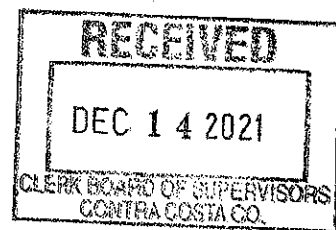


EXHIBIT C

LAW OFFICE OF
JANICE M. BELLUCCI
1215 K Street, 17th Floor
Sacramento, CA 95814
(805) 896-7854
JMBellucci@aol.com



December 14, 2021

Diane Burgis, Chair
Contra Costa County Board of Supervisors
1025 Escobar Street
Martinez, CA 94553

Re: Claim of Jermaine Demel Dickerson - \$12.3 million

Dear Chairwoman Burgis:

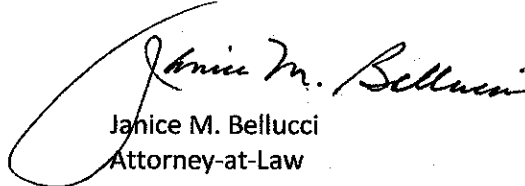
The purpose of this letter is to inform you, in your capacity as Chair of the Contra Costa County Board of Supervisors, that I am filing today a claim in the amount of \$12.3 million on behalf of my client, Jermaine Demel Dickerson. Enclosed with this letter are a completed claim form signed by Mr. Dickerson, a motion filed by the Contra Costa County Public Defender to vacate Mr. Dickerson's unlawful conviction for a sex offense that did not occur and a court order granting that motion dated September 24, 2021.

As the enclosed documents reflect, both the Contra Costa County Public Defender and the Contra Costa County District Attorney knew or should have know that the allegations against Mr. Dickerson were false. Both the Contra Costa Public Defender and the Contra Costa District committed fraud when they did not reveal these facts to Mr. Dickerson and chose instead to prosecute him for a crime that was never committed.

As the result of Mr. Dickerson's conviction for a sex offense that did not occur, Mr. Dickerson was required to register as a sex offender for 23 years. During that time, Mr. Dickerson suffered financially, physically and emotionally. For that reason, Mr. Dickerson is now filing a claim in the amount of \$12.3.

I am available to discuss this matter with the Board of Supervisors and/or its legal representatives upon request. Thank you for your attention to this important matter.

Sincerely,



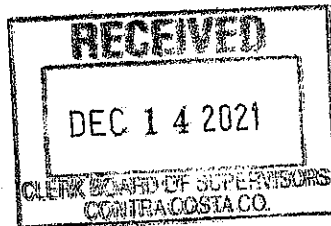
Janice M. Bellucci
Attorney-at-Law

RE: Claim By:

JERMAINE DEMEL DICKERSON

Against the

COUNTY OF CONTRA COSTA



The undersigned claimant hereby makes claims against the County of Contra Costa in the sum of \$12.3 million and in support of the claim represents as follows:

1. When did the damage or injury occur?

Jermaine Demel Dickerson is an African American male who was born in the San Francisco Bay area (San Leandro) near Contra Costa county on January 23, 1980. When Mr. Dickerson was four years old he was placed in foster care after his mother was convicted of drug offenses and incarcerated. During the next 14 years, Mr. Dickerson lived in a total of 36 foster and/or group homes located in the San Francisco Bay area (Contra Costa and Alameda counties).

When Mr. Dickerson was 18 years old he was a student in a special needs class at El Cerrito High School in Contra Costa county. When he was a student at that high school, Mr. Dickerson was arrested on April 20, 1998, by the El Cerrito Police Department for an alleged forcible rape that did not occur. The arrest was based upon an unsubstantiated accusation by a 15-year-old student at El Cerrito High School who claimed that Mr. Dickerson forcibly raped her after threatening her with a knife. She also claimed that Mr. Dickerson robbed her of jewelry, clothing and a backpack.

On April 20, 1998, the day of the alleged forcible rape, the victim was examined at a hospital for signs of sexual assault. The medical records of that examination indicated that there was no DNA evidence or physical injuries upon the body of the alleged victim consistent with a forceful rape. The hospital found one sperm cell on the clothing of the alleged victim and it was determined that Mr. Dickerson was not the source of that sperm cell.

