

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29

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

In the Matter of the Claim of:

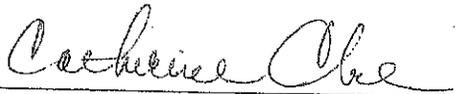
Gary Cecil

Claim No. G 525436

Notice of Decision

On September 19, 2003, the California Victim Compensation and Government Claims Board adopted the attached Proposed Decision upon Remand of the Hearing Officer as its Decision in the above-referenced matter. The Decision became effective on September 19, 2003.

Date: September 22, 2003


CATHERINE CLOSE
Interim Executive Officer
California Victim Compensation
and Government Claims Board

1
2
3
4
5
6 BEFORE THE VICTIM COMPENSATION AND GOVERNMENT CLAIMS BOARD
7 OF THE STATE OF CALIFORNIA
8

9 In the Matter of the Claim of:

10 Gary Cecil

11 Claim No. G 525436

Proposed Decision upon Remand
(Penal Code § 4900 *et seq.*)

12 A hearing on this claim was held on April 7, 2003, in Sacramento, California, by
13 Judith A. Kopec, Hearing Officer, who was assigned to hear this matter by the Executive Officer of the
14 Victim Compensation and Government Claims Board (Board).

15 The claimant, Gary Cecil, was present and was represented by Gary Campbell, Attorney.

16 The Attorney General was represented by Deputy Attorney General Michael Farrell.

17 A proposed decision was submitted to the Board for consideration at its July 25, 2003,
18 meeting. The Board remanded the matter to the hearing officer to consider the argument submitted by
19 Mr. Cecil concerning the proposed decision.

20 Findings of Fact

21 1. Gary Cecil was convicted of violating Penal Code section 290 [Failure to register as sex
22 offender] on August 4, 1999, and was sentenced on November 24, 1999, to a total of six years in state
23 prison. He was incarcerated until his discharge from the Department of Corrections on
24 January 15, 2002, a total of 782 days. Mr. Cecil filed this claim on April 24, 2002, within six months
25 of his release from prison.

26 2. Mr. Cecil was released from state prison as a result of his successful appeal of his
27 conviction. In an unpublished decision, the Court of Appeal, First District, reversed Mr. Cecil's
28 conviction after the matter was transferred to it by the California Supreme Court for reconsideration in
29 light of *People v. Garcia* (2001) 25 Cal.4th 744. *People v. Garcia* held that actual knowledge of the

1 duty to register as a sex offender is a required element of the crime of failing to register under Penal
2 Code section 290. The Court found that prejudicial error resulted from the prosecution's jury
3 instructions and argument which created the impression for the jury that it could convict Mr. Cecil
4 without his knowing he was required to register. Mr. Cecil was not re-tried for the offense.

5 3. Mr. Cecil was convicted of rape in 1980 and served time in state prison. At the time of
6 his sentencing, Mr. Cecil was not instructed that he had to register as a sex offender. Mr. Cecil was
7 not instructed at the time of his release from custody in 1984 that he had to register as a sex offender.

8 4. Mr. Cecil was convicted in 1994 of possession of drugs for sale and served time in state
9 prison. He was released on parole on May 17, 1994.

10 5. When he was released on parole for the drug offense, Mr. Cecil signed a Notice of
11 Registration Requirement form. Mr. Cecil signed the form immediately under a statement printed on
12 the form acknowledging that he had been notified of his duty to register as a convicted sex offender
13 under Penal Code section 290; that he understood his responsibility to register as a sex offender was a
14 lifetime requirement; that he must register within a specific time of coming into a city or county; and
15 that he must inform law enforcement within a specified time of a change in his residence.

16 6. Mr. Cecil testified that his processing for release from custody was rushed, he had to
17 sign a lot of papers, and he did not read any of the papers he signed. He then testified that the only
18 thing he read was the paper that mentioned money he received.

19 7. Mr. Cecil was released from parole for the 1994 drug conviction on June 9, 1995.
20 Mr. Cecil testified that his parole officer, Mr. McGuff, did not tell him that he had to register as a sex
21 offender. He also testified that a clinical psychologist to whom he was referred prior to his release
22 from parole did not tell him he needed to register as a sex offender. Mr. Cecil did not register as a
23 convicted sex offender after his release from parole.

24 8. Mr. Cecil moved to Lake County in 1998. He testified that when his girlfriend asked
25 him if he had to register as a sex offender, Mr. Cecil responded that he did not. When he moved to
26 Lake County in 1998, Mr. Cecil had a suspicion that there was an arrest warrant for him out of Fresno
27 County dating to approximately 1996. In April 1999, a deputy sheriff went to Mr. Cecil's home and
28 asked him if he was required to register as a sex offender. Mr. Cecil responded, "I didn't think I still
29 had to do that."

