Supreme Court Number _____

IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

In Re	)	**CASE No. B_____**
	)	
LESLIE VAN HOUTEN,	)	***Related Cases:***
	)	***B304258; B291024; S258552***
Petitioner,	)	***BH012512; BH007887***;
	)	***B240743; B286023***
on Habeas Corpus.	)	***S245992; S238110;***
_____	)	***S221618; S230851***

Hon. WILLIAM C. RYAN, Judge
Superior Court Case Nos. BH012512; A253156
Second Appellate District, Div. One, Appellate Court Number B304258

PETITION FOR REVIEW

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PETITION FOR REVIEW

TO THE HONORABLE TANI CANTIL-SAKAUYE, CHIEF JUSTICE, AND TO THE HONORABLE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE STATE OF CALIFORNIA:

Defendant and petitioner, Leslie Van Houten, respectfully petitions this Honorable Court for review in the above-entitled matter following the filing of a summary denial by the Court of Appeal of the State of California, Second Appellate District, Division One, on July 2, 2020. The Court of Appeal denied Petitioner's petition for writ of habeas corpus, with a dissent by Justice Chaney. (Exh. A.)

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I.

ISSUES PRESENTED FOR REVIEW

1. Review is required to settle the issue of whether the Governor's reversal of parole in a murder case is supported by a modicum of evidence with a rational nexus to the question of the inmate's current dangerousness, where the Governor cites isolated facts out of context and does not analyze those facts within the context of the inmate's current circumstances.

2 Review is required to determine if due process is violated when the Government is in possession of exculpatory evidence, that best describes the commitment offense, which was the basis for the Governor's reversal, and whether the inmate's liberty interest in parole requires such disclosure.

3. Review is required to determine that if a governor uses the commitment offense as described as "some of the most notorious and brutal killings in California's history" that continue to impact society 50 years later, that the public nature of the crimes creates a conflict of interest that would negatively impact future elections for Governor Newsom should he let Ms. Van Houten's grant of parole stand.

II.

STATEMENT OF THE CASE

In 1971, Ms. Van Houten was convicted of two counts of murder and one count of conspiracy to commit murder, together with codefendants Charles Manson, Patricia Krenwinkel and Susan Atkins. The jury sentenced all four defendants to death. While the automatic appeals were pending in this Court, the Court invalidated the death penalty in 1972. The appeals were transferred to the Court of Appeal. Division One of the Second Appellate District reversed Ms. Van Houten's conviction and affirmed the judgments of the other three defendants. (*People v. Van Houten* (1981) 113 Cal.App.3d 280, 283 ("*Van Houten*").) She was retried by a jury on the same charges and the jury deadlocked. (*Id.,* at pp. 282-283.) In her third trial, Ms. Houten was convicted by a jury of two counts of first degree murder and one count of conspiracy to commit first degree murder. The trial court imposed concurrent life sentences on each count, which carried a minimum service term of seven years. Against this sentence, the court granted Ms. Van Houten presentence custody credits of eight-years and twenty-days. The judgment was affirmed on appeal. (*Id.,* at p. 293.)

Ms. Van Houten appeared before the Board of Parole Hearings (BPH) 20 times before she was found suitable for parole in 2016 at her twenty-first parole hearing. Governor Brown reversed the grant of parole. A petition for review was filed on October 31, 2016, and denied on December 21, 2016, in case S238110.

The BPH again found Ms. Van Houten suitable for parole in 2017 at her twenty-second parole hearing. The Governor reversed the second grant

of parole. (Petition, Exh. A.) Ms. Van Houten filed a petition for writ of habeas corpus challenging Governor Brown's second parole reversal. The Court of Appeal affirmed the Governor's reversal on September 20, 2019. Justice Chaney dissented, finding instead that Ms. Van Houten is suitable for parole and concluding that the writ should have been granted. The second reversal was the subject of a petition for review in case number S258552. Review was granted and this Court ordered briefing deferred pending decision in *In re Palmer*, S252145. That matter was remanded to the appellate court who issued the same opinion.

On January 30, 2019, the BPH again granted Ms. Van Houten parole at her twenty-third parole hearing. Governor Gavin Newsom reversed the grant of parole on June 3, 2019. Ms. Van Houten filed a petition for writ of habeas corpus in the Los Angeles Superior Court challenging the third parole reversal. The superior court denied that writ petition and a petition for writ of habeas corpus was filed in the appellate court. On July 2, 2020, the appellate court denied the writ petition in a summary denial, and Justice Chaney dissented stating she would have issued an order to show cause why the petition should not be granted because the record contained no evidence of a current unreasonable risk to public safety if released on parole, and Justice Chaney also would have issued an alternative writ directing the superior court to vacate its earlier ruling denying Petitioner's request for the transcripts of the taped interviews of Charles "Tex" Watson.[1] (Exh. A, p. 2.)

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[1] In case S230851, this Court requested an answer to the petition for review and the Los Angeles County District Attorney's Office read the transcripts but declined this Court's offer to confidentially lodge the transcript of the Tex Watson tapes, and admitted the transcripts were exculpatory but argued the transcripts were cumulative. (S230852 Answer, pp. 9, 11-13.)

III.

STATEMENT OF FACTS

Ms. Van Houten lived a normal life until age 14. She sang in the family's church choir, attended youth fellowship and summer church camp, and graduated from high school after being elected homecoming queen and class secretary. (*Van Houten* at p. 334.) Ms. Van Houten's parents divorced when she was 14, and the divorce stigmatized Ms. Van Houten who then became a part of a lower social status. Ms. Van Houten handled the divorce poorly, which became a crossroad in her life. (B304258 Exh. D, p. 22-23, 25.)