The damages and injuries inflicted by Contra Costa County began on April 22, 1998, when Mr. Dickerson was incarcerated in the Contra Costa Detention Center. The damages and injuries inflicted by Contra Costa County continued when, despite the results of the alleged victim's medical examination, Mr. Dickerson was charged by the Contra Costa District Attorney two months later (on June 26, 1998), with forcible rape in violation of Penal Code Section 261(a)(2), using a dangerous and deadly weapon in violation of Penal Code Section 12022(b)(1) and using a deadly weapon in violation of Penal Code Section 12022.3(a).

The damages and injuries inflicted by Contra Costa County continued for about eight months when Mr. Dickerson was incarcerated in the Contra Costa Detention Center for an alleged forcible rape that did not occur. During his unlawful incarceration, the Contra Costa County Public Defender, who was Mr. Dickerson's legal representative, failed to notify him of the results of the alleged victim's medical examination. Instead, the Contra Costa County Public Defender stated if Mr. Dickerson was convicted of the charges filed by the Contra Costa District Attorney, Mr. Dickerson would be sentenced to prison for 15 years to life. The Contra Costa Public Defender recommended that the 18-year-old special needs student plead guilty to an alleged forcible rape that did not occur in violation of Penal Code sections 261(a)(2) and 12022.3(a).

Mr. Dickerson was further harmed by the Contra Costa District Attorney who prosecuted him for violating Penal Code sections 261(a)(2) and 12022.3(a) for an alleged forcible rape that did not occur. As a result of that prosecution, Mr. Dickerson was convicted of a felony and sentenced in Contra Costa County on December 4, 1998, for a forcible rape that did not occur. As the result of his conviction for a forcible rape that did not occur, Mr. Dickerson was required to register as a sex offender for his lifetime.

Fourteen years later, the alleged victim of the forcible rape that did not occur recanted in 2012 her false statement that she was raped by Mr. Dickerson. Shortly after the alleged victim's recantation, the Contra Costa Public Defender promised in 2012 to provide Mr. Dickerson with legal services leading to the overturning of his conviction. The Contra Costa Public Defender failed to honor that promise for eight years and during that entire time Mr. Dickerson was required to continue registering as a sex offender for a forcible rape that did not occur.

On September 25, 2020, the Contra Costa Public Defender interviewed the alleged victim and during that interview, the alleged victim recanted her prior false statement that she was raped by Mr. Dickerson. The Contra Costa Public Defender further delayed its assistance to Mr. Dickerson and did not file a Motion to Vacate the Prior Judgment for about a year. The Contra Costa District Attorney did not object to the Public Defender's motion and that motion was granted in Contra Costa County Superior Court on September 24, 2021. Subsequent to the granting of this motion, Mr. Dickerson's requirement to register as a sex offender was terminated, however, he was previously required to register as a sex offender for about 23 years due to his conviction for a forcible rape that did not occur.

2. Where did the damage or injury occur?

The damage to Mr. Dickerson took place in Contra Costa county and in every location where he resided for 23 years. That is because Mr. Dickerson was required to register as a sex offender for 23 years based upon his conviction by Contra Costa county for a forcible rape that did not occur. Because he was required to register as a sex offender, Mr. Dickerson suffered significant adverse collateral consequences, including residency restrictions and proximity restrictions which limited where he could live, work and visit.

3. How did the damage or injury occur?

Because he was required to register as a sex offender for 23 years, Mr. Dickerson was significantly harmed due to his inability to find employment and housing. As a result, Mr.

Dickerson was often homeless, sick and hungry. As a homeless person, Mr. Dickerson's life was in jeopardy at all times. During that time, he sometimes found temporary safety and a temporary place to sleep on city buses and BART trains.

4. What particular act or omission on the part of county or district officers, servants or employees caused the damage or injury?

The Contra Costa Public Defender failed to notify Mr. Dickerson, who was an 18-year-old special needs student, that a medical examination of the alleged victim revealed that there was no DNA evidence or physical injuries found upon the victim that was consistent with a forcible rape. Instead, the Contra Costa Public Defender recommended that the 18-year-old special needs student plead guilty to a forcible rape that they knew did not occur. In addition, the Contra Costa District Attorney prosecuted an 18-year-old special needs student for a forcible rape that they knew did not occur because available medical records clearly stated that there was no physical evidence consistent with the alleged forcible rape. Further, when the alleged victim recanted her claims 14 years later, the Contra Costa Public Defender promised to provide legal services to Mr. Dickerson in order to vacate his conviction for a forcible rape that did not occur. The Contra Costa County Public Defender failed to honor that promise for an additional eight years.

