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Love to Talk on the Phone?

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From the Los Angeles Times

Loophole lets state save by evading spirit of the law

One official decides that since a former inmate was pressured into pleading guilty to a crime he didn't commit, he doesn't deserve to be reimbursed.
Dana Parsons

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With California in financial trouble (who isn't?), I thought you'd like to know how the state is saving you money. It could have agreed to pay James Ochoa \$31,700 for doing 10 months in the state pen for a carjacking he didn't commit.

It said no.

The state penal code authorizes a \$100-a-day reimbursement to wrongly convicted inmates. The state knows Ochoa didn't do it because DNA led authorities to the guy who did.

But the code comes with a sweet little loophole that state hearing officer Kevin Kwong invoked in nixing Ochoa's request. If you want to drop Kwong a thank-you note, he works for the California Victim Compensation and Government Claims Board in Sacramento.

I've written twice about Ochoa's case, finding it hard to believe his claim would be denied. Even one of the sponsors of the statute's section that provides for compensation, Orange County GOP chairman Scott Baugh, has said that the spirit of the law clearly favors Ochoa's claim.

Here's why:

Ochoa, then 20, was arrested at his Buena Park home in May 2005 not long after a robbery-carjacking outside a nearby nightclub. The victims described the carjacker and an officer thought it matched Ochoa, whom he'd recognized from an earlier stop. The two victims were taken to Ochoa's home and identified him as he sat in his driveway. Before the trial that December, however, DNA testing by the Orange County crime lab excluded Ochoa as the person inside the victim's car, which had been recovered. Unbowed, the district attorney's office proceeded with the case.

In announcing his decision last month, Kwong didn't dispute Ochoa's contention that he'd felt pressured to plead guilty. He did so, Ochoa said, because he was looking at 15 years to life and the trial judge told him he'd throw the book at him if he turned down a plea and was later found guilty. Three days into his trial, after one of the witnesses identified him, Ochoa took a two-year plea bargain.

Kwong had a chance to make things right. Conceding that Ochoa was innocent and had done the 10 months for a crime he didn't commit (we're not even counting the six months he spent in jail awaiting trial), Kwong cited a provision in the statute that says the compensation can be denied if the accused did anything to contribute to his conviction.

Citing Ochoa's guilty plea, Kwong ruled that he'd done just that.

"The jury never determined that Ochoa was guilty of any crime and they could have found him innocent," Kwong concluded. "Without the DNA evidence matching Ochoa's DNA and with what [attorney Scott Borthwick] called a 'mountain of exculpatory evidence,' it was possible that Ochoa would have been acquitted. Since Ochoa admitted guilt when he had the possibility of being found innocent, his own action caused him to be erroneously convicted."

Kwong acknowledges the judge's threat about a lengthy sentence. Still, by taking the plea bargain, Kwong wrote, Ochoa made a "voluntary and intelligent" decision to take the lighter sentence. With that, Kwong decided, Ochoa basically made his own bed and would have to sleep in it.

Those are your tax dollars at work. In a state facing an \$8-billion deficit, Mr. Kwong saved you \$31,700.

To avoid the possibility of a life sentence for a crime he knew he didn't do, Ochoa took a two-year deal. He was 20, had a bogus eyewitness identification staring him in the face and wasn't too keen on a potential lifetime sentence.

What would you do?

I don't know that I'd call Kwong a villain, but he is one hard-hearted hearing officer.

The villain's horns better fit the Orange County district attorney's office. It applauds itself for acting promptly to free Ochoa when the DNA nailed the right guy. But it's the same office that pushed ahead when it knew the crime lab's analysis didn't implicate Ochoa and that no physical evidence linked him to the crime. As it has done too often, it relied on eyewitnesses to make a case.

In a deposition from a related civil case, Orange County crime lab analyst Danielle Wieland said Deputy Dist. Atty. Camille Hill tried to persuade her to change her findings that the DNA testing didn't implicate Ochoa.

Hill, who coordinates the district attorney's DNA office, denies that. Having a forensic science background herself, Hill says she was merely asking Wieland for a fuller explanation of why she thought the findings excluded Ochoa. When Wieland provided it, Hill says she and other experts agreed with it, but the case proceeded.

Meanwhile, Kwong's recommendation now goes to the full compensation board, which historically has rubber-stamped the hearing officer's findings.

I sense that Joshua Stock, who represented Ochoa at the hearing, isn't overly optimistic about his chances with the full board. Can you blame him?

A case that needed more investigation instead went to trial.

A judge put the fear of God into an innocent man.

An "eyewitness" got it all wrong.

When the truth was revealed and the luckless Ochoa asked for his just due, Kwong nailed him again.

Let's hope the state spends that \$31,7000 wisely.

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