At age 15, Ms. Van Houten was introduced into drug use. (B304258 Exh. D, pp. 25-27.) At age 17, Ms. Van Houten and her boyfriend ran away to San Francisco and she became pregnant. (B304258 Exh. D, pp. 25, 28-29.) Ms. Van Houten's mother arranged through her psychologist, to have an illegal abortion and the fetus was placed in a can and buried in the back yard. (B304258 Exh. D, pp. 28-32.) Ms. Van Houten was brokenhearted and "was not the same after that." (B304258 Exh. D, p. 32.)

Ms. Van Houten graduated from business college as a certified secretary. (*Van Houten* at p. 343; B304258 Exh. D, p. 33.) Ms. Van Houten had just turned 19 years old and met Catherine Share, Bobby Beausoleil, and another woman named Gail, who was Bobby's girlfriend. Ms. Van Houten's new friends were from the Spahn Ranch. Ms. Van Houten had been attracted to communal living. (*Van Houten* at p. 343; B304258 Exh. B, pp. 48-49.) The ranch was described as a commune that was run by a wonderful "Christlike" man. (B304258 Exh. D, p. 112.) The commune was run by Charles Manson after his release from prison in 1967. Manson

dominated and manipulated approximately twenty "Family" members who lived at the ranch. (*Van Houten* at p. 343.) Initially, life at the ranch "was welcoming" and all cult members would gather and smoke marijuana and use LSD. (B304258 Exh. D, pp. 38-39.) In the beginning Manson showed his cult members a love but it turned into "isolation, dependence, fear, drugs, sex, and indoctrination of the Family experience," and Ms. Van Houten and the others came to accept Manson's beliefs and goals, which included the murders required to start the revolution that Manson envisioned. (*Van Houten* at p. 344; B304258 Exh. D, pp. 41-42.)

On August 9, 1969, "Manson drove Ms. Van Houten and five others around while he scanned for victims. Manson and Watson, armed with a bayonet, went inside and tied up and blindfolded the LaBiancas. The girls, Ms. Van Houten and Patricia Krenwinkel, who had not yet entered the house, were ordered by Manson to go into the home "and do what Watson told them to do." (*Van Houten* at p. 345.) They entered the house to find Watson holding the LaBiancas at bayonet point. Manson drove away.

Inside the residence Watson held the victims defenseless with his bayonet. Watson then told Ms. Van Houten and Krenwinkel to take Mrs. LaBianca into her bedroom and kill her. After Ms. Van Houten and Krenwinkel took Mrs. LaBianca into her bedroom, Krenwinkel went to the kitchen and returned with some knives, one of which she handed to Ms. Van Houten. Ms. Van Houten put a pillowcase over the victim's head and wrapped a lamp cord, still attached to the lamp, around her neck. Mrs. LaBianca grabbed the lamp and swung it at Ms. Van Houten, who knocked it out of her hand and wrestled her onto her bed where she held her while Krenwinkel stabbed her in the clavicle, bending the knife. (*Van Houten* at p. 346; B304258 Exh. D, pp. 65-68.) Watson went into the bedroom with a

bayonet. After Ms. Van Houten turned away, Watson stabbed the victim eight times with the bayonet, and *any of the blows delivered by Watson's bayonet could have been fatal.* (*Van Houten* at p. 346.) At that time, Ms. Van Houten stared off into a den and then Watson turned Van Houten around, handed her a knife, and told her to "[d]o something." (B304258 Exh. D, p. 68.) Ms. Van Houten "was having a hard time holding on to what was happening at that moment. [She was] not saying that [she] suddenly felt it was wrong. [She] became more critical of [her]self that [she] wasn't as able to participate as Tex and Pat." (B304258 Exh. B, p. 78.) Ms. Van Houten did not see Tex stab Mrs. LaBianca. (Exhibit B, p. 78.) Ms. Van Houten saw Mrs. LaBianca "lying still on the floor. She ... 'felt' that Ms. LaBianca was dead, but she 'didn't know for sure.' " (*Van Houten* at p. 346; B304258 Exh. D, p. 68.)

Ms. Van Houten was subjected to the influence and instructions of Charles Manson. (*People v. Manson* (1976) 61 Cal.App.3d 102, 205 ("*Manson*").) "Manson's position of authority was firmly acknowledged. It was understood that membership in the Family required giving up everything to Manson and never disobeying him." (*Id.* at p. 128.) Manson controlled where Family members slept, what clothing to wear, and when they would eat. (*Id.* at p. 127; B304258 Exh. D, p. 39.) "The Family's willingness to follow Manson's directions [wa]s salient to the People's theory of the case. The establishment and retention of his position as the unquestioned leader was one of design." (*Id.* at p. 128.) The Office of the District Attorney of Los Angeles completely agreed with the power and control Manson had over the others in a brief filed with this Court in December of 2015, in case number S230851. (B304258 Exh. F.)

At the *Franklin* proceeding, it became clear some cult members were

not permitted to leave the ranch and were threatened with torture if they did try to leave. (B304258 Exh. E, pp. 45-47.) Ms. Van Houten was not free to leave. Later in the desert, "it was very clear [the cult members] couldn't leave" Manson. (B304258 Exh. E, pp. 57-58.) Manson convinced Ms. Van Houten that to leave him was to die. (B304258 Exh. D, pp. 46-47.)

Ms. Van Houten and the other cult members believed, and/or acted as if they believed, that Manson was Jesus Christ. (B304258 Exh. D, p. 112.) Ms. Van Houten wanted to prove herself to Manson and the cult. Manson asked Ms. Van Houten if she was crazy enough to believe in him and she answered yes. (*Van Houten* at p. 345.)