5. What are the names of county or district officers, servants or employees causing the damage or injury?

The names of the district officers, servants or employees who caused damage or injury to Mr. Dickerson include former Contra Costa County Public Defender and current Contra Costa County Superior Court Judge David E. Goldstein, former Contra Costa County District Attorney Gary T. Yancey, and former Contra Costa County Deputy District Attorney Gerald W. Chang.

6. What damage or injuries do you claim resulted?

As the result of his conviction for a forcible rape that did not occur, Mr. Dickerson was required to register as a sex offender for 23 years. During that time, Mr. Dickerson experienced significant physical, mental and emotional harm because he was unable to find employment and housing. Mr. Dickerson's physical harm includes but is not limited to permanent liver damage and high blood pressure. Mr. Dickerson's mental and emotional harm includes, but is no limited to, depression and anxiety as well as suicidal ideations. Mr. Dickerson continues to experience significant physical, mental and emotional harm because he was convicted of a forcible rape that did not occur and was required to register as a sex offender for 23 years.

7. How was the amount claimed above computed?

During the 23 years that Mr. Dickerson was required to register as a sex offender due to his wrongful conviction for a rape that did not occur, the harms he suffered have a value of \$100,000 per year for a total of \$2.3 million. Mr. Dickerson is also seeking punitive damages in the additional amount of \$10 million due to the fraudulent acts of the Contra Costa Public Defender as well as the fraudulent acts of the Contra Costa District Attorney that led to Mr.

Dickerson' conviction for a forcible rape that did not occur as well as his requirement to register as a sex offender for 23 years.

8. Names and addresses of witnesses, doctors and hospitals:

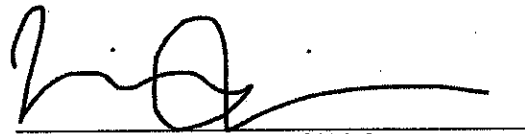
This information is available upon request.

9. List the expenditures you made on account of the accident or injury.

This information is available upon request.

SEND NOTICES TO:

**Attorney Janice M. Bellucci
LAW OFFICE OF JANICE M. BELLUCCI
1215 K Street, 17th Floor
Sacramento, CA 95814
Telephone: (805) 896-7854
Facsimile: (805) 349-8872
E-mail: JMBellucci@aol.com**



Jermaine Demel Dickerson

F I L E D
SEP 24 2021

K. BIEKER CLERK OF THE CO.
SUPERIOR COURT OF CALIFORNIA
COUNTY OF CONTRA COSTA

By _____
D. Villalpando, Deputy Clerk

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR CONTRA COSTA COUNTY**

PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff

v.

JERMAINE DICKERSON,

Defendant.

Case No. 5-981014-4

Court Order

The Court makes the following order, based upon Defendant's Motion to Vacate the Prior Judgment and Conviction Pursuant to Penal Code § 1473.7(a)(1), and the Prosecution's not objecting to the motion :

1. The Court has jurisdiction over this matter.
2. Defendant's Motion to Vacate the Prior Judgment and Conviction Pursuant to Penal Code § 1473.7(a)(1) is granted based upon legal invalidity due to actual innocence.
3. Defendant's guilty plea from 12/04/98 in Docket #5-981014-4, and the judgment of conviction, to a felony violation of Penal Code § 261(a)(2) in this case, are hereby vacated, *nunc pro tunc*, to the date of the plea.

COURT ORDER

4. The Complaint is reinstated, *nunc pro tunc*.
5. The People's motion to dismiss the remaining counts against defendant, *nunc pro tunc*, is granted in the furtherance of justice as authorized by Penal Code § 1385.
6. Defendant waives his right to challenge any irregularities of this proceeding, and that waiver is accepted by the Court.

IT IS SO ORDERED.

Dated: SEP 24 2021, 2021

NANCY STARK

THE HONORABLE
JUDGE OF THE SUPERIOR COURT

1 Robin Lipetzky, Public Defender, State Bar #124769
2 Rebecca Brackman, Deputy Public Defender, State Bar #197288
3 Tatiana Howard, Deputy Public Defender, State Bar #335087
4 Contra Costa County, California
5 800 Ferry Street
6 Martinez, CA 94553
7 Telephone: (925) 335-8000

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF CONTRA COSTA

10 PEOPLE OF THE STATE OF CALIFORNIA,

Case No.: 05-981014-4

11 Plaintiff,

12 vs.

