimant Reginald Rene
14 Simmons. Neither Mr. Simmons nor his attorney appeared for the hearing on September 13, 2004.

15 **Finding of Fact**

16 1. Mr. Simmons submitted a claim under Penal Code section 4900 *et seq.* on
17 April 8, 2002. Mr. Simmons alleged that he was erroneously convicted of a violation of Health and
18 Safety Code section 11352(a), the sale of cocaine. The conviction stemmed from an incident that
19 occurred on February 6, 1995. Mr. Simmons claimed that he was wrongfully incarcerated for this
20 offense for five years and requested compensation in the amount of \$182,500.
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22 2. Mr. Farrell reviewed Mr. Simmons' claim and the supporting documentation. In a
23 February 14, 2003 letter to the Board, Mr. Farrell recommended, on behalf of the Attorney General's
24 Office, that the Board deny Mr. Simmons' claim.

25 3. The file shows that Leah Moreno, paralegal to Attorney Gregory Moreno of the law firm
26 of Moreno, Becerra, Guerrero and Casillas, requested a hearing on behalf of Mr. Simmons. On
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1 August 25, 2004, a letter was sent to Ms. Moreno advising her of the 2:00 p.m., September 13, 2004
2 hearing. The file also reflects that the hearing had been rescheduled a number of times at the request
3 of the law firm.

4 4. Neither Mr. Simmons nor his attorney appeared for the September 13, 2004 hearing.
5 Neither party contacted the hearing officer or her legal assistant to advise that they would not appear,
6 or that they were requesting a continuance.

7 **Determination of Issues**

8 1. A person convicted and imprisoned for a felony may submit a claim to the Board for
9 pecuniary injury sustained through his erroneous conviction and imprisonment. (Pen. Code, § 4900.)
10 The claim must be filed within six months judgment of acquittal or discharge, or after pardon granted, or
11 after release from imprisonment. (Pen. Code, § 4901.)

12 2. The claimant must prove the following: (1) that the crime with which he was charged
13 was either not committed at all, or, if committed, was not committed by him; (2) that he did not by any
14 act or omission on his part, either intentionally or negligently, contribute to the bringing about of the
15 arrest or conviction for the crime; and (3) he sustained pecuniary injury through the erroneous
16 conviction and imprisonment. (Pen. Code, § 4903.) The Board may consider any information that it
17 deems relevant to the issues. (Cal. Code Regs., tit. 2, § 641.)

18 3. To prevail, the claimant must carry the burden of proof of innocence by a
19 preponderance of the evidence. (*Diola v. State Board of Control* (1982) 13 Cal. App.3d 580.)

20 4. Under California Code of Regulations, Title 2, section 617.9, the failure of a party to
21 appear at a hearing, or to proceed with a hearing, shall constitute a withdrawal of the action or
22 request for hearing, unless an extension of time for submission of documents or a continuance of the
23 hearing has been granted.

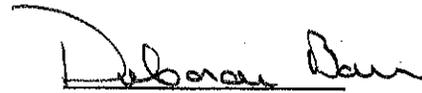
24 5. Based on the findings of fact in paragraphs 3 - 4, it is found that Mr. Simmons' claim is
25 withdrawn because the claimant failed to appear.
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BEFORE THE VICTIM COMPENSATION AND GOVERNMENT CLAIMS BOARD
OF THE STATE OF CALIFORNIA

Order

The claim under Penal Code section 4900 *et seq.* is withdrawn and the matter is dismissed.

Date: October 20, 2004



DEBORAH BAIN
Hearing Officer

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