Very shortly after the life crime, Ms. Van Houten turned her life around. (B304258 Exh. D, pp. 81, 158.) Ms. Van Houten was determined to "try to live my life where I never deliberately harmed a human being." Today, she lives a life of what she considers service work which she finds "very rewarding." (B304258 Exh. D, p. 81.) Her rehabilitation started in the county jail after she was separated from Manson. (B304258 Exh. D, p. 108.) Ms. Van Houten met with her mother and immediately felt bad due to the outrageous way she acted in court.[2] (B304258 Exh. D, p. 108.)

Ms. Van Houten refused to blame Manson or anyone else for what she did. She took responsibility for the revolution she participated in, including the night of her life crime, and "all that came before" it. Ms. Van Houten willingly went with Bobby Beausoleil and Catherine Share and went to the ranch. (B304258 Exh. D, p. 86.) No part of Ms. Van Houten believes it was Manson's fault, she willingly sat and listened to him, letting

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[2] Ms. Van Houten's mother visited in an attorney client visit at the jail. The attorney present was Jerry Brown, who later became California's governor, and twice reversed grants of Ms. Van Houten's parole. (B304258 Exh. B and C.)

go of who she was and became one with the whole group. Others in the group didn't go to the murders, but she recognized that she did. (B304258 Exh. D, pp. 86-87.) Ms. Van Houten feels that if she minimized her actions, it might be easier to live with the guilt because she'd be passing it onto somebody else and she wouldn't have to deal with it. "But that's not who I am and it's not what I do with my life. Knowing [Manson] has never eased the shame . . . ." "I don't let myself off from personal responsibility." (B304258 Exh. D, p. 87.) While giving this answer, the presiding commissioner made a record that Ms. Van Houten's body language demonstrated remorse when she talked about the horrific nature of the murders and also her abortion. (B304258 Exh. D, pp. 87-88.)

Catherine Share testified about the time after the murders, Ms. Van Houten "was more withdrawn that I had ever seen her. She really didn't talk very much, never laughed, she looked extremely depressed, and looked very anorexic."[3] (B304258 Exh. E, pp. 50-51.)

True to Ms. Van Houten's commitment to help others, she described how she helped other inmates by being a tutor and her work as the chairperson for the advisory committee made her a "liaison between the women on the yard and the administration." The committee addresses things that help the women inmates and the administration make a more peaceful environment. Ms. Van Houten basically troubleshoots all day long. The rehabilitative programs have helped Ms. Van Houten to attain the skills necessary to assist other inmates by "letting them learn and grow[] on their own." (B304258 Exh. D, pp. 90, 92-93, 101.)

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[3] This statement was stricken at the *Franklin* proceeding because that hearing was to focus on youthful characteristics *prior* to the crime and not Ms. Van Houten's demeanor *after* the crime even though Ms. Van Houten was still at a youthful age. (Exhibit D, p. 51.)

The BPH psychologist's report found Ms. Van Houten a low risk for violence if paroled. (B304258 Exh. H, p. 17.) The commissioners also looked at multiple reports dating back 11 years. (B304258 Exh. D, pp. 103-104; Exhibit H, pp. 7-8.) Ms. Van Houten "assumed full responsibility for her behavior without minimizing [her] role or externalizing blame and although she recognizes the impact of her emotional functioning on her behavior, she wished to clarify that she alone was responsible for her involvement in the crime." (B304258 Exh. D, pp. 105-106, B304258 Exh. H, p. 16.) The clinician indicated Ms. Van Houten exhibited prosocial behaviors throughout her imprisonment. (B304258 Exh. D, p. 105.) Ms. Van Houten displayed "genuine regret for her involvement in the life crime and she assumed full responsibility for her behavior, without externalizing blame." Ms. Van Houten appears to have seized every opportunity provided to her to make positive changes in her life . . . ." (B304258 Exh. H, pp. 16-17.)

While at the ranch, Ms. Van Houten was arrested and released four times without being charged with a crime. Law enforcement found stolen cars, multiple weapons that included a machine gun, and no charges were ever filed. None of the Manson cult members were being charged with any crimes while many of them were being arrested on a routine basis for their ongoing illegal activities. (B304258 Exh. D, pp. 108-112.) There were no consequences at the ranch unless one displeased Manson. (B304258 Exh. E, pp. 44-47.)

At Ms. Van Houten's January 30 , 2019, parole hearing, Ms. Van Houten testified that she took responsibility for her actions and did not blame Manson. "There is nothing in that night of murder that I don't take responsibility for or all that came before." I went to the ranch. I became a

participant in the group at the ranch. I wanted to be a part of the revolution and the murders that were going to spark it. There's no part of me that says it was his [Manson's] fault that I did all that. I willingly sat and listened. I let myself let go of who I had been . . . ." "I don't minimize. I feel like if I minimized, I would find easy ways to live with the guilt of what happened because I'm passing the buck onto somebody else so my conscience doesn't have to deal with it. But that's not who I am and it's not what I do with my life." "So I suppose it's always there to say I'm blaming him [Manson]." "He was convicted for controlling us and we were convicted for doing what we did in the houses. I don't - - I don't let myself off from personal responsibility." (B304258 Exh. D, pp. 86-87.)