NOTICE OF MOTION AND MOTION TO
VACATE WRONGFUL CONVICTION ON
THE GROUNDS OF NEWLY DISCOVERED
EVIDENCE PURSUANT TO PENAL CODE
SECTION 1473.7

13 JERMAINE DEMEL DICKERSON,

14 Defendant

15 TO: DIANA BECTON, DISTRICT ATTORNEY OF CONTRA COSTA COUNTY,
16 MARTINEZ, CALIFORNIA, OR TO ANY OF YOUR REPRESENTATIVES; AND TO
17 THE CLERK OF THE ABOVE-ENTITLED COURT:

18 PLEASE TAKE NOTICE THAT on the abovementioned date and time, JERMAINE
19 DEMEL DICKERSON, by and through his attorney, will move this court for an order vacating
20 the judgement of conviction rendered by this court on December 4, 1998, in the Superior Court
21 of Contra Costa County case number 05- 981014-4. ¹ The basis for this motion is that newly
22 discovered evidence of Mr. Dickerson's innocence requires his conviction be vacated as a matter
23 of law and in the interest of justice. (Pen. Code § 1473.7, subd. (a)(2).)

24
25
26 ¹ To the extent that this Motion to Vacate may be treated as a petition for Habeas Corpus relief,
27 Petitioner respectfully requests this Court treat this petition as a request for such. (See *Owens v.*
28 *Superior Court* (1959) 52 Cal.2d 822, 827 ["If the facts justify such relief it is immaterial that
defendant has prayed for the wrong remedy..."].)

1 The motion will be based upon this notice, the accompanying memorandum of points and
2 authorities with attached exhibits, the files and documents of the prior proceedings in this case,
3 and any other such evidence as may be adduced at the hearing on this matter.
4

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6 Dated:

Respectfully submitted,

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9 Rebecca Brackman
10 Attorney for Mr. Dickerson
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 In June of 1998, Mr. Dickerson was charged with a violation of Penal Code section 261
3 (a)(2) (Forcible Rape), a section 12022.3(a) enhancement (Using Deadly Weapon/Firearm in
4 Designated Sex Offense), and section 211 (Robbery). After being detained for over eight
5 months, Mr. Dickerson pled no contest to Count One, violation of section 261(a)(2), and the
6 section 12022.3(a) enhancement. (Exhibit A, Waiver of Formal Arraignment, Change of Plea,
7 Sentencing, December 4, 1998.) On December 4, 1998, Mr. Dickerson was sentenced to nine
8 years in state prison; his sentence was suspended and he was placed on formal felony probation.
9
10 (Id.)

11
12 In 2012, the alleged victim and sole witness, Nataki Perry (formerly Nataki Rasheed),
13 recanted her allegation that Mr. Dickerson was her assailant. (See Exhibit B, Reporter's
14 Transcript of Preliminary Hearing, June 19, 1998; Exhibit C Facebook Private Message, May 29,
15 2012.) Since Mr. Dickerson was no longer incarcerated, he had no legal remedy to challenge his
16 conviction and demonstrate his innocence. Because of this wrongful conviction, Mr. Dickerson
17 is required to register as a sex offender pursuant to Penal Code section 290 for life. (Exh. A. at p.
18 3.)

19
20 In January 2017, the Legislature enacted Penal Code section 1473.7 which permits individuals
21 who are no longer incarcerated to challenge their conviction when "newly discovered evidence
22 of actual innocence... requires vacation of the conviction or sentence as a matter of law or in the
23 interest of justice." The newly discovered evidence must be of sufficient value to ensure that "it
24 more likely than not would have changed the outcome of trial." (§ 1473, subd. (b)(3)(A).) Here,
25 the evidence of Mr. Dickerson's innocence entitles him to relief, both as a matter of law and in
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1 the interest of justice. Further, as provided in section 1473.7, subdivision (d), he is entitled to a
2 hearing on the filing of this motion. (Pen. Code § 1473.7, subd. (2)(d).)

3
4 **FACTUAL AND PROCEDURAL BACKGROUND**

5 **A. Preliminary Hearing Testimony**

6 The preliminary hearing was held on June 19, 1998. The sole witness was Ms. Perry, who
7 at the time was fifteen years old. Mr. Dickerson conditionally waived his appearance while Ms.
8 Perry testified about her assailant's identity. The following statement of facts is derived from the
9 testimony therein. (Exh. B.)

