

NANCY L. TETREAUULT
ATTORNEY AT LAW

346 N. Larchmont Boulevard, Los Angeles, California 90004
Telephone 424-224-7093
Email: tetreault150352@gmail.com

March 2, 2023

Second Appellate District, Division One
Court of Appeal of the State of California
300 South Spring Street
Second Floor, North Tower
Los Angeles, California 90013

Re: *In re Van Houten*, B320098
Supplemental Traverse: *In re Palmer*

To Presiding Justice Frances Rothschild, and the Honorable Associate
Justices of Division One of the Court of Appeal:

A. Introduction.

This letter brief responds to the Attorney General's reply to Ms. Van Houten's assertion that the Governor's serial denials of parole violate the California Constitution's prohibition against cruel and unusual punishment. Ms. Van Houten continues to rely on the detailed arguments made in the habeas corpus petition, which she incorporates by reference. This response addresses only those matters not covered in Ms. Van Houten's petition.

Respondent argues that Ms. Van Houten tacitly conceded her ineligibility for relief under the holding of *In re Palmer* (2021) 10 Cal.5th 959 by failing to address the factors set out in *In re Lynch* (1972) 8 Cal.3d 410, 414. Respondent is incorrect. The argument advanced by Ms. Van Houten in the petition covers the same factors as those raised by respondent in the reply. Nevertheless, Ms. Van Houten provides the following analysis organizing her argument under the three *Lynch* factors, and additionally provides statistic evidence proving that her service of 52 years in prison has become grossly excessive to the point of cruel and unusual punishment.

Document received by the CA 2nd District Court of Appeal.

B. The Lynch Factors.

The court in *In re Lynch* (1972) 8 Cal.3d 410 identified three factors to be considered in determining if a sentence, as applied, amounts to cruel and unusual punishment. The first factor examines whether the petitioner has demonstrated that the punishment is disproportionate in light of the nature of the offense and the petitioner's personal characteristics and background. The second factor compares the challenged penalty with the punishments prescribed in the same jurisdiction for different offenses deemed more serious. The third factor compares the challenged punishment with the punishments prescribed for the same offense in other jurisdictions having the same constitutional provision. (*Id.* at pp. 425-427; *In re Palmer, supra*, 3 Cal.App.5th at pp. 1207, 1209.)

Like the petitioner in *Palmer*, Ms. Van Houten's cruel and unusual punishment argument is not directed at the indeterminate life term to which she was sentenced but the actual term of years she has served. (*In re Palmer, supra*, 33 Cal.App.5th at p. 1205.) Also like *Palmer*, the Governor's serial reversals of Ms. Van Houten's grants of parole have resulted in punishment so disproportionate to her individual culpability that it must be deemed constitutionally excessive. (*Id.* at p. 1202; cf. *id.* at p. 1208 ["the question here is not whether a life sentence for the offense of kidnapping for robbery is proportionate in the abstract"].)

1. Nature of the offenses and Ms. Van Houten's personal characteristics and background.

Ms. Van Houten was 19-years-old when she was convicted of murder in the deaths of Leno and Rosemary La Bianca. Without question, the murders were egregious. She is 73 years-old and spent the last 52 years in prison for her part in the murders. Ms. Van Houten was sentenced in 1976 to life with the possibility of parole, with a minimum service term of seven years. Her presentence custody credits made her eligible for parole shortly after her conviction. The Board of Parole Hearings ("Board") denied parole at the first 22 parole hearings. She received her first grant of parole in 2016. The Board again found her suitable for parole at the next four consecutive parole

hearings, for a total of five parole grants. The Governor reversed all five of the Board's parole decisions.¹

Other than the commitment offense, Ms. Van Houten has no criminal history and no history of violence before or after the murders. Beginning in the early 1980, all of Ms. Van Houten's many psychological evaluations have concluded she presents a low risk of violence. In at least the past twenty years, the psychologists have credited her with deep insight into the influence Charles Manson exerted over her, as well as the causes of her involvement in the commitment murders. She has a nearly perfect record of prison behavior. Her exhaustive list of self-help classes, prison programming, and therapy have focused on attaining insight, remorse, responsibility, and sobriety. Ms. Van Houten has not engaged in any acts of verbal or physical violence since her initial incarceration in 1968. During her long years in prison, she has proven her ability to maintain behavioral control, stability, and follow the strict rules and daily challenges of prison life. Her behavior in custody is a strong indication of how she will conduct himself in the community.

Although Ms. Van Houten was not an actual juvenile when she committed the murders, at the age of 19 she qualified as a youthful offender. The connection between adolescent brain development and criminality has only been recognized in criminal law for around the last 15 years. This science led the United States Supreme Court in 2012 to change how juveniles are sentenced. (*Miller v. Alabama* (2012) 132 S.Ct. 2455.) The science involving brain development was not known at the time of appellant's trial; however, it played a significant role in the Board's decisions to grant her parole. It also was an important part of the favorable evaluations by the prison psychologists who found her to present a low risk of violence. Ms. Van Houten's emotional immaturity, difficult family history, and impulsive early behavior established that her conduct in 1969 fit the classic definition of the hallmark features of youth. (*People v. Franklin* (2016) 63 Cal.4th 261, 283.)