The presiding commissioner acknowledged Ms. Van Houten's testimony of dealing with the weight of having been a part of one of society's most heinous crimes but found her growth led her to engage in positive behavior as a way to make amends for her actions. Her behavior in prison "is probably one of the most exemplary I've ever seen." (B304258 Exh. D, p. 156.) "You've shown signs of remorse, accepted responsibility for your criminal actions as evidenced by your - - by your life - - you basically turned your life around. Very shortly after the life crime, you turned your life around. Your behavior, uh, lines up with your testimony today." (B304258 Exh. D, p. 158.)

On June 3, 2019, Governor Gavin Newsom recognized Ms. Van Houten's advanced age of 69, and her young age and immaturity at the time of the crime, that had been addressed by earing bachelors and masters degrees, completing extensive rehabilitative programming, and serving on the Inmate Advisory Council, and facilitating the Victim Offender Education program at the prison, the Governor remained "concerned by her

role in these killings." (B304258 Exh. A, p. 3.) The Governor found it "difficult to understand how someone could commit these extreme crimes." (B304258 Exh. A, p. 3.)

The Governor's opinion was that Ms. Van Houten failed to "adequately explain her willing participation indicates that Ms. Van Houten is still minimizing her responsibility." (B304258 Exh. A, p. 4.) The Governor was also "concerned" that Ms. Van Houten failed to grasp the "serious trauma" of her parents' divorce and "lived in a dysfunctional family environment." (B304258 Exh. A, p. 4.)

Finally, the Governor found that when Manson used a drug to sodomize her, and Ms. Van Houten accepted some responsibility for being a rape victim because she was at the ranch willingly, the Governor interpreted this as "not fully examined her ongoing susceptibility to negative influences and manipulation" which makes it uncertain if Ms. Van Houten is capable of acting differently in the future. (B304258 Exh. A, p. 4.) Ms. Van Houten "must take additional steps that demonstrate she will never return to this type of submission or violence again." (B304258 Exh. A, p. 4.)

In the end, Governor Newsom found: "***I cannot be sure*** that Ms. Van Houten is capable of acting differently in the future." (B304258 Exh. A, p. 4, emphasis added.)

Ms. Van Houten filed a challenge to Governor Newsom's reversal that was denied by the superior court in case BH012512 on January 31, 2020. (B304258 Exh. I.) The superior court found the Governor's finding that the crime was atrocious and brutal, and continues to inspire fear to this day, the victims were abused, defiled, and mutilated." The seriousness of the crimes, and Ms. Van Houten's motive for committing them, were sufficient "evidence supporting the Governor's decision that if paroled at

this time, Petitioner would pose an unreasonable risk of danger to society." (B304258 Exh. I, pp. 11-13.) The superior court found that the record did "not support the conclusion that Petitioner minimized her role in the murders," but there was a "modicum of evidence to support the Governor's conclusion" that Ms. Van Houten did not adequately explain what led to follow Manson's preaching that led to multiple murders. (B304258 Exh. I, p. 14.) The superior court recognized "that there may never be a satisfactory explanation for her participation in these murders." (B304258 Exh. I, pp. 17-18.) The superior court did acknowledge that the Governor was required to give great weight to intimate partner battering. The Governor used this factor against Ms. Van Houten when Ms. Van Houten explained how she was drugged and sodomized by Manson. The superior court found the Governor's use of this event against Ms. Van Houten was "problematic." (B304258 Exh. I, p. 22, fn. 9.) The Governor's misuse of this factor was "contrary to the spirit of the law." (B304258 Exh. I, p. 22.)

IV.

COMBINED NECESSITY FOR REVIEW AND SUPPORTING LEGAL BASIS

Petitioner respectfully requests that review of the issues presented in this petition be granted under California Rules of Court, rule 8.500, subdivision (b), based on the necessity to settle these important questions of law.[4]

Review is additionally necessary under rule 8.500, subdivision (b)(1), to secure uniformity of the decisional law addressing these issues, as

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[4] All rule references are to the California Rules of Court.

set out below:

A. The Governor's Reversal Violated Constitutional Due Process Because it Was Not Supported by a Modicum of Evidence with a Rational Nexus to the Central Question of Ms. Van Houten's Current Risk of Danger to Public Safety, Where the Governor Cited Isolated Facts out of Context And Failed to Evaluate the Record as a Whole.

The central question in this case is whether Ms. Van Houten currently poses an unreasonable risk of danger to public safety. It is not whether the crimes she committed at the age of 19 were particularly heinous. Without question, the commitment offenses were egregious. She, however, committed these offenses 50 years ago. She has spent the last five decades understanding the forces that drove her to commit such crimes. Now, at the age of 70, Ms. Van Houten currently poses no risk of danger. The Governor's terse and ill-reasoned decision does not prove otherwise.

The standard for evaluating parole suitability is straightforward. The BPH and Governor "shall" grant parole unless they determine that public safety requires a more lengthy period of incarceration. (Pen. Code, § 3041, subd. (b).)[5] This determination falls within constitutional due process. (*In re Rosenkrantz* (2002) 29 Cal.4th 616, 664 (*Rosenkrantz*).) Due process requires that a parole suitability decision is supported by "some evidence" in the record. (*Ibid.*) It also subjects the decision to judicial review to ensure it complies with this constitutional mandate. (*Ibid.*)

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[5] Statutory references are to the Penal Code unless otherwise stated.

In exercising judicial review, courts are required to do more than identify some evidence in the record supporting a conclusion that the commitment offense was particularly egregious, or that a particular piece of evidence supports the decision by the Governor or Board. Due process requires that there be evidence in the record with a direct nexus to the inmates current risk of danger, when viewed in the context of the inmate's entire circumstances. (*In re Lawrence* (2008) 44 Cal.4th 1181, 1210-1212 (*Lawrence*).) Applying this standard reveals the Governor's error.

