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 From the Los Angeles Times

**DANA PARSONS / ORANGE COUNTY**

## Prosecutors guilty of playing with man's compensation

**The law says James Ochoa is owed money for a false conviction. But the attorney general's office is hedging.**  
 Dana Parsons

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The cops, the district attorney and a judge already have had their fun with James Ochoa, behaving like dogs with a chew toy. Now it's the attorney general's turn to snarl, take a bite or two, and fling him around some more.

All in the name of justice, of course.

Ochoa was 20 years old in December 2005 when he pleaded guilty in Orange County Superior Court to second-degree robbery and accepted a two-year prison term.

He'd pleaded not guilty to carjacking and robbery in Buena Park, but had listened as one of the victims testified that he was the guy. And with Judge Robert Fitzgerald's words ringing in his ears — that he'd give him the max if convicted — Ochoa put two and two together and got four. He took the offer on the table, instead of risking life in prison.

At the time, Ochoa's protestation of innocence would have sounded like just another guilty guy's chant. Except for one thing: He was innocent.

Ten months into his prison term, DNA testing pointed to a man in custody for another carjacking. When he proved to be the real culprit in the Buena Park carjacking, the Orange County D.A.'s office promptly called for Ochoa's release and expressed remorse.

I'd give them more credit, but the D.A.'s office put Ochoa on trial knowing that DNA testing of the carjacker's clothing had eliminated him. Prosecutors considered that an insufficient reason to do more investigating, largely because the two victims identified Ochoa after cops surmised he might be responsible and showed his photo to them. On parole for a drug offense at the time, Ochoa lived in the area where the crime occurred.

Once, people like Ochoa just had to grin and bear it. But several years ago, Gov. Gray Davis signed a bill that allowed incarcerated people who later were proved innocent to receive compensation for their imprisonment. The rate was \$100 a day, which in Ochoa's case would come to about \$30,000. He has filed a claim for the money.

Enter the state attorney general's office, which makes a recommendation to the hearing officer and victim compensation board that will decide Ochoa's claim.

End of story, right? Must be a no-brainer, right? Ochoa didn't do it, everybody knows it and he did 317 days in prison (the 200 days he did in county jail awaiting trial don't count).

Show him the money!

Maybe, but don't forget that Ochoa is a human chew toy. In her report, Deputy Atty. Gen. Catherine Chatman wrote that the A.G.'s office "does not intend to present evidence in opposition to Mr. Ochoa's claim."

So far, so good. But in the body of her report, Chatman discusses the two key elements that a person "must prove" under state law to qualify for compensation. The first is innocence; the second is that the person didn't do anything to "contribute to the bringing about of his arrest or conviction...."

Ochoa's innocence isn't in dispute, Chatman writes. But on the second point, she describes Ochoa's claim as "more problematic." Disputing Ochoa's contention, she finds no indication that Fitzgerald was hostile or played a role in Ochoa's decision to accept the plea that, in essence, convicted him. She recommends that the board find this guilty plea was voluntary.

"Mr. Ochoa's fear of a lengthy prison term and the mistaken but positive eyewitness identification appear to have been the truly motivating factors," she writes.

Ochoa's attorney, Joshua Stock, is beside himself. He acknowledges the conclusion that the attorney general won't present evidence against Ochoa at his hearing, which hasn't been scheduled yet. But, Stock says, Chatman's report gives the hearing officer the legal cover to deny the claim.

"The hearing officer will have this letter," Stock says, "and he'll know the attorney general's problem with the case is that Mr. Ochoa, in their opinion, contributed to his own conviction by pleading guilty."

Stock says he has a sworn affidavit from Scott Borthwick, Ochoa's trial attorney, that Fitzgerald told Ochoa that he'd give him the maximum sentence if he were convicted. The remarks were made in court but Fitzgerald went off the record when he said it, Borthwick and Stock say. That may explain why Chatman doesn't cite it in her report, Stock says.

As for the plea, Stock concedes that Ochoa wasn't "held down and beaten" before taking the plea. "You've got to look at the circumstances," he says. "But I don't think they're going to look outside the box. The law says this, he voluntarily took his plea, and I think we're in trouble, to be honest with you."

I wanted Chatman to clear up the seeming discrepancy — specifically, that the A.G.'s office won't present evidence in opposition while at the same time finding that Ochoa didn't satisfy all the elements needed to qualify for the money.

She said she couldn't comment on a pending case, and a spokesman for the A.G.'s office said it doesn't want to go beyond what's in Chatman's letter to the board's attorney. The spokesman, Gareth Lacy, acknowledges my suggestion that a mixed message is sent. When I asked him, specifically, why the office won't simply say that it supports Ochoa's claim, Lacy says the A.G.'s office has nothing to add beyond what Chatman wrote.

People, help me. Give me a reality check.

If the purpose of the law is to compensate the wrongly convicted, and if a man who knows he's innocent pleads guilty because he fears getting a maximum sentence based on false testimony and a judge's warning, how is that a voluntary plea?

Literally, I get it. Ochoa wasn't water-boarded.

But in the world of common sense? Why should a plea, made under the threat of a life sentence, be held against someone who is factually innocent?

I went to one more source. Scott Baugh is the head of the Orange County Republican Party and the former Huntington Beach assemblyman who wrote the compensation law that Davis signed.

Baugh wasn't familiar with the Ochoa case, but I read Chatman's depiction of the case and her findings.

For starters, Baugh says, he had "a sense of outrage over the scenario," beginning with Ochoa being taken to trial when DNA apparently excluded him. "It's disturbing that a prosecutor can charge somebody with serious felonies knowing that the DNA at the scene of the crime did not match that of the defendant," he says.

"DNA points to innocence, and yet our system of criminal justice allows the possibility that eyewitness testimony can send innocent people to prison."

Baugh is preaching to the choir on that, but to me, the key issue here is the plea and its possible effect on the hearing officer who will largely decide Ochoa's claim.

Voluntary? Involuntary?

To Baugh, it's crystal clear. "I find it outrageous," he says, "that you can force someone into a Hobson's choice of 25 years to life or pleading to a crime he didn't commit and spending two years in prison, and call it a voluntary decision. Even if the judge said nothing, he's facing 25 years to life or a two-year plea bargain.

"That's not a voluntary decision, if he's an innocent man.

"It's not the spirit of the statute, at all, that I carried."

It's possible, of course, that Ochoa will win his claim. Baugh surmises that the A.G.'s office is simply trying to ensure that the so-called second element of the bill isn't automatically brushed aside.

I understand that. What bugs me is the A.G.'s almost cavalier response to someone who did 10 months in state prison, not to mention nearly seven months before that in county jail. By that, I mean that to define an innocent man's guilty plea as "voluntary" and to factor it into a compensation decision sounds like a lawyer's strained attempt to find a loophole.

Baugh says the second element was meant to stop frivolous claims.

"Hypothetically," he says, "if some guy who was mouthing off and he says he did something he didn't do and later was proved innocent, he contributed to his own incarceration. In those cases, law enforcement has got to do what it's got to do."

Understood. Which only makes Ochoa's claim even more clear-cut.

A no-brainer, right from the start.

Unless, of course, you think that doing hard time makes someone less human and fair game for legal hocus-pocus.

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*Dana Parsons' column appears Tuesdays, Thursdays and Saturdays. He can be reached at (714) 966-7821 or at [dana.parsons@latimes.com](mailto:dana.parsons@latimes.com). An archive of his recent columns: <http://www.latimes.com/parsons> <252>*

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