SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

In Re LESLIE VAN HOUTEN, Petitioner, on Habeas Corpus.	**CASE Nos. BH _____** ***Related Cases: BH007887*; *S230851*** ***B240743; B286023*** ***S45992; S238110; S221618*** Superior Court Case A253156

PETITION FOR WRIT OF HABEAS CORPUS;

MEMORANDUM OF POINTS & AUTHORITIES

RICH PFEIFFER
State Bar No. 189416
NANCY TETRAULT
State Bar No. 150352
P.O. Box 721
Silverado, CA 92676
Telephone: (714) 710-9149
Email: highenergylaw@yahoo.com

Attorneys for Petitioner
Leslie Van Houten

TABLE OF CONTENTS

TABLE OF EXHIBITS

Exhibit

A. 2019 Governor Reversal of Grant of Parole

B. 2018 Governor Reversal of Grant of Parole

C. 2016 Governor Reversal of Grant of Parole

D. January 30, 2019 Parole Suitability Hearing Transcripts

E. August 31, 2017 *Franklin* Hearing Transcripts

F. District Attorney Answer to Supreme Court in Case S230851

G. August 1978 Sentencing Transcripts

H. March 3, 2010 Clinical Risk Assessment

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

In Re LESLIE VAN HOUTEN, Petitioner, on Habeas Corpus.	**CASE Nos. BH _____** ***Related Cases: BH007887; S230851 B291024; B240743; B286023 S45992; S238110; S221618*** Superior Court Case A253156

TO THE HONORABLE, PRESIDING JUDGE OF THE LOS ANGELES COUNTY SUPERIOR COURT:

Petitioner Leslie Van Houten hereby petitions this Court for a writ of habeas corpus, and by this verified petition represents that:

INTRODUCTION:

In 1969, Petitioner Leslie Van Houten participated in the murders of Leno and Rosemary LaBianca at the age of nineteen under the direction and control of Charles Manson. (Exh. F.) Manson was in charge of what became known as the Manson "Family" but as commissioners have appropriately pointed out, the term "family" is not appropriate and the word "cult" should be used. The Governor specifically refers to the cult as " 'the Family.' " (Exhibit A, p. 3.)

In 1978, after three trials, Ms. Van Houten was finally convicted and sentenced to seven years to life for conspiracy and first degree murder pursuant to the felony murder rule. After spending almost 50 years in prison as an exemplary inmate, the commitment offense was the reason why the Governor reversed her second grant of parole. Ms. Van Houten has *always* accepted complete responsibility for her actions during the commitment offense. When she entered the house the plan was to kill the victims and she wanted to participate in that. (*People v. Van Houten* (1980) 113 Cal.App.3d 280, 283-284.) 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 tht 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." (Exhibit D, p. 86-87.) While Ms. Van Houten told the commissioners she didn't know how else to answer her responsibility, the presiding commissioner stated: "All right. I think you've answered it." He added: "I did want to put on the record that, you know, it doesn't show over the, uh, microphones, but I do want to note the expression of remorse I saw on your face when you talked about he abortion and when you talked about the murders and the realization of - - of how awful, how horrific it was." (Exhibit D, pp. 87-88.) The presiding commissioner acknowledged Ms. Van Houten's testimony in dealing with the weight of having been a part of one of society's most heinous crimes, but found her growth had led her to engage in positive behaviors as a way to make amends for her actions. Her behavior in prison "is probably one of the most exemplary I've ever seen." The hearing Panel found that although Ms. Van Houten was a leader regarding her behaviors and actions it was not to the extent of the others in Manson's group. (Exhibit 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." (Exhibit D, p. 158.)

At the outset, if Ms. Van Houten failed to recognize Manson's complete control of

herself and others, she would lack the insight into the causative factors that led to the crime and it could happen again. This would be a legitimate reason to deny parole. This would be true despite the superior court previously finding " 'it is unlikely [Van Houten] could ever find another Manson-like figure if released . . . .' " (Exhibit B, p. 4.) In the Governor's second reversal of the grant of parole, by Ms. Van Houten recognizing Manson's control, the Governor found "she still shifted blame for her own actions onto Manson to some extent," and therefore failed to take responsibility for her crime.[1] (Exhibit B, p. 3.) If Ms. Van Houten failed to recognize the true facts how Manson controlled the cult, she has no insight and remains a risk of danger. If she does testify to that control, she shifts some blame to Manson and does not take full responsibility, and is denied parole for that reason. The People and Governor cannot have it both ways.

The inconsistencies of the denial of parole over the years, and multiple reversals where the reasons keep changing, have demonstrated that fundamental fairness has not been applied to Ms. Van Houten. For instance, "There was ample evidence that Manson was the leader and directed the murders and that there was drug usage." (Exhibit G, p. 11.) However, at Ms. Van Houten's 2013 parole suitability hearing, during the decision, the BPH found Ms. Van Houten to have been a leader in the commitment offense.[2]

While cases have mentioned in dicta that the commitment offense could be so aggravated that the crime alone would be a sufficient reason to deny parole, no case since *In re Lawrence* (2008) 44 Cal.4th 1181 (*Lawrence*), has held that the commitment offense alone was enough to deny parole. In *Lawrence*, the California Supreme Court

---

[1] That BPH Panel found that Ms. Van Houten took responsibility for her "criminal actions as evidenced by [her] life - - [she] basically turned [her] life around. Very shortly after the life crime, [she] turned [her] life around." Ms. Van Houten's behavior lined up with her testimony. (Exhibit D, p. 158.)

[2] The Panel found Ms. Van Houten chose to "become a leader of a sense in that criminal association." (http://www.cielodrive.com/leslie-van-houten-parole-hearing-2013.php at p. 263.)

found that found that immutable circumstances such as the gravity of the commitment offense that is remote, and mitigated by circumstances indicating the conduct is unlikely to recur, do not provide "some evidence" inevitably supporting the ultimate decision that the inmate remains a "threat to public safety." (*Lawrence,* at p. 1191.) Under the *Lawrence* standard, an unreasonable risk to public safety requires a *current* risk to public safety. (*Lawrence*, at p. 1212.)

This was the third time Ms. Van Houten was granted parole and the third time a governor has reversed that finding. When Ms. Van Houten successfully addresses reasons for a reversal, the governors come up with new reasons that should have been asserted at the first reversal. This moving target strategy is completely unfair, it prevents Ms. Van Houten from being able to address all of the governors' concerns in a timely manner, resulting in her continued incarceration. Governor Newsom found that because Ms. Van Houten did not "adequately explain her willing participation" in the crimes, she is still minimizing her responsibility. (Exhibit A, p. 4.) The Governor knows full well that there simply is no adequate explanation for participating in this crime. Further, the Governor found Ms. Van Houten lacks insight because she stated if she could have done something differently, she would have been a better daughter despite being raised in a dysfunctional family. That answer demonstrated she still cannot explain her destructive reaction to external factors that were beyond her control.