Ms. Van Houten's postconviction record proves she is fully rehabilitated and poses no danger to public safety. The Governor neither disputes this record, nor did he relate his negative findings to any of her current circumstances. He also failed to suggest anything further she might do to change the serial reversal of the BPH's grant of parole. The Governor's recitation of isolated incidents taken out of context or immutable factors from Ms. Van Houten's past, without the articulation of a rational nexus between those facts and her current dangerousness, "fail[ed] to provide the required 'modicum of evidence' of unsuitability." (*Lawrence,* at pp. 1226-1227.)

The BPH, in finding Ms. Van Houten suitable for parole, relied on the fact she earned a master's degree in prison; successfully participated in programming and counseling for over three decades, expressed deep and sincere remorse; took responsibility for her actions; lacked any history of violent crime apart from the commitment offense; and had 17 psychological assessments dating back to 2006 that uniformly concluded she presents a low risk for future violence. The BPH also gave great weight to Ms. Van Houten's young age when she committed the murders. (Petition, Exh. D, pp. 156-158.)

The Governor's written opinion found that Ms. Van Houten failed to "adequately explain her willing participation indicates that Ms. Van Houten is still minimizing her responsibility." (B304258 Exh. A, p. 4.) The Governor was also "concerned" that Ms. Van Houten failed to grasp the "serious trauma" of her parents' divorce and "lived in a dysfunctional family environment." (B304258 Exh. A, p. 4.) Finally, the Governor found that when Manson used a drug to sodomize her, and Ms. Van Houten accepted some responsibility for being a rape victim because she was at the ranch willingly, the Governor interpreted this as "not fully examined her ongoing susceptibility to negative influences and manipulation" which makes it uncertain if Ms. Van Houten is capable of acting differently in the future. (B304258 Exh. A, p. 4.) Ms. Van Houten "must take additional steps that demonstrate she will never return to this type of submission or violence again." (B304258 Exh. A, p. 4.) In the end, Governor Newsom found: "***I cannot be sure*** that Ms. Van Houten is capable of acting differently in the future." (B304258 Exh. A, p. 4, emphasis added.)

However, Ms. Van Houten recognized that she allowed herself to be influenced by Manson, but that she took personal responsibility for her actions and her decision to submit to Manson's control. The context of the single statement cited by the Governor dispels the conclusion reached by the Governor.

As aptly stated by Justice Chaney in the dissent after the second governor reversal in case number B291024, Ms. Van Houten made these statements to explain what she had learned about herself and the tools she had developed to ensure that she never would again involve herself in this type of a situation. (B291024, at p. 3 [dissent].) In Ms. Van Houten's words, "Well, I learned that I was weak in character. I was easy to give over

my belief system to someone else. That I sought peer attention and acceptance more than I did my own foundation. That I looked to men for my value, and I didn't speak up. I avoided any kind of conflicts." She explained that her self-esteem had been "very, very, very low" and described the steps, including therapy and education, she has undertaken to address that character defect. (B291024, at pp. 3-4 [dissent].) Justice Chaney apparently stands by her dissent in case B29104 as she again dissented in the summary denial in case B304258. (Exh. A, p. 2.)

The Governor characterized Ms. Van Houten's comments as minimizing her role in the murders by still shifting blame for her own actions onto Manson to some extent. (Petition, Exh. A, at p. 3.) As acknowledged by Justice Chaney, this places Ms. Van Houten in a "Catch-22" conundrum. (B291024, at p. 9 [dissent].) If, on the one hand, Ms. Van Houten takes full responsibility for her criminal conduct, the Governor concludes she has no insight and remains a risk of danger because someone else might control her upon release.

The superior court departed from earlier decisions and now found that the record did "not support the conclusion that Petitioner minimized her role in the murders." (B304258 Exh. I, p. 14.) The superior court also recognized "that there may never be a satisfactory explanation for her participation in these murders." (B304258 Exh. I, pp. 17-18.) The superior court acknowledged that the Governor was required to give great weight to intimate partner battering but the Governor used this factor against Ms. Van Houten when Ms. Van Houten explained how she was drugged and sodomized by Manson. The superior court found the Governor's use of this event against Ms. Van Houten was "problematic." (B304258 Exh. I, p. 22, fn. 9.) The Governor's misuse of this factor was "contrary to the spirit of

the law." (B304258 Exh. I, p. 22.)

As eloquently explained by Justice Liu,

> [O]lder evidence of lack of insight may be eclipsed by more recent evidence: "Usually the record that develops over successive parole hearings has components of the same kind: CDCR reports, psychological evaluations, and the inmate's statements at the hearings. In such cases, the Board or the Governor may not arbitrarily dismiss more recent evidence in favor of older records when assessing the inmate's current dangerousness. In *Lawrence*, for example, we rejected the Governor's suggestion that the petitioner continued to pose a danger due to serious psychiatric problems, concluding that the Governor's position was based on earlier, superseded psychological evaluations. Courts may properly intervene when the Board or the Governor rely on outdated evidence of lack of insight in denying parole.

(*People v. Shaputis* (2011) 53 Cal.4th 192, 226 [Liu, J [concurring].)

The fact an explanation falls outside the range of common experience does not make it untrue. The California Supreme Court has cautioned, "expressions of insight and remorse will vary from prisoner to prisoner and . . . there is no special formula for a prisoner to articulate in order to communicate that he or she has gained insight into, and formed a commitment to ending, a previous pattern of violent behavior." (*In re Shaputis* (2008) 44 Cal.4th 12 41, 1260, fn. 18 (*Shaputis I*).)