10
11 Ms. Perry testified that she knew Mr. Dickerson from their mutual physical education
12 course at El Cerrito High School. (Exh. B. at p. 22.) Mr. Perry described her assailant as an
13 African American male with short black hair, two tattoos, discolored marking along the bottom
14 of his face, and a nose ring. (Exh. B. at pp. 18-25.) She stated that she had little to no contact
15 with Mr. Dickerson prior to the alleged rape and knew of his tattoos only as a result of being
16 raped. (*Id.* at p. 26.) When Mr. Dickerson was brought into the room for the remainder of the
17 preliminary hearing, she testified he was "[t]he one who raped me." (Exh. B. at p. 30.)

18
19 According to her testimony, on April 20, 1998, Mr. Dickerson met Ms. Perry at the bus
20 stop near their school after her final course for the day. (Exh. B. at p. 32, 46.) The two engaged
21 in minor conversation at the bus stop where Mr. Dickerson attempted to fondle her without her
22 permission on multiple occasions. (Exh. B. at p. 33, 55.) After the brief conversation at the bus
23 stop, Ms. Perry followed Mr. Dickerson, at his request, back to the school behind the music
24 building. (Exh. B. at p. 34.) She stated that Mr. Dickerson informed her that he had something
25 that he wanted to show her, and out of curiosity she followed him. (Exh. B. at p. 34.) When the
26 two reached the dirt area near the music building, they sat and engaged in conversation for a
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1 brief moment. (Exh. B. at p. 34.) Ms. Perry stated that Mr. Dickerson then pushed her to the
2 ground and forced himself on top of her. (Exh. B. at p. 35.) He held her down with the weight of
3 his torso and brandished a knife when she attempted to push from under him. (Exh. B. at p. 36-
4 37.) He then put the knife away and proceeded to rape her. (Exh. B. at pp. 38-41.) At some point
5 he got frustrated and stopped. (Exh. B. at p. 41.) Ms. Perry got up, fixed her clothing, and walked
6 down the hill. (Exh. B. at p. 42.)

8 Ms. Perry testified that when she made it down the hill Mr. Dickerson appeared behind
9 her. (Exh. B. at p. 44.) He demanded that she remove her jewelry, snatched her chain from her
10 neck, and stole her backpack and shoes. She roamed around the area for several hours barefoot
11 and then went to an auto parts store. (Exh. B. at pp. 44-45.) There, she told store employees that
12 she was attacked by a group of girls who stole her things. (Exh. B. at p. 108.) The employees
13 allowed her to use the restroom and call her parents. (Exh. B. at p. 46.) While there, a police car
14 came into the parking lot. (*Ibid.*) Employees suggested she speak with the police; she declined.
15 (Exh. B. at p. 93.) When her father arrived, she informed him that she had been targeted by three
16 individuals who tried to “take her with them.” (Exh. B. at p. 93.) After approximately an hour at
17 home, she informed her father that she had lied to him about what occurred, and instead told him
18 that she was raped by Mr. Dickerson. (Exh. B. at p. 94.) Her father took her to the police station,
19 where she identified Mr. Dickerson as her assailant from a photographic lineup. (Exh. B. at p. 48,
20 102.) She was then taken to the hospital where the doctors examined her for signs of sexual
21 assault. (Exh. B. at p. 48.)

25 The medical records indicated there were no interior vaginal, cervical, or vulval injuries.
26 (Exh. B. at p. 119.) There was no DNA evidence or physical injuries consistent with the alleged
27 forceful rape. (Exh. B. at p. 119.) There was one sperm cell found on Ms. Perry’s clothing and
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1 another on Mr. Dickerson's, along with one abrasion to the exterior of Ms. Perry's vaginal area.
2 DNA analysis confirmed that Mr. Dickerson was not the source of either sperm cell.

3
4 The court held Mr. Dickerson to answer to both counts and the enhancement. (Exh. B. at
5 p. 123.)

6 **B. Plea and Sentencing**

7 As a result of Mr. Dickerson's plea, he remains subject to lifetime registration as a sex
8 offender under Pen. Code section 290. (Exh. A. at p.3.)