Finally, the Governor found that Ms. Van Houten was not capable of acting differently in the future because when Manson drugged and sodomized her, she stated she was there willingly at that time. Had Ms. Van Houten stated she was a victim of Manson raping her, it's predictable that the Governor would have stated she was not taking responsibility and blaming Manson. Date rapes are often very difficult to prove. They often involve the victims willingly going along with the perpetrators until it goes too far. While it is very difficult for a date rape victim to acknowledge some of their

actions may have contributed to the situation of the rape, Ms. Van Houten has been able to take that giant step and recognize her mistakes. Her recognition of this is evidence demonstrates that she can prevent similar actions in the future. It is not evidence that she is incapable of acting differently in the future. (Exhibit A, p. 4.) This should have been a mitigating factor, not an aggravating factor as Governor Newsom so claimed.

PRELIMINARY REQUIREMENTS

***Custody*.** Petitioner is confined by the California Department of Corrections and Rehabilitation (CDCR) at the California Institution for Women at Corona, California, Molly Hill, Warden.

Jurisdiction and Venue. This Court has original jurisdiction to issue the writ (Cal.Const., Art.VI, § 10; Penal Code[3] § 1508), and venue to adjudicate the petition. Petitioner was prosecuted in Los Angeles County.

Administrative Remedy. BPH provides no administrative remedy for alleged violations of law by its parole hearing panels or Governor reversals of grants of parole.

PROCEDURAL HISTORY

Criminal History, Sentencing, Commitment

The factual summary is based on the facts set forth in the appellate opinions in (*People v. Manson* (1976) 61 Cal.App.3d 102, 205 ("*Manson*") and *People v. Van Houten*, *supra*, 113 Cal.App.3d 280, and *In re Van Houten* (2004) 116 Cal.App.4th 339 ("*Van Houten*"), and the January 30, 2019 parole suitability hearing transcripts (Exhibit D).

In 1971, a jury convicted Ms. Van Houten of two counts of first degree murder and one count of conspiracy and was sentenced to death. The conviction was reversed because of the midtrial disappearance of Ms. Van Houten's attorney. (*Van Houten* at p. 347.) Ms. Van Houten had no convictions prior to the commitment offenses which

---

[3] All further statutory references are to the Penal Code.

occurred on August 10, 1969. Ms. Van Houten's 1971 conviction was reversed on appeal in 1976 due to the absence of her trial counsel. (*Manson* at p. 217.) A second trial resulted in a 30-day deadlocked jury, and a third trial convicted Ms. Van Houten of one count of conspiracy and two counts of first degree murder. The "jury in this third trial was not required to decide that she premeditated and deliberated the murder because the trial court also gave the felony-murder instructions. ***Concurrent life sentences with the possibility of parole*** were imposed." (*Van Houten* at p. 347, emphasis added.)

At trial Ms. Van Houten "admitted her full participation in the LaBianca homicides. It was conceded that she did not participate in the Tate killings." Her defense was diminished capacity due to mental illness induced by Charles Manson and prolonged use of hallucinogenic drugs that Manson supplied. The sentence imposed was 7 years-to-life with the possibility of parole, with a minimum eligible parole date of August 17, 1978. It is important to note that Ms. Van Houten's conviction was based on the felony murder rule where the homicides Ms. Van Houten assisted in committing occurred during the commission of a robbery. The prosecutor's previous two attempts to convict Ms. Van Houten of premeditated murder at trial had failed. The sentencing court gave "serious attention" to sentencing Ms. Van Houten to probation, after acknowledging that nobody ever convicted of first degree murder in California had ever been granted Probation. (Exhibit G, p. 131.) After receiving opposition to probation, the superior court sentenced Ms. Van Houten to three, seven-years-to-life terms for the three counts, and the court ordered "[a]ll three sentences to be served concurrently." (Exhibit G, pp. 131-132.) Ms. Van Houten was given credit for having already served eight years and 120 days, making her eligible for parole at the time of sentencing, 41 years ago. (Exhibit G, p. 132.) No party appealed that sentence.

Prior to her third trial, Ms. Van Houten was *released on bail following a hearing at which the trial judge determined that she no longer posed an undue risk to public*

safety, or a risk to abscond. Ms. Van Houten conducted herself in an exemplary manner while free in the community for 6½ months, until her conviction on July 5, 1978, at which time she was recommitted to CDCR.

Ms. "Van Houten returned to prison with a good attitude, which she has maintained since, as demonstrated by consistently good reports and evaluations concerning her participation and leadership in self-help, service, education, counseling, religious programs, and her work assignments." (*Van Houten* at p. 347.)

On April 14, 2016, and again on September 6, 2017, the BPH found Ms. Van Houten suitable for parole. The Governor reversed the first parole grant on July 22, 2016. (Exhibits B and C.) On August 31, 2017, Ms. Van Houten had a *Fran*klin proceeding which made a record of the methods of Manson's control over the cult and how cult members were threatened with being tortured if they attempted to leave. (Exhibit E) On January 30, 2019, Ms. Van Houten was again found suitable for parole and the Governor reversed parole a third time on June 3, 2019. (Exhibit A.)

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. (Exhibit D, p. 22-23.) The divorce stigmatized Ms. Van Houten and as a result, she became a part of a lower social status. Ms. Van Houten handled the divorce poorly, which became a crossroad in her life. (Exhibit D, p. 25.)

At age 15, while associating with single parent children, her brother and boyfriend introduced her into drug use. (Exhibit D, pp. 25-27.) At age 17, Ms. Van Houten and her boyfriend ran away to San Francisco and she became pregnant. (Exhibit 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. (Exhibit D, pp. 28-32.) Ms. Van Houten was brokenhearted and "was not the same after that." (Exhibit D, p. 32.)

Ms. Van Houten graduated from business college as a certified secretary. (*Van Houten* at p. 343; Exhibit D, p. 33.) After graduation, Ms. Van Houten traveled the West Coast for five months. 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; Exhibit B, pp. 48-49.) The ranch was described as a commune that was run by a wonderful "Christlike" man. (Exhibit 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. (Exhibit D, pp. 38-39.) While life at the ranch was welcoming, Manson was a strong personality. (*Van Houten* at p. 344; Exhibit D.) In the beginning Manson showed his cult members a love but it turned into fear and survival. Through "isolation, dependence, fear, drugs, sex, and indoctrination of the Family experience," Ms. Van Houten and the others came to accept Manson's beliefs and goals, and means, which included the murders required to start the revolution that Manson envisioned. (*Van Houten* at p. 344; Exhibit D, pp. 41-42.)