The Governor's refusal to accept undisputed evidence that Ms. Van Houten has acknowledged the historic factors motivating her criminal conduct and engaged in decades-long work to understand those causes, is not "a rational or sufficient basis upon which to conclude that the inmate

lacks insight, let alone that he or she remains currently dangerous." (*People v. Ryner* (2011) 196 Cal.App.4th 533, 548-549.) It is questionable that anyone can articulate to the satisfaction of everyone the complexity and consequences of an inmate's past misconduct and atonement. (*Id.,* at p. 549.) The Governor erred in basing his reversal on the fact Ms. Van Houten occasionally had trouble articulating in exacting detail the complex set of historic factors that caused her to join the Manson cult and commit to its criminal mission more than 50 years ago.

Review is required to establish that the Governor's contrary ruling violated Constitutional due process and state law. (U.S. Const., 5th & 14th Amends.; Cal. Const., art. 1, §§ 7, subd, (a), 15; *Kentucky Dep't of Corrections v. Thompson* (1989) 490 U.S. 454, 459-460.)

B. The Governor Violated Due Process by Relying on the Gravity of the Commitment Offense as the Basis for Reversing Ms. Van Houten's Grant of Parole, Where He Failed to Connect Any Aggravating Facts of the Commitment Offense to the Issue of Ms. Van Houten's Current Dangerousness, and the Governor Failed to Use the Most Accurate Description of the Commitment Offense Contained in the Tex Watson Tapes.

Under the "Governing Law" part of the Governor's written decision, he cites this Court's decision in *In re Lawrence* for the proposition that "In rare circumstances, the aggravated nature of the crime alone can provide a valid basis for denying parole, even when there is strong evidence of rehabilitation and no other evidence of current dangerousness." (Petition, Exh. A, at p. 2, citing *In re Lawrence, supra,* 44 Cal.4th 1181, at p. 1214.) Relying on this misinterpretation of *Lawrence*, the Governor concludes, that

"[I]n rare circumstances, the aggravted nature of the crime alone can provide basis for denying parole, even when there is strong evidence of rehabilitation and no other evidence of current dangerousness." (Petition, Exh. A, at p. 2.)

Two things are evident from these statements. First, the Governor believes that *Lawrence* supports the legal proposition that the gravity of a commitment offense, without more, supports the permanent denial of parole even if the inmate is completely rehabilitated. Second, the Governor reversed Ms. Van Houten's grant of parole based on the gravity of the commitment offense alone, though he cited other contributing factors. Review is required to establish that the Governor's interpretation of *Lawrence* is incorrect. Finally, if the Governor can legitimately use the gravity of the commitment offense alone to reverse a grant of parole, is he required to permit the inmate to obtain the most accurate description of the crime and environment the crime was committed in when the government has that evidence?

In *Lawrence,* Ms. Lawrence shot her lover's wife four times then stabbed the wife to death with a potato peeler after becoming enraged when the husband ended his extra martial affair with the defendant. After committing the murder the defendant told her family the murder was a birthday present to herself then fled the state for eleven years. (*In re Lawrence, supra,* 44 Cal.4th at p. 1193.)

In 1983, she was convicted of first degree murder and sentenced to an indeterminate life sentence. (*Id.,* at p. 1190.) Early in her prison term, Ms. Lawrence's psychological evaluations characterized her as "moderately psychopathic." (*Id.,* at p. 1195.) Ten years later in 1993, her psychological evaluations showed she no longer posed a danger to society. (*Ibid.*) She had

remained free of serious discipline violations throughout her 23-years in prison, and contributed to the prison community in a variety of ways. She participated in educational groups and earned a bachelor's and master's degree in prison. (*Id.,* at p. 1194.)

In 2005, the Governor reversed the BPH's grant of parole on the finding that "the gravity alone of this murder is a sufficient basis on which to conclude presently that Ms. Lawrence's release from prison would pose an unreasonable public-safety risk." (*Id.,* at p. 1200.) The Governor noted contributing factors, such as Ms. Lawrence's initial lack of remorse for the crime, early negative psychological evaluations, and eight counseling "chronos" for minor prison violations. (*Id.,* at p. 1199.)

This Court reversed the Governor's decision. In doing so, it established that the gravity of the commitment offense alone, is not enough to deny parole. The Court explained, "[T]he statutory and regulatory mandate to normally grant parole to life prisoners who have committed murder means that, particularly after these prisoners have served their suggested base terms, the underlying circumstances of the commitment offense alone rarely will provide a valid basis for denying parole when there is strong evidence of rehabilitation and no other evidence of current dangerousness." (*In re Lawrence, supra,* 44 Cal.4th at p. 1211.) The Court clarified,

> [T]he Board or the Governor may base a denial-of-parole decision upon the circumstances of the offense, or upon other immutable facts such as an inmate's criminal history, but some evidence will support such reliance only if those facts support the ultimate conclusion that an inmate continues to pose an unreasonable risk to public safety. Accordingly, the relevant inquiry for a reviewing court is not merely whether an inmate's

> crime was especially callous, or shockingly vicious or lethal, but whether the identified facts are probative to the central issue of current dangerousness when considered in light of the full record before the Board or the Governor.

(*In re Lawrence, supra,* 44 Cal.4th at p. 1221.)

Thus, the relevant inquiry under *Lawrence* is, "whether the circumstances of the commitment offense, when considered in light of other facts in the record, are such that they continue to be predictive of current dangerousness many years after the commission of the offense." (*Id.,* at p. 1235.) This inquiry is an "individualized one, and cannot be undertaken simply by examining the circumstances of the crime in isolation, without consideration of the passage of time" or other mitigating factors. (*Ibid.*) In order for the gravity of the commitment offense to support the denial of parole, there must be aspects of the commitment offense establishing a nexus between the crime and the inmate's current risk of danger. (*Id.,* at p. 1227.)