9 **C. Evidence of Innocence**

10 On the morning of May 5, 2012, Mr. Dickerson's wife and the mother of his three
11 children reached out to Ms. Perry via Facebook Private Messaging. (Exh. C., at p. 127). She
12 informed Ms. Perry that Mr. Dickerson was still dealing with the negative consequences of his
13 plea. As a result, she encouraged Ms. Perry to "tell the truth" regarding the incident that led to
14 his 1998 rape conviction. (Exh. C. at p. 127) In response Ms. Perry admitted to falsely accusing
15 Mr. Dickerson of the offense against her. (*Ibid.*)
16
17

18 I am very appreciative for you reaching out to me. I haven't thought about any of this
19 since it happened. Yes, i (*sic*) was really raped that day but i (*sic*) will handle this ASAP.
20 My intentions were not to take someones (*sic*) life away and i (*sic*) truly regret the wrong
21 doing i (*sic*) played a part in. Jermaine is a good person and did not deserve any of the
22 hardship he has been through. I cant (*sic*) give him his life back but i (*sic*) can do my part
23 in making things better. I was a very young and ignorant girl and i (*sic*) listened to the
24 wrong people and someone innocent got hurt. I give my blessing to you and your family.
25 i (*sic*) have a family too and couldnt (*sic*) imagine being in this predicament. You have
26 presented your self (*sic*) as a strong woman. i (*sic*) respect and appreciate that. i (*sic*) am,
27 truly apologetic and will make things as right as possible. i (*sic*) will also stay in contact
28 with you to let you [know] what is going [on] with this whole process.

(Exhibit C. at p. 127.)

26 On September 25, 2020, Contra Costa Deputy Public Defender Rebecca Brackman and
27 Investigator Justin Hill interviewed Ms. Perry. (Exhibit D, Nataki Perry Investigation Report, p.
28

1 129.) Ms. Perry verified that she wrote the message, was of sound mind when she did so, and
2 that the information stated within it was true. (Exh. D. at p. 129.) She confirmed her allegation
3 that Mr. Dickerson was her assailant was false. (Exh. D. at p. 129.) She acknowledged that
4 shortly after she sent the Facebook message, she was contacted by Charlotte Epps, former
5 investigator for the Contra Costa County Public Defender's Office, regarding the incident. (Exh.
6 D. at p. 129.) At the time of the conversation with Ms. Epps, she informed her that she was
7 actually assaulted by a former partner who demanded that she blame Mr. Dickerson for the
8 assault. She maintained this version of events when speaking with Ms. Brackman. She further
9 relayed to Ms. Brackman that Mr. Dickerson did not rape her and that she felt responsible for his
10 wrongful conviction.
11
12

13 **ARGUMENT**

14 **I. MR. DICKERSON'S CONVICTION SHOULD BE VACATED BECAUSE, AS A**
15 **MATTER OF LAW, NEWLY DISCOVERED EVIDENCE OF ACTUAL**
16 **INNOCENCE EXISTS.**

17 In pertinent part, section 1473.7 provides that:

18 (a) A person no longer in criminal custody may file a motion to vacate a conviction or
19 sentence for any of the following reasons:

20 ...

21 (2) Newly discovered evidence of actual innocence exists that requires vacation of the
22 conviction or sentence as a matter of law or in the interests of justice.

23 ...

24 (e)(1) The court shall grant the motion to vacate the conviction or sentence if the moving
25 party establishes, by a preponderance of the evidence, the existence of any of the grounds
26 for relief specified in subdivision (a).

27 (e)(3) If the court grants the motion to vacate a conviction or sentence obtained through a
28 plea of guilty or nolo contendere, the court shall allow the moving party to withdraw the
plea.

(§ 1473.3; See also *People v. Perez* (2020) 47 Cal.App.5th 994, 997.)

1 Ms. Perry's recantation is newly discovered evidence that entitles Mr. Dickerson to relief,
2 both as a matter of law and in the interest of justice. As a matter of law, the new evidence
3 requires the court to vacate Mr. Dickerson's conviction because the evidence: (1) meets all
4 technical requirements of "newly discovered evidence;" and (2) is of such value that it is more
5 likely than not that it would have resulted in a different outcome of this case. Finally, the
6 interests of justice require the reversal of a conviction that rests entirely on the testimony of a
7 complaining witness who has consistently acknowledged the falsity of her allegation that Mr.
8 Dickerson raped her. Justice weighs in favor of granting Mr. Dickerson relief under section
9 1473.7.
10

11
12 **A. Ms. Perry's Recantation Meets All of the Technical Requirements of the**
13 **"Newly Discovered Evidence" Standard.**

14 "[A]lthough Penal Code section 1473.7 does not define the phrase 'newly discovered
15 evidence,' the phrase has been defined elsewhere in the Penal Code. [Citation]. Those definitions
16 consistently describe newly discovered evidence as testimony, writings or similar things
17 described in Evidence Code section 140 (which defined 'evidence'), *discovered after trial or*
18 *judgment, and that with reasonable diligence could not have been discovered earlier.*
19 [Citation.]" (*Perez, supra*, 47 Cal.App.5th at p. 999.)²
20

21 In a similar respect, the definition for "newly discovered evidence" under Penal Code
22 section 1473 was changed in 2016. (See *In re Masters* (2019) 7 Cal.5th 1054.) There, the court
23 found "new evidence" to mean evidence that "could not have been discovered prior to trial by
24

25
26
27 ² See *Estate of Thomas* (2004) 124 Cal.App.4th 711, 720 ['consistent usage implies consistent
28 meaning: 'A word or phrase, or its derivatives, accorded a particular meaning in one part or
portion of a law, should be accorded the same meaning in other parts or portions of law.']."]