On August 9, 1969, "Manson drove Ms. Van Houten and five others around while he scanned for victims. As ordered by Manson they brought a change of clothing. Manson ordered the driver to stop next door to the LaBianca home. 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. When he untied Mrs. LaBianca's hands, she brought out a small box of money. 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; Exhibit 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." (Exhibit 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." (Exhibit 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; Exhibit D, p. 68.)

Ms. Van Houten was subjected to the influence and instructions of Charles Manson. (*Manson,* at p. 205.) "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; Exhibit 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 the California Supreme Court in December of 2015, in case number S230851. (Exhibit 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. (Exhibit 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. (Exhibit E, pp. 57-58.)

Barbara Hoyt's statements in which Governor Brown relied upon in the 2016 reversal regarding cult members being free to come and go as they chose, were impeached at the *Franklin* proceeding. (Exhibit E, pp. 45-50, 57-58.)

Prior to the crime, Ms. Van Houten had gotten involved with bikers who were at the ranch and Manson had Tex Watson to "keep an eye on" her because Manson believed "We're losing this one." Tex Watson and Patricia Krenwinkle remained with Ms. Van Houten prior to the murders. One of the bikers came to get Ms. Van Houten to take her with him but she didn't leave the ranch. Ms. Van Houten's fear of what would wait for me by leaving the group was what kept [her] attached there. (Exhibit D, pp. 45-46.) Manson convinced Ms. Van Houten that to leave him was to die. (Exhibit 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. (Exhibit 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.)

Upon returning to the ranch after the crime, Ms. Van Houten told cult member Diane Lake that "the more I stabbed [Mrs. LaBianca] the more fun it was." (Exhibit D, p. 73.) However, Ms. Van Houten testified that "it wasn't fun." But "everything was to be fun" and Diane was presented by Manson as the perfect woman and part of Ms. Van Houten "wanted to impress her. That's who I had become." (Exhibit D, pp. 73-74.) Ms. Van Houten was instructed to never talk about the murders again, and she and Patricia Krenwinkle were separated from the rest of the cult. (Exhibit D, pp. 74-75.)

Very shortly after the life crime, Ms. Van Houten turned her life around. (Exhibit 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." (Exhibit D, p. 81.) Her rehabilitation started in the county jail after she was separated from Manson. (Exhibit D, p. 108.) Ms. Van Houten met with her mother and immediately felt bad due to the outrageous way she acted in court.[4] (Exhibit 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 got into the truck with Bobby Beausoleil and Catherine Share and went to the ranch. (Exhibit D, p. 86.) No part of Ms. Van Houten believes it was Manson's fault, she willingly sat and listened to him, letting 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. (Exhibit 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

---

[4] 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.

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." (Exhibit 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. (Exhibit D, pp. 87-88.)

Catherine Share testified 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."[5] (Exhibit E, p. 51.) Catherine Share saw Ms. Van Houten's demeanor change to becoming "very withdrawn and not talking to anybody and just staying by herself a lot." (Exhibit E, p. 50.) Ms. Share witnessed Ms. Van Houten express remorse for her actions in the commitment offense. That remorse caused Ms. Share to call the prison warden in the 1990's and request to speak to Ms. Van Houten to apologize for her part in recruiting Ms. Van Houten into the cult. (Exhibit E, pp. 52-53.)

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." (Exhibit D, pp. 90, 92-93, 101.)

The BPH psychologist's report found Ms. Van Houten a low risk for violence if

---

[5] 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.)

paroled. The commissioners also looked at multiple reports dating back 11 years.[6] (Exhibit D, pp. 103-104.) 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." (Exhibit D, pp. 105-106.) The clinician indicated Ms. Van Houten exhibited prosocial behaviors throughout her imprisonment and the risk assessment tools indicated Ms. Van Houten was "well below the cutoff threshold used to identify dissocial or pathologic personalities. (Exhibit D, p. 105.)

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. (Exhibit D, pp. 108-112.) There were no consequences at the ranch unless one displeased Manson. (Exhibit E, pp. 44-47.)

JANUARY 30 , 2019, PAROLE HEARING DECISION

Ms. Van Houten testified that she took responsibility for her actions and did not blame Manson. "There is nothing in that night of murder tha 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 tht 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

---

[6] A 2010 risk assessment indicated that Ms. Van Houten told the clinician that Manson had drugged her as he raped her "effectively claiming her." This psychological evaluation was where the sodomy issue first was documented. (Exh. H, p. 6.)

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." (Exhibit D, pp. 86-87.) The presiding commissioner acknowledged Ms. Van Houten's testimoney 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." The hearing Panel found that although Ms. Van Houten was a leader regarding her behaviors and actions it was not to the extent of the others in Manson's group. (Exhibit 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." (Exhibit D, p. 158.)

JUNE 3, 2019 GOVERNOR REVERSAL

Governor Gavin Newsom reversed that grant of parole and gave "great weight" to the hallmark features of youth because Ms. Van Houten qualified as a youthful offender at the time of her commitment offense. (Exhibit A, pp. 2-3.) However, the Governor failed to give great weight to the other two categories that required it, the intimate partner battering and elderly parole. The BPH appropriately gave great weight to all three categories. (Exhibit D, pp. 5-6.) Despite recognizing 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." (Exhibit A, p. 3.) The Governor found it "difficult to understand how spomeone could commit these extreme crimes." (Exhibit A, p. 3.) The Governor's opinion that Ms. Van Houten failed to "adequately explain her willing participation indicates that Ms. Van Houten is still minimizing her responsibility." (Exhibit 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." (Exhibit 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 susceptability to negative influences and manipulation" which makes it uncertain if Ms. Van Houten is capable of acting differently in the future. (Exhibit A, p. 4.) Ms. Van Houten "must take additional steps that demonstrate she will never return to this type of submission or violence again." (Exhibit A, p. 4.) Governor Newsom used those reasons to support his finding that Ms. Van Houten remains currently dangerous. (Exhibit A, pp. 4-5.)

