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STATE OF WISCONSIN CLAIMS BOARD

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CLAIM OF: MARIO VICTORIA VASQUEZ

CLAIM NO. 2022-016-CONV

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Notice of Appeal Rights

This is a final decision of the Wisconsin Claims Board.

Any person aggrieved by this decision has a right to petition for judicial review in circuit court as provided in Wis. Stat. §§ 227.52 and 227.53. Any petition must be filed in court and served on the Board within 30 days of service of the decision. The time to file and serve a petition runs from the date the final decision is mailed. The petition shall name the Wisconsin Claims Board as the respondent.

Any person aggrieved may also file a petition for rehearing with the Board under Wis. Stat. § 227.49(1); that petition must be received by the Board within 20 days of the service of this decision.

This notice of appeal rights is provided pursuant to Wis. Stat. § 227.48.

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DECISION

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Background

This is a claim for Innocent Convict Compensation pursuant to Wis. Stat. § 775.05. The claim relates to Mario Victoria Vasquez's 1998 conviction for first-degree sexual assault of a minor. Vasquez requests the maximum statutory reimbursement of \$25,000 and attorneys' fees and costs in the amount of \$47,600. Vasquez also requests that the Claims Board recommend to the legislature additional compensation in the amount of \$1,164,500.

Claimant's Facts and Argument

Claimant provided the following facts and arguments in support of his claim for compensation.

In February 1998, 4-year-old GT reported genital pain and a medical exam determined that she had contracted herpes. GT had reported to her mother that “Mario” had touched her at the babysitter’s house, and GT’s mother told police that Vasquez was the “Mario” identified by GT.

Vasquez argues that at the time he was identified by GT’s mother, he was a 34-year-old husband and father with no history of violence or inappropriate behavior. He was the brother-in-law of GT’s babysitter, and he states that he had only limited contact with GT.

Vasquez argues that compelling evidence exists against other suspects. For example, GT knew another man named Mario, her father’s brother, who Vasquez states lived with GT and had regular, uninterrupted access to her, and according to police reports, GT had reported to her mother in the summer of 1997 that her uncle Mario had touched her inappropriately. Vasquez also argues that GT’s uncle admitted having genital sores and while the uncle denied under oath that he had herpes, Vasquez alleges that this was a lie based on a 1999 police report whereby a 31-year-old woman reported contracting herpes from the uncle during a sexually abusive encounter.

In addition, Vasquez believes there is compelling evidence against GT’s father. After GT’s mother told the babysitter about the report regarding GT’s uncle Mario touching her inappropriately, the babysitter received a phone call from GT’s father threatening her with harm if she told anyone about the abuse. GT’s mother also reported to police during the investigation that she had changed her work schedule to ensure GT’s father would not be alone with GT after friends expressed concern about his behavior.

Vasquez further alleges that GT’s identification of him was unreliable. Vasquez argues that GT never specifically identified him during the investigation or trial as her abuser other than through a photo array. Vasquez argues that although GT had picked Vasquez’s picture out of a photo array, she did so after being asked to “point to Mario,” not to identify her abuser, and her uncle Mario’s photo was never included in the photos shown to GT. At trial, Vasquez argues that GT twice stated that the man who assaulted her was not in the courtroom, even though she had a clear view of Vasquez.

Vasquez also argues that GT’s statements were inconsistent throughout the investigation, at various times identifying her abuser as “Mario,” her father, her uncle, and the babysitter’s husband. Vasquez raised questions about GT’s ability to distinguish between a truth and a lie by pointing to interview statements that Vasquez argues fail to establish that GT knew the difference at the time of the investigation. In addition, Vasquez points to incorrect translations by a Spanish language interpreter during an interview with GT. For example, GT was asked who had touched her and she responded “mi tio touched me” which Vasquez argues was incorrectly translated as “Mario touched me.” Vasquez also argues that there was significant evidence that GT had been coached

by her family, pointing to GT's statements that her father and uncle had not touched her, often unprompted or in response to unrelated questions.

Vasquez also alleges that he received ineffective assistance of counsel. His trial attorney failed to present GT's uncle as an alternative suspect and failed to question the reliability of GT's statements, even though the difficulty in obtaining accurate testimony from someone so young was well known at the time. Vasquez notes that his attorney was later disbarred after almost 100 instances of misconduct in representing clients.