1 the exercise of due diligence, and is admissible and not merely cumulative, corroborative,
2 collateral, or impeaching.” (Pen. Code § 1473 subd. (b)(3), added in 2016; See also *In re*
3 *Masters, supra*, 7 Cal.5th at p. 1083.) The statute also requires that the evidence be credible,
4 material, and presented without substantial delay. (*Ibid.*)

5
6 Ms. Perry’s recantation of Mr. Dickerson’s identification could not have been discovered
7 prior to Mr. Dickerson’s plea because it did not occur until years later. At the time of Mr.
8 Dickerson’s plea, Ms. Perry continuously maintained that Mr. Dickerson raped her. She
9 identified him by name and described several markings and tattoos that she claimed to have seen
10 during the assault. (Exh. B. at p. 31.) She explained away any impeachment evidence
11 undermining her false accusation and stated that she told two previous conflicting stories out of
12 fear that her actual assailant would retaliate against her. (*Id.* at p. 98.) Further interviews would
13 not have rendered a different story. Thus, this evidence could not have been discovered prior to
14 trial with due diligence.
15

16
17 Mr. Dickerson did not serve any time in prison as a result of his plea. Rather, he was
18 subject to three years of felony probation and is still required to register as a sex offender. Thus,
19 at the time of the recantation in 2012, Mr. Dickerson had no standing to bring this evidence
20 before the court.

21
22 This evidence is also admissible³, as it conclusively contradicts the only basis of Mr.
23 Dickerson’s conviction, the testimony of the prosecution’s sole witness. As a result, this new
24 evidence goes to the heart of the issue in this case, Mr. Dickerson’s innocence.

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28 ³. “Except as otherwise provided by statute, all relevant evidence is admissible.” (Evid. Code, § 351.) “ ‘Relevant evidence’ means evidence... having any tendency in reason to prove or

1 No physical evidence corroborated Ms. Perry's version of the assault, nor did any DNA
2 evidence corroborate the false identification. The rape kit performed only found one abrasion to
3 the exterior Ms. Perry's vagina, which is inconsistent with being forcefully penetrated at least
4 three times. There were also no interior abrasions to the vaginal, cervical, or vulval area.
5 Finally, none of the DNA test results from Ms. Perry's person or her clothing were found to be
6 Mr. Dickerson's; and similarly, none of the DNA found on Mr. Dickerson was found to be Ms.
7 Perry's.
8

9 Finally, the evidence is not "merely cumulative, corroborative, collateral, or
10 impeaching," since it is relevant to the sole contested issue in the case: who raped Ms. Perry,
11 and comes from Ms. Perry directly. "Cross-examination is subject to restriction under Evidence
12 Code section 352 if it is cumulative or if it constitutes impeachment on collateral issues."
13 (*People v. Greenberger* (1997) 58 Cal.App.4th 298, 352.) "But trial courts are not required to
14 exclude all cumulative evidence and *if evidence has substantial relevance to prove material*
15 *facts which are hotly contested and central to the case, it is not 'merely cumulative.'*" (*People*
16 *v. Lang* (1989) 49 Cal.3d 991, 1016, emphasis added.) Evidence is "substantially or materially
17 probative" if there is a "*reasonable probability it could have affected the outcome.*" (*In re*
18 *Malone* (1974) 12 Cal.4th 935, 965, original emphasis, quoting *In re Wright* (1978) 78
19 Cal.App.3d 788, 814.)
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23 Testimony from the victim – the prosecution's only witness – who provided the only
24 direct or circumstantial evidence of guilt is not merely collateral, cumulative, or impeaching. The
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28 disprove any disputed fact that is of consequence to the determination of the action." (Evid.
Code, § 210.)