MEMORANDUM OF POINTS AND AUTHORITIES

I.
MS. VAN HOUTEN IS NOT AN UNREASONABLE RISK TO PUBLIC SAFETY.

A. THE STANDARD OF REVIEW.

1. Governor Reversal Standard of Review.

A review of the Governor's reversal of a grant of parole is reviewed to determine if it is supported by "some evidence." (*In re Rosenkrantz* (2002) 29 Cal.4th 616, 626 (*Rosenkrantz*).) The *Rosenkrantz* court explained: "Article V, section 8(b), requires that a parole decision by the Governor pursuant to that provision be based upon the same factors the Board is required to consider. Due process of law requires that this decision

be supported by some evidence in the record. Only a modicum of evidence is required. Resolution of any conflicts in the evidence and the weight to be given the evidence are matters within the authority of the Governor. As with the discretion exercised by the Board in making its decision, the precise manner in which the specified factors relevant to parole suitability are considered and balanced lies within the discretion of the Governor, but the decision *must reflect an individualized consideration of the specified criteria* and cannot be arbitrary or capricious. It is irrelevant that a court might determine that evidence in the record tending to establish suitability for parole far outweighs evidence demonstrating unsuitability for parole. As long as the Governor's decision reflects due consideration of the specified factors as applied to the individual prisoner in accordance with applicable legal standards, the court's review is limited to ascertaining whether there is some evidence in the record that supports the Governor's decision." (*Rosenkrantz*, at pp. 676–677, emphasis added.)

"[T]he aggravated nature of the crime does not in and of itself provide some evidence of *current* dangerousness to the public unless the record also establishes that something in the prisoner's pre- or post-incarceration history, or his or her current demeanor and mental state, indicates that the implications regarding the prisoner's dangerousness that derive from his or her commission of the commitment offense remain probative to the statutory determination of a continuing threat to public safety." (*Lawrence*, at p. 1214, italics in original.) Accordingly, the reviewing court independently reviews the entire record to determine "whether the identified facts are probative to the central issue of current dangerousness when considered in light of the full record before . . . the Governor." (*Lawrence*, at p. 1221, italics deleted.)

In the present case, the Governor cites to no evidence of a nexus between the commitment offense and a current unreasonable risk to public safety. The Governor remained "concerned by her role in these killings" and it was "difficult to understand

how someone could commit these extreme crimes." (Exhibit A, p. 3.) Ms. Van Houten's "role in these killings" led to her conviction, something that is not being challenged and exists in every single life inmate who is paroled. The Governor does not need to understand how any person could commit a life crime for an inmate to be successfully paroled.

The Governor's opinion that Ms. Van Houten failed to "adequately explain her willing participation indicates that Ms. Van Houten is still minimizing her responsibility." (Exhibit A, p. 4.) Ms. Van Houten has over and over again taken responsibility for her criminal acts. There may not be an "adequate explanation" in any life crime. An "adequate explanation" appears to be a justification for committing the crime, which would make a good argument for claiming the inmate was minimizing that crime. That is certainly not the case with Ms. Van Houten, who 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 got into the truck with Bobby Beausoleil and Catherine Share and went to the ranch. (Exhibit D, p. 86.) No part of Ms. Van Houten believes it was Manson's fault. She willingly sat and listened to him, letting 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. (Exhibit D, pp. 86-87.) "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." (Exhibit D, pp. 86-87.) Knowing [Manson] has never eased the shame . . . ." (Exhibit D, p. 87.) Ms. Van Houten's acceptance of her responsibility in the crime is simply not a minimization.

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." (Exhibit A, p. 4.) For years, Ms. Van Houten had told various parole board panels about how her parents' divorce was a turning point in her life. She completely understood the impact of the divorce, even though the Board and courts failed to see a divorce as serious trauma. Further, just because Ms. Van Houten's parents divorced did not make that family a dysfunctional family. Lots of parents get divorced. In fact, living together and not getting a divorce when partners no longer get along is a better example of a dysfunctional family.

Finally, the Governor found that when Manson used a drug to sodomize Ms. Van Houten, and she accepted some responsibility for being a rape victim because she was at the ranch willingly, the Governor found that she had "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. (Exhibit A, p. 4.) Ms. Van Houten "must take additional steps that demonstrate she will never return to this type of submission or violence again." (Exhibit A, p. 4.) First, the Governor does not suggest what "additional steps" Ms. Van Houten must take to demonstrate she would not willingly become a rape victim again. It is a very sad day when our Governor requires a rape victim to have to take some unknown additional steps to demonstrate she will not willingly be susceptible to be submissive to this type of abuse and control in the future.

In no uncertain terms, Ms. Van Houten did not minimize or blame Manson for her

own choices and actions involving the commitment offense. It has to be remembered, Manson was *convicted* of the LaBianca murders when he was not present when anyone was killed. The Los Angeles County District Attorney's Office argued to the California Supreme Court in case S230851, that "Charles Manson controll[ed] the family and direct[ed] the killings." (Exh. F, p. 9.) "There was ample evidence that Manson was the leader and directed the murders and that there was drug usage." (Exh. F, p. 11.) The courts recognize Manson had his part in it, Ms. Van Houten recognizes the same thing. The Governor needs to also recognize the facts in a correct context.

Not one of the Governor's reasons for reversing Ms. Van Houten's parole is a legitimate reason, not one reason points to a current unreasonable risk to public safety, or has a nexus to the commitment offense.

2. The De Novo Standard of Review is Appropriate.

In *Lawrence*, the California Supreme Court found that found that immutable circumstances such as the gravity of the commitment offense that is remote, and mitigated by circumstances indicating the conduct is unlikely to recur, do not provide "some evidence" inevitably supporting the ultimate decision that the inmate remains a "threat to public safety." (*Lawrence,* at p. 1191.)

Additionally, the standard of review of this matter must be something more than just "some evidence" supporting the Governor's conclusion because Ms. Van Houten qualified for three different categories that require the governor to give "great weight" to his consideration. Those three categories are: youthful offender factors, intimate partner battering, and elderly parole. The BPH Panel did give great weight to those three categories. (Exhibit D, pp. 5-6.) The Governor only gave "great weight" to the youthful offender criteria, and failed to give great weight to the other two categories that required it, the intimate partner battering and elderly parole. (Exh. A, pp. 2-3.) The BPH appropriately gave great weight to all three categories. (Exhibit D, pp. 5-6.) Instead of

giving great weight to the intimate partner battering, which should be a mitigating factor, the Governor used that as an aggravating factor. He found that Ms. Van Houten's embarrasing but honest answer about Charles Manson's forced sexual activity with her included the administration of some sort of date rape drug while he sodomized her, and her saying she was there willingly.