Ms. Van Houten engaged in a double murder 54 years ago. When

¹ A petition for writ of habeas challenging the Governor's fifth reversal is presently pending in the Los Angeles Superior Court.

balanced against her remarkable rehabilitation and record of conduct in prison, the first *Lynch* factor establishes that her continued incarceration is “shocking and offensive” within the definition of cruel and unusual punishment. (Cal. Const., art. I, § 17.)

2. Inter jurisdictional and intra jurisdictional statistics.

Ms. Van Houten’s convictions of murder are not amenable to a comparison of her sentence with other punishments in California for more serious crimes. A comparison can be made between the amount of time she has served in prison and the time served by other inmates convicted of murder. According to CDCR statistics, the average time served before parole for first-degree murder is twenty-seven years.² Ms. Van Houten has exceeded this by 25 years.

A comparison of the length of time between Ms. Van Houten’s 52 years of incarceration and the time served by inmates nationwide for the crime of murder further establishes that her sentence has become grossly excessive. According to the United States Department of Justice’s Bureau of Justice Statistics, in 2016 the median number of years served nationwide by inmates convicted of murder was 13.4 years, with a mean of 15 years. The numbers exclude time served in jail prior to the prison commitment. (<https://bjs.ojp.gov/content/pub/pdf/tssp16.pdf>.)

Additionally, Ms. Van Houten’s 52 years in prison exceeds any of the benchmarks that apply to her sentence. She became eligible for parole at the same time she was sentenced because of her more than eight years of presentence custody credits, making her minimum eligible parole date (“MEPD”) August 17, 1978. She long ago passed her youth parole eligible date (“YPED”) of April 14, 1989. She also has exceeded the elderly parole

² CDCR Data Analysis Unit, Time Served on Prison Sentence (2012); http://www.cdcr.ca.gov/Reports_Research/Offender_Information_Services_Branch/Annual/TIME6/TIME6d2011.pdf (on file with the McGeorge Law Review).

eligible date (“EPED”) date of August 23, 2009. (Exh. 1, at p. 5.)

Ms. Van Houten engaged in the violent murders of Leno and Rosemary La Bianca. She has served at least a quarter of a decade longer than the average inmate convicted of murder in California and across the nation. Her continued incarceration has become grossly excessive under any statistical metric.

C. Conclusion.

The purpose of parole is to help an inmate “reintegrate into society as constructive individuals as soon as they are able, without being confined for the full term of the sentence imposed.” (*Morrissey v. Brewer* (1972) 408 U.S. 471, 477.) The Governor’s serial parole reversals have not only violated the prohibition against cruel and unusual punishment by requiring Ms. Van Houten to remain in prison long after she has met the legal standard for release, they also negate the importance of the vital role parole serves in our system of criminal justice. Ms. Van Houten’s continued incarceration after 52 years in prison, based on a crime she committed as a youth offender, is “shocking and offensive” within the definition of cruel and unusual punishment. (Cal. Const., art. I, § 17.) It also takes away the hope of other inmates who look to Ms. Van Houten as a model of what the CDCR’s programming can accomplish when the Governor can arbitrarily block a rehabilitated inmate’s ability to ever leave prison.

Ms. Van Houten respectfully requests that this Court issue a writ of habeas corpus vacating the Governor’s reversal for this additional reason.

Respectfully submitted,

15/ Nancy Tetreault
Nancy L. Tetreault
Attorney for Petitioner
Leslie Van Houten

DECLARATION OF SERVICE

I, Nancy L. Tetreault, declare:

I am an attorney licenced to practice before the courts of California, and am not a party to this action. I am employed in the County of Los Angeles, California, and my business address is 346 N. Larchmont Boulevard, Los Angeles, California. I caused to be served the **Letter Brief** on the parties listed below by the method indicated for each addressee. For electronic service I sent a copy of this document in PDF format by TrueFiling or email on the date of this declaration. For mail service, I placed a copy of this document in a separate envelope addressed to the addressee(s) to be served by mail. I sealed each envelope affixed postage thereon fully prepaid and deposited the envelope(s) in the United States mail, at Los Angeles, California, on March 2, 2023.

Jennifer Heinisch, Dep. Atty. General
Office of the Attorney General
300 S. Spring Street
Los Angeles, CA 90013
(Via TrueFiling)

Los Angeles County Superior Court
Clara Shortridge Foltz Criminal
Justice Center
Department 100
210 W. Temple Street
Los Angeles, CA 90012
(Via TrueFiling)

Los Angeles District Attorney,
Appeals Division
320 W. Temple St., Ste. 540
Los Angeles, CA 90012
(Via TrueFiling)

Ms. Leslie Van Houten, W-13378
CIW EB 508L
16756 Chino-Corona Road
Corona, CA 92878-8100
(Via USPS)

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on March 2, 2023, at Los Angeles, California.

/s/ Nancy Tetreault
NANCY TETREAULT

Document received by the CA 2nd District Court of Appeal.