Applied here, the Governor was required to cite specific factors from Ms. Van Houten's commitment offense that remain present today and have not been mitigated by her 50 years in prison, extensive psychological treatment, advanced college degrees, and positive programming. His failure to do so requires reversal.

Review is required to establish that the Governor's sole reliance on the gravity of the commitment offense violated due process. It also violated the legal standard established by this Court in *Lawrence*. (U.S. Const., 5th & 14th Amends.; Cal. Const., art. 1, §§ 7, subd, (a), 15; *Superintendent v. Hill* (1985) 472 U.S. 445, 455 [105 S.Ct. 2768, 86 L.Ed.2d 356]; *In re Lawrence, supra,* 44 Cal.4th 1181.)

In the court of appeal, the appellate court ordered informal briefing on the sole issue of the failure to disclose the Tex Watson tape transcripts. The People (both the Office of the District Attorney and now the Office of the Attorney General) have the transcripts of the tapes, and have read them, and rely on them and cited them, while Petitioner has been deprived of the tapes. The unfairness of this speaks for itself. The only ones who do not have transcripts of the tapes are Ms. Van Houten's attorneys, and this Court. This Court offered the Office of the District Attorney to confidentially lodge the transcripts and the People refused. At the August 31, 2017 *Franklin* proceeding, the superior court did not accept the excuse that disclosure of the tape transcripts would jeopardize ongoing investigations and ordered the transcripts and the detective to appear. The investigating officer arrived in court with the transcripts and admitted - - *for the first time* - - that there were no ongoing investigations. The People, in case S230851, the People argued to this Court that Ms. Van Houten was only mentioned in the tapes four times. (S230851, answer to pet. For review, p. 9.) But at the *Franklin* proceeding. Judge Ryan wanted those instances flagged and he started reading the transcripts. At the lunch break, the court indicated Ms. Van Houten was mentioned eight times in the first 85 pages. (B304258 Exh. E, pp. 10-11.)

C. Because the Governor Used the Notoriety of the Commitment Offense That Continued to Impact Society Today, and Permitting the Grant of Parole to Stand Could Negatively Impact the Governor's Future Elections, the Governor Has an Actual Conflict of Interest and Should be Prohibited From Reviewing the Grant of Parole.

"Because prisoners possess a protected liberty interest in connection with parole decisions rendered by the Board, it would be anomalous to conclude that they possess no comparable interest when such decisions are reviewed by the Governor, where such review must be based upon the same factors considered by the Board. Under California law, this liberty interest underlying a Governor's parole review decisions is protected by due process of law." (*In re Rosenkrantz, supra*, 29 Cal.4th at p. 661.)

"An independent judiciary is the hallmark of the constitutional state." (Verkuil, Separation of Powers, the Rule of Law and the Idea of Independence (1989) 30 Wm. & Mary L.Rev. 301, 308.) The conflict-of-interest statutes are based upon "[t]he truism that a person cannot serve two masters simultaneously." (*Thomson v. Call* (1985) 38 Cal.3d 633, 637) The duties of public office demand the absolute loyalty and undivided, uncompromised allegiance of the individual that holds the office. (*Thomson v. Call, supra,* 38 Cal.3d at p. 648; *Stigall v. City of Taft* (1962) 58 Cal.2d 565, 569.) Yet it is recognized " 'that an impairment of impartial judgment can occur in even the most well-meaning men when their personal economic interests are affected by the business they transact on behalf of the Government.' " (*Stigall v. City of Taft, supra,* 58 Cal.2d at p. 570, quoting *United States v. Mississippi Valley Generating Co.* (1961) 364 U.S. 520, 549.)

Conflict-of-interest statutes are concerned with what might have happened rather than merely what actually happened. (*Ibid.*) They are aimed at eliminating temptation, avoiding the appearance of impropriety, and assuring the government of the officer's undivided and uncompromised allegiance. (*Thomson v. Call, supra,* 38 Cal.3d at p. 648.) Their objective "is to remove or limit the possibility of any personal influence, either

directly or indirectly which might bear on an official's decision . . . ." (*Stigall v. City of Taft, supra,* 58 Cal.2d at p. 569.)

The purposes of our conflict-of-interest statutes is that their scope is not limited to instances of actual fraud, dishonesty, unfairness or loss to the governmental entity, and criminal responsibility is assessed without regard to whether the contract in question is fair or oppressive. (*People v. Darby* (1952) 114 Cal.App.2d 412, 426–427.) A conflict requires recusal only when the possibility of less than impartial treatment "is so great that it is more likely than not the defendant will be treated unfairly during some portion of the criminal proceedings." (*Haraguchi v. Superior Court* (2008) 43 Cal.4th 706, 713.)

In this case, Governor Newsom went out of his way to document the notoriety of Manson's crimes and described them as "some of the most notorious and brutal killings in California's history" that was "an attempt to incite social chaos [and] continue to inspire fear to this day." "Almost 50 years later, the magnitude of these crimes and their impact on society endure." (Exhibit. A, p. 3.) Because the Governor was describing how he believed Manson's crimes still publically haunt society, he would likely suffer a loss of a lot of votes if he signed off on releasing anyone who was involved. An online petition against parole for Ms. Van Houten has 168,484 signatures as of February 9, 2020. (https://www.change.org/p/keep-charles-manson-cult-killer-leslie-van-houten-from-being-paroled.) It matters not that the vast majority of those signatures came prior to release of the parole hearing transcripts, meaning the potential voters signing the petition did not know petitioner's part of the crime or her subsequent rehabilitation. What matters is at least that many people felt it was important to sign a petition that would keep Ms. Van Houten in prison until

she dies. Those people would not likely vote for Governor Newsom if he permitted Petitioner's release.