The definition of "great weight" to be used at parole suitability hearings was enumerated in *In re Palmer*, previously published at (2018) 27 Cal.App.5th 120 (*Palmer I*). While *Palmer I* dealt with giving "great weight" to the youth factors at a youthful offender parole consideration hearing, the opinion also recognized two other areas where the BPH must give "great weight" to any information or evidence. Those other areas are the intimate partner battering (section 4801, subdivision (b)(1)) and the Elderly Parole Program (section 3055, subdivision (c)) (*Palmer I* at p. 18, fn. 6.) The California Supreme Court granted review and depublished *Palmer I*. (Review granted January 16, 2019, Case S252145.) Currently there is no California Supreme Court authority describing a standard for "great weight" in an adult parole suitability context. In this case, while the Governor claimed he gave "great weight" to the youthful offender factors, but there was no standard to define that weight and the Governor did not describe how he viewed those factors differently. He did not even claim to give "great weight" to elderly parole or intimate partner battering.

However, in *People v. Martin* (1986) 42 Cal.3d 437 (*Martin*), the supreme court defined the definition of "great weight" that it had utilized in two cases involving a trial courts' review of the Youth Authority's recommendations. Those recommendations were entitled to "great weight" and "must be followed in the absence of 'substantial evidence of countervailing considerations of sufficient weight to overcome the recommendation.'" (*Martin*, at p. 447.) Therefore the Governor must accept those factors as indicating suitability for release on parole absent substantial evidence of

countervailing considerations indicating unsuitability. (*Ibid.*) In this case, the Governor never found that there was substantial evidence that Ms. Van Houten poses a current unreasonable risk to public safety.

Further, on April 5, 2019, the case *In re William M. Palmer II* (2019) 33 Cal.App.5th 1199 (*Palmer II*) was published. *Palmer II* involved the same defendant as *Palmer I*. In *Palmer II*, Mr. Palmer was sentenced to life in prison with the possibility of parole after he was convicted of kidnapping for robbery in 1988 when he was 17 years old. He filed the current petition for a writ of habeas corpus to challenge his continued incarceration as cruel and unusual punishment in violation of both the United States and California Constitutions. He became eligible for parole in 1996 and thereafter parole was denied ten times. In the midst of the defendant's ongoing challenges of his parole denials, the Board of Parole Hearings finally granted him parole in December 2018 after the Court of Appeal ordered the Board to conduct another hearing. In this current petition, the Court of Appeal determined defendant's "serial denial of parole . . . resulted in punishment so disproportionate to his individual culpability for the offense he committed, that it must be deemed constitutionally excessive." The appellate court ordered defendant to be released from all forms of custody, including parole supervision. (*Id.*, at pp. 1210-1214, 1224.) In this case, Ms. Van Houten has become the poster child/victim of a "serial denial of parole . . . result[ing] in punishment so disproportionate to h[er] individual culpability for the offense [s]he committed, that it must be deemed constitutionally excessive."

Therefore because this case involves an interpretation of law, the facts are not disputed. In a habeas corpus proceeding, "the court may grant (or deny) the relief sought without ordering an evidentiary hearing as long as resolution of the petition does not depend on any disputed issue of fact." (*In re Zepeda* (2006) 141 Cal.App.4th 1493, 1497.)

This petition raises legal issues concerning the application of law to established

record facts. The Governor's findings that a commitment offense is sufficient to deny parole is cited in dicta, but has never been a reason to deny parole in a published case since *Lawrence* was decided. With respect to mixed questions of law and fact, a court reviews the Governor's application of law to fact under a deferential "some evidence" standard (or something more if "great weight" is applied) if the inquiry is predominantly factual. But when the application of law to fact is predominantly legal, such as when it implicates constitutional rights and the exercise of judgment about the values underlying legal principles, a court's review is de novo. These basic principles of review apply to a petition for habeas corpus. This petition involves a constitutional challenge to the facial validity of he Governor using only the commitment offense to deny parole without connecting it to a current unreasonable risk to public safety. Accordingly, de novo review is appropriate." (*Rosenkrantz*, at p. 677 ["Because the trial court's findings were based solely upon documentary evidence, we independently review the record."].) Additionally, the constitutionality of a statute is a question of law, which we review de novo. (*Sanchez v. State of California* (2009) 179 Cal.App.4th 467, 486.) De novo review is also the general standard of review when a mixed question of law and fact implicates constitutional rights. (*People v. Cromer* (2001) 24 Cal.4th 889, 894.)

B. THE REVERSAL OF MS. VAN HOUTEN'S FINDING OF PAROLE SUITABILITY WAS A DENIAL OF DUE PROCESS.

Penal Code section 3041 mandates that the BPH "*shall*" set a parole date at the initial hearing or as soon thereafter when to do so no longer creates "an unreasonable risk of danger" to public safety. (California Code of Regulations, Title 15 ("15 CCR") sections 2401, 2402(a).) The Due Process Clause protects Ms. Van Houten's liberty interest in a parole date under the statute. (*McQuillion v. Duncan*, 306 F. 3d 895, 902 (9th Cir. 2002); *In re Rosenkrantz, supra,* 29 Cal.4th 616; see *In re Lawrence, supra*, 44 Cal.4th 1181 at 1205, 1211-1212.)

In his reversal of Ms. Van Houten's parole suitability decision, the Governor conceded that "[t]he question I must answer is whether Leslie Van Houten will pose a current danger to the public if released from prison." (Exhibit A, p. 2.) Yet the Governor misstated the law's standard, as summarized in *Lawrence*

> "that the some evidence standard described in *Rosenkrantz* and *Dannenberg* poses *not simply a question of whether some evidence* supports the factors cited for denial, but instead, whether the evidence supports the core determination required by the statute before parole can be denied - that an inmate's release will *unreasonably* endanger public safety." (*Lawrence* at p. 1209, italics added.)

It is the issue of "unreasonably endangering public safety" that must be considered in a review of current dangerousness. Instead of focusing on Ms. Van Houten's unreasonable current dangerousness, the Governor focused on Ms. Van Houten's commitment offense, a crime committed by a youthful offender almost 50 years ago, and a factor that can never change regardless of any amount of rehabilitation that is accomplished. The underlying crime is one of the "immutable and unchangeable circumstances" of the murder offense that does not constitute "some evidence" supporting Governor's reversal of Board of Parole Hearings' decision to grant parole. (*Lawrence* at p. 1181.) The Governor stated the California Supreme Court stated 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." (Exhibit A, p. 2.) The gravity of the commitment offense is a legitimate factor for the BPH to consider when determining parole suitability, suitability, even though the underlying crime is one of the immutable and unchangeable circumstances of the murder offense. (*In re Stoneroad* (2013) 215 Cal.App.4th 596, 614, 617 (*Stoneroad*); Lawrence, at pp. 1181, 1221.) However, there

must be a nexus to an unreasonable risk of danger to public safety. The BPH commissioners repeatedly addressed that issue and acknowledged that cases have stated in dicta that extraordinary crimes may be the sole basis to deny parole, but that did not apply to this case. The commissioners appropriately looked to Ms. Van Houten's conduct and actions, and not Manson's. Since *Lawrence*, no published case has found that an inmate, who has been rehabilitated, committed a crime that is so bad that it is appropriate to basically change a court's sentence from the possibility of parole, to a sentence of life without parole. The BPH Panel found there to be no nexus between the life crime and current parole suitability. (Exhibit C, p. 286.)

