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

In the Matter of the Claim of:

Cecil Fanning II

Claim No. G573202

Proposed Decision

(Penal Code § 4900)

Introduction

An in-person hearing on this claim was held on July 17, 2008, in Sacramento, California, by Kevin Kwong, Hearing Officer, California Victim Compensation and Government Claims Board (Board). The claimant, Cecil Fanning II, appeared but was not represented by an attorney. The California Attorney General's Office was represented by Michael Farrell, Senior Assistant Attorney General (AG). The record remained open for the submittal of additional documents. Additional documents were received on or about July 31, 2008, and the record closed. As explained below, Fanning has not met the statutory requirements to receive compensation under Penal Code section 4900 because he failed to prove that he did not commit the crimes with which he was charged.

Procedural Background

In April 2004, Fanning was convicted of ten counts of felony child molestation. After the trial, the trial court set aside eight of the ten convictions because it determined that those eight charges had not been timely filed. On March 14, 2007, the Court of Appeals set aside the remaining two

1 charges because it determined that those charges were also not timely filed.¹ The Court of Appeals
2 did not discuss or make a determination relating to Fanning's innocence or guilt since the statute of
3 limitations violation required that the two remaining charges of child molestation be dismissed.
4 Fanning was released from prison on March 14, 2007.

5 **Summary of Evidence**

6 Fanning has two daughters. His eldest daughter, Rhonda (born 1967), is the daughter of his
7 ex-wife Ruth. His younger daughter, Georgina (born 1977), is the daughter of Fanning's current wife
8 Peggy. Although both daughters alleged that Fanning molested them as children, the prosecution
9 only charged Fanning with molesting Georgina. Rhonda's testimony was used at trial to prove a
10 pattern of Fanning's behavior and conduct.

11 I. Trial Court Testimony

12 According to the evidence presented at Fanning's trial,² Rhonda stated that Fanning sexually
13 abused her in the 1970's when she was about ages four to fifteen. The two would wrestle and he
14 would touch her vagina, breasts, and make her touch his penis. The touching occurred both on top
15 and underneath clothing. At night when she was sleeping, Fanning would enter her room to fondle
16 her or stick his penis into her mouth. Rhonda stated that Fanning would pinch her nose so that she
17 would open her mouth and then he would then stick his penis inside her mouth. Additionally, Fanning
18 performed oral sex and digital penetration on her approximately two or three times a week and at
19 least 150 times total.

20 Georgina testified at trial that she was first molested in around 1990 when she was
21 approximately 13 years old. Rhonda had already moved out of the house when the molestation
22 began. Fanning would enter her room at night and play with her vagina on top of her clothing. This
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24 ¹ According to former Penal Code section 803(g) in effect at the time the complaint was filed, if a
25 person was molested as a minor and reports the crime to law enforcement as an adult, the statute of
26 limitations to file a criminal complaint against the alleged perpetrator is one-year. In this case, the
27 complaint against Fanning was timely filed under former Penal Code section 803(g). However,
28 sometime after the one-year period, the prosecution amended the complaint when it discovered that
the dates, locations, and crimes were incorrectly alleged. The Court determined that the amended
complaint was actually a new complaint. Since the complaint was new, it was barred by the statute of
limitations because it was filed over a year after the reporting of the crime to law enforcement.

29 ² All trial information comes from the trial transcripts. (AG Exhibits 2 and 3).

1 occurred approximately two or three times a week. From about ages 14-16, the touching occurred
2 about once every other month.

3 Georgina testified that when she was approximately 14 years old, Fanning entered the
4 bathroom when she was taking a shower and said that he needed to wash her back. Georgina said
5 that she allowed him to do so because she felt that she did not have any other choice. She said that
6 Fanning would always open the door whenever she was taking a shower. Around the same age, she
7 remembers sitting on the sofa watching television when Fanning sat along side her, grabbed her
8 breasts, and made her touch his penis. The jury found Fanning guilty on all ten counts of child
9 molestation. All ten counts were later dismissed because of a statute of limitations violation.

10 II. Penal Code Section 4900 Hearing and Evidence

11 Fanning testified at his hearing under Penal Code section 4900 that he was innocent and that
12 he did not molest his daughters. He stated that Rhonda made up the accusations in 1988 because
13 there was an on-going dispute regarding Rhonda's boyfriend and the ownership/use of the family
14 vehicle. Additionally, Fanning had divorced Rhonda's mother and married Peggy. Fanning believes
15 that Rhonda made up the molestation stories to break up his marriage with Peggy.

16 The AG stated that Rhonda never went to the police with her accusations of molestation.³
17 Her only contact with the police occurred after Georgina came forward with her claims. The AG
18 argued that it was unreasonable to believe that Rhonda would fabricate a child molestation story in
19 2001 because she was mad at Fanning for events that occurred in 1988.