The Governor was not alone in recognizing the public outcry against Petitioner's release. Throughout the superior court return in case BH012512, Respondent described the commitment offenses as "culture shifting life crimes" "which terrorized an entire country and generation." (BH012512 Return, p. 7.) "The notoriously brutal and disturbing circumstances of [petitioner's] crimes as a Manson Family member" were enough to reverse the grant of parole. (BH012512 Return, p. 8.) The "crimes were so aggravated in nature that they exemplify the rare instance in which the crimes alone support a denial of parole." (BH012512 Return, p. 8.) The "Manson Family, who was trying to provoke Helter Skelter - a civilization ending race war . . . ." (BH012512 Return, p. 8.) Petitioner "was both fully committed to the radical beliefs of the Manson Family and she actively contributed to 'some of the most notorious and brutal killings in California history.' " (BH012512 Return, p. 10.) Petitioner engaged "in Manson's philosophy, she set out to start a civilization-ending war . . . ." (BH012512 Return, p. 10.) "Manson's 'violent and controlling actions . . . .' " (BH012512 Return, p. 13.)

Governor Newsom could not risk the public response at his next election when he believes the nature of the commitment offenses were so heinous they "continue to inspire fear to this day." "Almost 50 years later, the magnitude of these crimes and their impact on society endure." (Exh. A, p. 3.) This public pressure on the Governor created a conflict on interest to where he could not release Ms. Van Houten if he wanted to win future elections. This is why the judiciary has to be independent and follow the law, even when it is not popular.

CONCLUSION

The standard for parole suitability is not that Ms. Van Houten poses no risk at all, but that she does not currently pose an *unreasonable* risk of danger to public safety. This court has repeatedly held,

> [I]n light of the constitutional liberty interest at stake, judicial review must be sufficiently robust to reveal and remedy any evident deprivation of constitutional rights. If simply pointing to the existence of an unsuitability factor and then acknowledging the existence of suitability factors were sufficient to establish that a parole decision was not arbitrary, and that it was supported by "some evidence," a reviewing court would be forced to affirm any denial-of-parole decision linked to the mere existence of certain facts in the record, even if those facts have no bearing on the paramount statutory inquiry. Such a standard, because it would leave potentially arbitrary decisions of the Board or the Governor intact, would be incompatible with our recognition that an inmate's right to due process "cannot exist in any practical sense without a remedy against its abrogation.

(*In re Lawrence, supra,* 44 Cal.4th at p. 2011; *In re Rosenkrantz, supra*, 29 Cal.4th at p. 664.)

Review is required to establish that the Governor's denial was not based on identifiable factors in the record providing a nexus with the central issue of whether Ms. Van Houten, today, poses an unreasonable risk of danger to the safety of the public. Ms. Van Houten respectfully requests that the Court accept review of this case.

Dated: July 7, 2020

Respectfully submitted,

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CERTIFICATE OF WORD COUNT

(Cal. Rules of Court, rule 8.504, subdivision (d)(1))

The text of this brief consists of 8,478 words, excluding Exhibit A, as counted by the Corel WordPerfect version 10 word processing program used to generate this brief.

Dated: July 7, 2020

By _____
Rich Pfeiffer
Nancy L. Tetreault
Attorneys for Petitioner, Leslie Van Houten

EXHIBIT A
COURT OF APPEAL OPINION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re

LESLIE VAN HOUTEN

On

Habeas Corpus.

B304258

(Super. Ct. L.A. County
No. A253156; BH012512)

(WILLIAM C. RYAN, Judge)

ORDER

THE COURT*:

The petition for writ of habeas corpus, filed February 18, 2020; the opposition thereto, filed June 10, 2020; the reply, filed June 10, 2020; the request for transmission of sealed transcripts, filed June 15, 2020; the opposition to the request for sealed transcripts, filed June 19, 2020; and the reply to the opposition to the request for sealed transcripts, filed June 22, 2020, have been read and considered.

The petition for writ of habeas corpus is denied. The request for transmission of sealed transcripts is denied.

*ROTHSCHILD, P. J.

BENDIX, J.

CHANEY, J., dissenting:

I would issue an order to show cause why the petition should not be granted because I find no evidence in the record to support the Governor's conclusion that petitioner currently poses an unreasonable risk to public safety if released on parole. I also would issue an alternative writ directing the superior court to vacate that part of its September 11, 2019 order denying petitioner's request for the transcripts of taped interviews of Charles "Tex" Watson conducted in December 1969 and January 1970 and then issue a new and different order granting same, or show cause why it elected not to do so.

CHANEY, J.

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Leslie Van Houten

In re Leslie Van Houten
On Habeas Corpus

Case No. _____

DECLARATION OF SERVICE

I, the undersigned, declare: I am over the age of eighteen years and not a party to the cause; I am employed in the County of Orange, California, and my business address is P.O. Box 721, 14931 Anderson Way, Silverado, CA 92676. I caused to be served the **PETITION FOR REVIEW** by placing copies thereof in a separate envelope addressed to each addressee in the attached service list.

I then sealed each envelope and with the postage thereon fully prepaid, I placed each for deposit in the United States mail, at Silverado, California, on July 7, 2020.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on July 7, 2020, at Silverado, California.

Rich Pfeiffer
RICH PFEIFFER

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