The result of *Lawrence* and its progeny is that the aggravating nature of a crime can no longer provide evidence of current dangerousness "unless there is also evidence that there is something about the commitment offense which suggests the inmate still presents a threat to public safety." (*In re Denham* (2012) 211 Cal.App.4th 702, 715, 150 Cal.Rptr.3d 177, citing *Lawrence*, at p. 1214.) "Therefore, the gravity of the commitment offense can no longer, in and of itself, justify denial of parole." (*Stoneroad*, at p. 621.)

The Governor's reversal specifically found that the crimes were "heinous, cruel, and inexplicably disturbing and dispassionate." (Exh. A, p. 3.) To justify the Governor's description of the crime, the Governor had to describe the more vicious crimes where more than twice as many victims were murdered that occurred at the Tate residence that Ms. Van Houten had not even known occurred until the next day. (Exhibit A, p. 1.) While Ms. Van Houten's crimes were terrible, as are all murders, the Governor felt a need to embellish them and add Manson's murders to her. The Governor was unable to point to any current risk to public safety if Ms. Van Houten was released on supervised parole after following prison rules for 49 years and being free on bail for more than six months without incident. Therefore, no nexus between the commitment offense and a

current unreasonable risk of danger to the public exists. (See: *Stoneroad*, at pp. 621-622.)

The nexus to current dangerousness is critical. "*Lawrence* and *In re Shaputis* (2008)] 44 Cal.4th 1241, (*Shaputis I*) 'clarified that in evaluating a parole-suitability determination by either the Board or the Governor, a reviewing court focuses upon "some evidence" supporting the core statutory determination that a prisoner remains a current threat to public safety—not merely "some evidence" supporting the Board's or the Governor's characterization of facts contained in the record.'" (*In re Prather* (2010) 50 Cal.4th 238, 251–252 (*Prather*); *Stoneroad*, at p. 615.) "It is not the existence or nonexistence of suitability or unsuitability factors that forms the crux of the parole decision; the significant circumstance is how those factors interrelate to support a conclusion of current dangerousness to the public." (*Lawrence*, at p. 1212.) The Governor "must determine whether a particular fact is probative of the central issue of current dangerousness when considered in light of the full record." (*Prather,* at p. 255.) "[T]he proper articulation of the standard of review is whether there exists 'some evidence' demonstrating that an inmate poses a current threat to public safety, rather than merely some evidence suggesting the existence of a statutory factor of unsuitability." (*Lawrence*, at p. 1191; *Prather*, 50 Cal.4th at pp. 251–252.)

The Board's regulations set forth six circumstances tending to show unsuitability for parole and nine tending to show suitability, leaving the importance of weighing these circumstances in a particular case to the judgment of the BPH and Governor. (Cal.Code Regs., tit. 15, § 2402 (CCR).) The circumstances tending to show unsuitability are (1) that the commitment offense was carried out "in an especially heinous, atrocious or cruel manner," (2) that the prisoner on previous occasions inflicted or attempted to inflict serious injury, especially if he or she "demonstrated serious assaultive behavior at an early age," (3) that "the prisoner has a history of unstable or tumultuous relationships

with others," (4) that the prisoner has previously committed sadistic sexual offenses, (5) that "the prisoner has a lengthy history of *severe* mental problems related to the offense," and (6) that "the prisoner has engaged in serious misconduct in prison or jail." (CCR section 2402, subd. (c).) The circumstances tending to show suitability are (1) that the prisoner does not have a juvenile record of assaults or crimes with a potential of personal harm to victims, (2) that the prisoner "has experienced reasonably stable relationships with others," (3) that the prisoner has performed acts tending to indicate remorse or indicating he "understands the nature and magnitude of the offense," (4) that the prisoner committed the crime as a result of significant stress in his life, particularly stress built over a long period of time, (5) that the prisoner suffered from battered women's syndrome, (6) that the prisoner "lacks any significant history of violent crime," (7) that the prisoner's "present age reduces the probability of recidivism," (8) that the prisoner has made realistic plans for release or developed marketable skills that can be put to use upon release, and (9) "[i]nstitutional activities indicate an enhanced ability to function within the law upon release." (SSR section 2402, subd. (d).)

In applying those factors to Ms. Van Houten, the first factor supports the Governor's reversal. The crime was "heinous, cruel, and inexplicably disturbing and dispassionate." (Exh. A, p. 3.) But as *Lawrence* states, that is not enough to deny parole. (*Lawrence* at p. 1181.) The other factors that show unsuitability simply do not apply to Ms. Van Houten. She had no previous history of inflicting serious injury at any age; she has a history of maintained positive relationships with a large number of friends (as was evidenced by the letters supporting parole); she never committed sadistic sexual offenses; did not have any history of severe mental problems related to the commitment offense; and has not engaged in a single serious episode of misconduct in jail or prison. The factors that show suitability support parole. Ms. Van Houten does not have a juvenile record; she has experienced stable relationships with others; demonstrated

remorse and articulated the magnitude of her offense; committed the crime under significant stress over a long period of time while under Manson's control; suffered from intimate partner battering at the hands of Manson (which was used as an aggravating factor by the Governor) (Exhibit A, p. 4.); lacked a history of any other violent crimes; is at an old age that greatly reduces recidivism (a factor the Governor should have considered and failed to do); has realistic plans for release and has developed marketable skills (such as obtaining a master's degree where her thesis was on sustained rehabilitation); and engaged in prison activities that enhanced her ability to function on parole.