20 Fanning testified at the hearing that Georgina made up the accusations because she was
21 mad at him for not allowing her boyfriend to come over to the house. He believes that Georgina
22 spoke to Rhonda and the two came up with a similar story to "get revenge on him."

23 The AG stated that Georgina did not initially go to the police with her accusations of
24 molestation. She only disclosed being molested in 2001 after being married and wanting to have
25 children of her own. She stated at trial that she worried that Fanning would molest her children so
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29 ³ The AG's statements regarding Rhonda and Georgina's actions are consistent with their testimony elicited at trial.

1 she decided to confront Fanning about what happened. Fanning repeatedly stated "I don't know
2 what you're talking about."

3 Fanning overdosed on pills later that evening in an apparent attempted suicide. According to
4 trial testimony, Georgina went to the police about one year after confronting Fanning about the
5 molestation. The AG argued that had Georgina and Rhonda been vindictive and sought revenge
6 against Fanning, they would have gone to the police much sooner.

7 Findings

8 A preponderance of the evidence supports each of the following findings:

- 9 1. Fanning was convicted by a jury of ten counts of child molestation against Georgina.
- 10 2. All ten counts were dismissed because the charges were not timely filed.
- 11 3. There was no finding that Fanning did not commit child molestation.
- 12 4. Both Rhonda and Georgina testified at trial that Fanning molested them for many years.

13 Determination of Issues

14 A person convicted and imprisoned for a felony may submit a claim to the Board for pecuniary
15 injury sustained as a result of his erroneous conviction and imprisonment.⁴ Penal Code section 4903
16 provides that in order to state a successful claim for compensation, the claimant must prove the
17 following by a preponderance of the evidence.⁵

- 18 1. That the crime with which he was charged was either not committed at all, or, if committed,
19 was not committed by him;
- 20 2. That he did not by any act or omission on his part, either intentionally or negligently,
21 contribute to the bringing about of the arrest or conviction for the crime; and
- 22 3. That he sustained a pecuniary injury through his erroneous conviction and imprisonment.

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26 ⁴ Pen. Code, § 4900.

27 ⁵ *Diola v. Board of Control* (1982) 135 Cal.App.3d 580, 588, fn 7; *Tennison v. Victim Compensation and*
28 *Government Claims Board* (2000) 152 Cal. App. 4th 1164. Preponderance of the evidence means
29 "evidence that has more convincing force than that opposed to it. (*People v. Miller* (1916) 171 Cal.
649, 652.)

1 If the claimant meets his burden of proof, the Board shall recommend to the legislature that an
2 appropriation of \$100.00 per day of incarceration served subsequent to conviction be made for the
3 claimant.⁶

4 Fanning has not proven by a preponderance of the evidence that he is innocent of the crimes
5 with which he was charged. The testimony of the women at trial is significant evidence that Fanning
6 molested Georgina. The jury found him guilty beyond a reasonable doubt of ten counts of child
7 molestation against Georgina. Although all charges were later dismissed because of a statute of
8 limitations violation, this is not evidence that Fanning did not commit child molestation. Being released
9 because of a statute of limitations violation is a procedural matter and is not related to the innocence or
10 guilt of the defendant. There were no findings by the Trial Court or the Courts of Appeals that Fanning
11 did not commit the crimes, their only findings were that the charges were brought untimely.

12 Fanning did not present any other evidence that he did not commit child molestation other than
13 his testimony. Fanning stated that he was innocent and speculated as to why his daughters would
14 create false accusations. However, Fanning's argument is purely speculative and is not enough to
15 prove that his daughters lied about being molested. Additionally, it is unreasonable to believe that
16 Fanning's daughters would hold a grudge against Fanning for boyfriend and car issues that occurred
17 so many years prior that they would create fictitious molestation accusations in 2001.

18 Finally, a claimant's mere denial of the commission of the crime, or reversal of the judgment of
19 conviction on appeal may be considered by the Board, but it will not be sufficient evidence to carry the
20 claimant's burden in the absence of substantial independent corroborating evidence that the claimant is
21 innocent of the crime charged.⁷ Fanning did not present any evidence of innocence other than his
22 testimony and the dismissal of the charges for being untimely. This is not enough evidence to meet his
23 burden of proof, especially considering the jury's finding of guilt was never overturned.

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28 ⁶ Pen. Code, § 4904.

29 ⁷ Cal. Code of Regs., title 2, § 641.

1 Fanning has not proven by a preponderance of the evidence that he did not commit the crimes
2 with which he was charged. Thus, his claim under Penal Code section 4900 is denied.

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4 Dated: September 25, 2008

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7 Kevin D. Kwong
8 Hearing Officer
9 California Victim Compensation and
10 Government Claims Board
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