Vasquez requested records from the Green Bay Police Department in 2002. After receiving that request, GBPD spoke to GT, who at the time told them that she could not remember the name of the man who had abused her, but identified Vasquez again in the same photo array presented to her at the time. GT stated again that her uncle had touched her inappropriately and added that he had been kicked out of the house for doing so. GBPD then questioned GT's mother, who told them GT's uncle Mario had abused the children physically but not sexually. Despite this additional information implicating GT's uncle, Vasquez states that GBPD took no action and never provided the reports of these interviews to Vasquez or his attorneys.

The Wisconsin Innocence Project filed a motion for a new trial based on newly discovered evidence represented in the documents obtained through the open records request, as well as for ineffective assistance of counsel. In response to that motion, the DA offered Vasquez a new plea deal that would have resulted in his immediate release, but Vasquez declined, stating that he refused to plead guilty to a crime he did not commit, even if it meant spending more time in prison. The day before the hearing on Vasquez's motion, GT (then 21-years-old) told prosecutors that certain of her testimony had been false and included in her testimony as information that her uncle had, in fact, molested her in 1998. She also stated that her father had sexually molested her throughout her childhood and that both her father and uncle had herpes. The next day, at the motion hearing, the DA's Office conceded that Vasquez was entitled to a new trial and the court vacated his conviction. Vasquez argues that the DA chose not to retry him because they would not be able to meet their burden of proof.

Vasquez believes that through his facts and arguments, he has presented clear and convincing evidence that he was innocent of this crime and did nothing to contribute to his conviction. Vasquez states that he was wrongly incarcerated for 16 years in the prime of his life and lost wages, social security, and Medicare benefits. He requests the statutory maximum compensation of \$25,000 and attorneys' fees and costs in the amount of \$47,600. Vasquez notes that the statutory maximum compensation would barely compensate him for even one year of lost wages and therefore requests that the Claims Board recommend to the Legislature additional compensation in the amount of \$1,164,500.

### DA's Response: Facts and Argument

The District Attorney's office provided the following facts and argument in opposition to Vasquez's claim for compensation.

The DA's Office argued that Vasquez has not provided clear and convincing evidence of his innocence. The DA points to the fact that for several days prior to reporting the assault, GT was at the babysitter's home where Vasquez essentially lived. The DA also notes that at the time of his arrest, Vasquez had healing lesions on his genitals consistent with herpes. The DA's office states that through the investigation, GT identified her assaulter as Vasquez.

The DA argues that GT has never indicated that Vasquez was not her assaulter. Throughout multiple contacts with GBPD and with the DA's office, even as an adult after the DA's office admitted that Vasquez was entitled to a new trial, GT has consistently identified Vasquez to GBPD as her 1998 assailant and continues to do so to this day. The DA notes that the fact that other individuals also assaulted GT during her childhood is not proof that Vasquez did not do so. At his hearing before the Claims Board, Vasquez's attorneys responded that any continued insistence on the part of GT that Vasquez was her abuser was due to the psychological impacts on child victims of abuse, which often make it difficult for such victims to reconsider what had happened in light of new evidence.

The DA stated that his office did not oppose Vasquez's motion for a new trial because Vasquez's appeal presented additional evidence that merited an additional review of the case. The decision not to retry Vasquez was based on the challenges posed by the amount of time that had passed and the fact that Vasquez had effectively served his sentence, and not on presumed innocence. The DA has never concluded that Vasquez is innocent of the crime and does not do so now.

### Discussion and Conclusion

Under the standards of Wis. Stat. § 775.05(3), the Claims Board must determine whether or not the evidence is clear and convincing that the petitioner was innocent of the crime for which he or she was imprisoned.

While Vasquez presents alternative theories and evidence that may demonstrate he received ineffective assistance of counsel, he does not present affirmative evidence of innocence, particularly in light of the victim's continued insistence that he was her abuser. Therefore, based on the facts and arguments presented above, the Board concludes and finds that the evidence is not clear and convincing that Vasquez was innocent of the crime for which he was imprisoned. Accordingly, the Board concludes that Vasquez is not entitled to compensation under Wis. Stat. § 775.05. Vote: 4-0

**Dated at Madison, Wisconsin this 16th day of December, 2022**

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*Corey F. Finkelmeyer*  
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Corey Finkelmeyer, Chair  
Representative of the Attorney General

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Anne L. Hanson, Secretary  
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Senate Finance Committee

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