Additionally, Ms. Van Houten's individual participation in her commitment offense was not so extraordinary whereby her sentence should be changed. Changing her sentence today is a Constitutional violation of the ex post facto clause. After her original conviction was reversed, the second trial resulted in a deadlocked jury, after 30 days of deliberation, the jury was unable to find Ms. Van Houten premeditated and deliberated the murders due to her diminished capacity due to Manson's control and use of drugs.[7] The third trial resulted in a conviction based on the felony murder rule. The "jury in this third trial was not required to decide that she premeditated and deliberated the murder. ***Concurrent life sentences with the possibility of parole*** were imposed." (*Van Houten* at p. 347, emphasis added.) The sentencing court, who heard the witnesses and saw the evidence, gave "serious attention" to sentencing Ms. Van Houten to probation, after acknowledging that nobody convicted of a first degree murder in

---

[7] Not available to the jury was consideration of diminished capacity for being a youthful offender. The science regarding adolescent brain development is only approximately 15 years old. (Exhibit D, p. 32.) That science led to the United States Supreme Court changing how juveniles are sentenced in 2012 in the landmark case *Miller v. Alabama* (2012) 132 S.Ct. 2455, and since then subsequent United States and California Supreme Court cases extending youthful offender considerations.

California had ever been granted probation. (Exh. G, p. 131.) Ms. Van Houten was given credit for having already served eight years and 120 days, making her *eligible for parole at the time of sentencing*. (Exhibit F, p. 132.) The trial court that heard the evidence, and ordered a concurrent sentence that permitted an imminent parole. That sentence demonstrated that the court apparently did not opine this was one of the most extraordinary crimes that should result in parole never being granted. Had the District Attorney not agreed with that sentence, an appeal could have been filed. No party appealed. It is too late today to complain about her sentence.

Parole has a purpose, that being "to help individuals 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.) To not grant Ms. Van Houten, who has demonstrated his suitability and has served almost 50 years of a 7 years to life sentence, only serves to negate its importance as a vital part of our criminal justice system.

II.
THE GOVERNOR FORFEITED NEW REASONS TO DENY PAROLE THAT WERE NOT ASSERTED AT REVERSALS OF EARLIER REVERSALS OF GRANTS OF PAROLE.

"Generally speaking, four elements must be present in order to apply the doctrine of equitable estoppel: (1) the party to be estopped must be apprised of the facts; (2) he must intend that his conduct shall be acted upon, or must so act that the party asserting the estoppel had a right to believe it was so intended; (3) the other party must be ignorant of the true state of facts; and (4) he must rely upon the conduct to his injury." (*Driscoll v. City of Los Angeles* (1967) 67 Cal.2d 297, 305.)

In this case, the Governor is the party who should be estopped from claiming Ms. Van Houten's commitment offense alone is sufficient to reverse a grant of parole. Governor Brown reversed Ms. Van Houten's parole in 2016, and again in 2018. The

reasons for the three reversals keeps changing - - however - - the central reason for the reversals were reliance on the commitment offense that has never changed. Ms. Van Houten continues to address each and every reason for her multiple parole reversals. Because Ms. Van Houten did not anticipate her family being dysfunctional because her parents divorced, and her being a victim of rape at the hands of Manson, as legitimate reasons to reverse a grant of parole. These new and different reasons to reverse cause Ms. Van Houten prejudice because she cannot predict different reasons to reverse a grant of parole. For sure, Ms. Van Houten could never have anticipated that being a rape victim, but acknowledging she willingly went to Manson's ranch would be an aggravating factor and not a mitigating one. Almost all date rapes include the victim willfully engaging with the rapist, often toing into their homes. It is important for date rape victims to acknowledge the danger of potential perpetrators not stopping when the rape exceeds consent. Drugging Ms. Van Houten eliminated her ability to say no.

Fundamental fairness requires Ms. Van Houten be given an opportunity to address any facts or evidence that might cause her to be denied parole. Because the Governor's reasons for this reversal were present and actually litigated at the 2016, and 2018 parole hearings, and the Governor failed to assert that evidence as being sufficient to deny parole, both Governor Brown and Governor Newsome forfeited those issues.

If the Governor is permitted to hide the ball and change the reasons for reversing parole from hearing to hearing, that is a game that unjustly keeps Ms. Van Houten incarcerated when there is no evidence she poses an unreasonable risk to public safety. This is essentially changing her sentence from 7 years to life to a sentence of life without parole 41 years after the sentence was rendered when no party appealed the sentence. This is an ex post facto violation in contradiction with fundamental fairness and the United States Constitution.

///

III.
MS. VAN HOUTEN WAS DENIED DUE PROCESS WHEN THE PROSECUTION HAD EXCULPATORY EVIDENCE IN THE CHARLES "TEX" WATSON TAPES, AND FAILED TO DISCLOSE IT.

Ms. Van Houten was denied the Watson tapes at both her 2017 *Franklin* proceeding, and her 2017 parole hearing. A *Franklin* proceeding permits the introduction of evidence, for both sides, subject to the rules of evidence. (*Franklin* at p. 284.)

Penal Code section 1054.1 states in pertinent part: "The prosecution "shall disclose to the defendant or his or her attorney all of the following materials and information, if it is in the possession of the prosecuting attorney or if the prosecution attorney knows it to be in the possession of the investigating agencies: ... (b) Statements of all defendants ... (c) All relevant real evidence seized or obtained as a part of the investigation of the offenses charged." Charles Tex Watson is a co-defendant. Therefore, Watson's statements are required to be disclosed.

What also applies to a *Franklin* proceeding is any evidence pursuant to procedures set forth in Penal Code section 1204 and rule 4.437 of the California Rules of Court, and subject to the rules of evidence. Mr. "Franklin may place on the record any documents, evaluations, or testimony (subject to cross-examination) that may be relevant at his eventual youth offender parole hearing, and the prosecution likewise may put on the record any evidence that demonstrates the juvenile offender's culpability or cognitive maturity, or otherwise bears on the influence of youth-related factors." (*Franklin* at p. 284.) Therefore, any admissible relevant evidence, including but not limited to *Brady v. Maryland, supra* , 373 U.S. 83 material, should be admitted at a *Franklin* hearing.

There are three components of *Brady*: the evidence at issue must be favorable to the accused; that evidence must have been suppressed by the State, either willfully or inadvertently; and prejudice must have resulted. (*Strickler v. Greene* (1999) 527 U.S.

263, 281-282 (*Strickler*); *Edwards v. Ayers* (2008) 542 F.3d 759, 768 (9th Cir.).) The terms "suppression," "withholding," and "failure to disclose" have the same meaning for *Brady* purposes. (See *Benn v. Lambert*, 283 F.3d 1040, 1053 (9th Cir.2002).) It does not matter that *Brady* material involves "the good faith or bad faith of the prosecution." (*Brady*, at p. 87.) *Brady* does not distinguish between pre and post conviction evidence held by the government. (*Ibid.*) Petitioner respectfully asserts *Brady* should apply in this case.