1 identity of the rapist was the sole issue contested at trial, and as such, any evidence regarding the
2 identity cannot be considered collateral. Specifically, Ms. Perry's statement that someone other
3 than Mr. Dickerson is the actual assailant is not collateral, but rather, it is integral and material
4 evidence of actual innocence.. For the same reason, the newly discovered evidence that Ms.
5 Perry falsely alleged Mr. Dickerson raped her is "necessarily ... also material." (*People v. Lang*
6 (1989) 49 Cal.3d 991, 1016.)
7

8 **B. Ms. Perry's Recantation is of Such Value That it is More Likely Than Not**
9 **That It Would Have Changed the Outcome of this Case.**

10 In order to warrant relief under the "newly discovered evidence" standard, the court must
11 "determine whether the new evidence proffered by [the petitioner] entitled him to a new trial, not
12 to predict the outcome of a future trial or to determine the ultimate issue of culpability." (*Sagin*,
13 *supra*, 39 Cal.App.5th at p. 579.) Prior to section 1473s enactment, petitioners were required to
14 "conclusively establish innocence," meaning that the new evidence, standing alone, was required
15 to completely exonerate the convicted. (*Ibid.*) The *Sagin* court observed:
16

17 "The change in the law represents an overall lower tolerance for wrongful convictions.
18 The Legislature has chosen to more closely protect society's interest in ensuring that a
19 person convicted of a crime is the person who committed it."

20 (*Ibid.*)

21 In *Sagin*, twenty years after the petitioner was convicted of murder, investigators tested
22 DNA evidence found and stored from the victim's autopsy. (*Ibid.*) Of the several samples tested,
23 none of the evidence produced results that identified petitioner. (*Ibid.*) The court acknowledged
24 that this evidence was new, since DNA testing technology did not exist at the time of the
25 conviction. (*Ibid.*) Further, under the section 1473 standard, the evidence was found to be more
26 likely than not to change the trial outcome. (*Ibid.*)
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1 Here, Mr. Dickerson is capable of meeting both the new and former standard. Ms. Perry's
2 accusation was the sole evidence against Mr. Dickerson. The medical reports presented only one
3 abrasion to Ms. Perry's vaginal area, which is inconsistent with the force described in her
4 preliminary hearing testimony. (Exh. B. at p. 122.) The medical rape kit examination results did
5 not produce any additional evidence to corroborate Ms. Perry's account of a violent assault. The
6 seminal fluid tests of Ms. Perry's vaginal and rectal swabs only contained one sperm cell and Mr.
7 Dickerson was excluded as the source by DNA testing results. The stains from her clothing
8 contained no sperm. (Exh. B, at p. 122.) In fact, the stain found on her sweater only contained
9 her personal DNA. Stains found on Mr. Dickerson's clothing were tested and results eliminated
10 Ms. Perry as the source of the vaginal cells present and eliminated himself as the source of
11 sperm. Ms. Perry's false allegation was the only evidence the prosecution offered at the
12 preliminary hearing. Without Ms. Perry's false allegation, the prosecution would not have been
13 capable of proving the allegations against Mr. Dickerson. Thus, without the false allegations, Mr.
14 Dickerson would not have been held to answer to the charges against him. ⁴

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18 **II. THE INTERESTS OF JUSTICE DEMANDS THE REVERSAL OF MR.
19 DICKERSON'S WRONGFUL CONVICTION.**

20 The interests of justice in this case are served by exonerating Mr. Dickerson and
21 reversing his plea. Ms. Perry repeatedly stated that Mr. Dickerson did not rape her. Mr.
22 Dickerson and his family have suffered under this false conviction for many years, and Ms. Perry
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27 ⁴ Sufficient cause to hold a defendant to answer is equivalent to the reasonable or probable cause
28 standard that is required to justify an arrest; further defined as "such a state of facts as would lead
a man of ordinary caution or prudence to believe and consciously entertain a strong suspicion of
guilt of the accused." (*Williams v. Superior Court* (1969) 71 Cal.2d 1144, 1147.)

1 has suffered under the guilt of her intentional and false allegation. Mr. Dickerson is still subject
2 to community opprobrium because he is a lifetime sex offender registration. In the interest of
3 justice, this court must set right the wrong inflicted upon Mr. Dickerson as the result of the false
4 allegations against him.
5

6 **CONCLUSION**

7 For the foregoing reasons, Mr. Dickerson respectfully requests that this court vacate the
8 judgement and set aside his wrongful conviction. Further, Mr. Dickerson is entitled to, and
9 respectfully requests, a hearing on this motion. (Pen. Code § 1473.7 subd. (2)(d))
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