There is no dispute that the first component of *Brady* (evidence favorable to the defendant) exists in this case. This Court found that "Leslie" was mentioned eight times on the tapes, and the tapes repeatedly talked about Manson's control over the Manson Family members. (Exhibit B, p. 3.) In Supreme Court case S230851, the People conceded Manson's control over his cult members who acted on his behalf were contained in the tapes. Therefore, the tapes unquestionably contain exculpatory evidence.

The second element of *Brady* requires the evidence to be in the possession of the government who refuses to share it with the defense. (*Strickler* at pp. 281-282.) Again, there is no dispute about the government's possession and withholding of the Watson Tapes.

The final element of *Brady* is prejudice. Because the tapes contain evidence that Manson had control over his followers, Ms. Van Houten's participation in the crimes is mitigated by that control. The Governor's 2016 reversal was directly related to the extent of Manson's control, and the ability of cult members to leave him. For these reasons, Petitioner asserts the trial court erred when it found the tapes were not material. (Exhibit C) In the 2018 reversal, the Governor conceded Ms. Van Houten was not free to leave, but recognizing Manson's control was blaming Manson for the crimes and a failure to take responsibility. Because the Governor's reasons for reversing parole in

2018 go straight to the heart of the issue in this petition - Manson's control over cult members - refusing to comply with *Brady* was highly prejudicial.

All other factors in weighing Ms. Van Houten's parole suitability are favorable. Therefore, *any* evidence that mitigates the commitment offense is essential. Denying access to that evidence was, and remains, prejudicial. If the Governor wants to use the gravity of the commitment offense to reverse a grant of parole, he has to - - at a minimum - - use the most accurate description of the life crime and the facts surrounding it. When Tex Watson made the tapes for his attorney in 1069, the tapes were protected by the attorney client privilege. The tapes were made before there was any disclosure of the facts of the crimes, making the tapes not subject to an outside influence. Tex Watson personally was in charge and personally killed every victim at both the Tate and LaBianca residences. Therefore, the Tex Watson tapes are the most reliable description of the crimes and the circumstances surrojunding the crimes.

"The *Brady* rule . . . is over 50 years old. It is alive, well, and as we explain, it is self executing. There need be no motion, request, or objection to trigger disclosure. The prosecution has a sua sponte duty to provide *Brady* information." (*People v. Harrison* (2017) 16 Cal.App.5th 704, 706.)

A "criminal defendant's right to discovery is based on the 'fundamental proposition that [an accused] is entitled to a fair trial and an intelligent defense in light of all relevant and reasonably accessible information.' " (*People v. Gonzales* (2006) 38 Cal.4th 932, 960.)

CONCLUSION

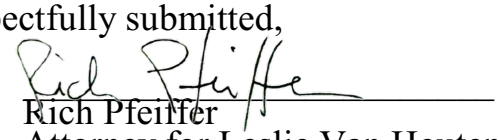
The real reason for the Governor's reversal is the name Manson. Manson died. However, Ms. Van Houten continues to be haunted by that despicable criminal who deceived, controlled her, as he did to so many others.

This case may be the strongest case of a "serial denial of parole." (*Palmer II*, at pp. 1210-1214.) Like *Palmer II*, Ms. Van Houten should be immediately released from all

forms of custody, including parole supervision. (*Ibid.*)

Because all of the evidence indicates Ms. Van Houten is not an unreasonable risk to public safety if placed on supervised parole, no matter what standard is applied, it is respectfully requested this Honorable Court grant the requested relief.

DATED: June 21, 2019 Respectfully submitted,



Rich Pfeiffer
Attorney for Leslie Van Houten

PRAYER

WHEREFORE, PETITIONER PRAYS:

(1) For the Petition for Writ of Habeas Corpus to issue and find there was no evidence Ms. Van Houten is an unreasonable risk to public safety if placed on supervised parole, and

(2) Find the Governor is equitably estopped from asserting reasons to deny parole that were present in 2016 and 2018 and did not change, and

(3) Find Ms. Van Houten's fundamental due process rights were violated when the Office of the District Attorney refused to turn over the exculpatory evidence requested in the Tex Watson tapes, and

(4) Find Ms. Van Houten is suitable for parole and order her be immediately placed on parole (or excused from parole - - See *Palmer II*) because she is a victim of a serial denial of parole and it would be futile and an idle act to remand the matter to the Governor when the Governor reversed the grant of parole by only relying on the commitment offense (*In re Masoner* (2009) 179 Cal.App.4th 1531, 1538.), or

(5) Issue an alternative writ directing Respondent to show cause why the petition should not be granted, and

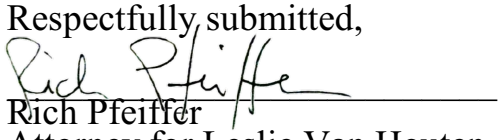
(6) Find the Office of the District Attorney of Los Angeles County committed prosecutorial error and/or misconduct, and order the release of the Tex Watson tapes and the report related to the tapes, to Petitioner's counsel, or

(7) Redact any inappropriate material in the tapes and release the redacted versions of the tapes to counsel, and

(8) Grant any other such further relief as the Court deems just and proper.

Dated: June 21, 2019

Respectfully submitted,



Rich Pfeiffer
Attorney for Leslie Van Houten

VERIFICATION

I, RICH PFEIFFER, DECLARE:

I am the retained attorney for the Petitioner, Leslie Van Houten, in the above entitled action. I am located in Orange County and Petitioner is located in prison at the California Institution for Women in Corona, California and is incarcerated. Therefore, the Petitioner is not available to verify the within Petition. I am familiar with its contents and the parole consideration hearing record. I was present at the parole suitability hearings conducted on April 14, 2016, September 6, 2017, and January 30, 2019, and the *Franklin* proceeding held on August 31, 2017. I litigated the pre-hearing efforts to attempt to obtain the Tex Watson tapes. The facts alleged in this Petition for Writ of Habeas Corpus are true and correct.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on June 21, 2019, at Silverado, California.

RICH PFEIFFER

Rich Pfeiffer
Attorney at Law
State Bar No. 189416
P.O. Box 721
Silverado, CA 92676
Attorney for Petitioner
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 **PETITIONER'S PETITION FOR WRIT OF HABEAS CORPUS** 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 June 21, 2019.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on June 21, 2019 at Silverado, California.

RICH PFEIFFER

SERVICE LIST:

Office of the Attorney General
300 S. Spring Street
Los Angeles, CA 90013

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

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

Leslie Van Houten, W-13378
CIW EB 508L
16756 Chino-Corona Road
Corona, CA 92878-8100