IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT, DIVISION ONE

In Re	)	**CASE No. B291024**
	)	
LESLIE VAN HOUTEN,	)	
	)	***Related Cases:***
Petitioner,	)	***BH007887***; ***S230851***
	)	***B240743; B286023***
on Habeas Corpus.	)	***S45992; S238110;***
_____	)	***S221618***

Hon. WILLIAM C. RYAN, Judge
Superior Court Case Nos. BH011585; A253156

SUPPLEMENTAL PETITION FOR WRIT OF HABEAS CORPUS

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SUPPLEMENTAL PETITION FOR WRIT OF HABEAS CORPUS

INTRODUCTION

On September 13, 2018, a new case, *In re Palmer* (2018) 5 Cal.App.5th __ [2018 WL 4356791] (*Palmer*), was published that addressed the definition and standard for review of the requirement that the Board of Parole Hearings (BPH or Board) give "great weight" to certain factors bearing on the suitability for release of a life inmate. While *Palmer* 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 (Penal Code[1] section 4801, subdivision (b)(1)) and the Elderly Parole Program (section 3055, subdivision (c)) (*Palmer* at p. 18, fn. 6.) Ms. Van Houten qualifies under all three categories. She was 19 years old, a youthful offender at the time of

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[1] All further statutory references are to the Penal Code unless otherwise stated.

the crime; she is currently 69 years old and served 49 years in prison[2]; and she was battered (or intimidated) by her intimate partner, Charles Manson. The Governor claimed he gave "great weight" to the intimate partner battering and youthful offender categories, but he failed to give "great weight" to the elderly parole category. (Exhibit A)

Palmer found that in giving "great weight" to a parole suitability factor requires there must be "***substantial evidence*, not merely *some evidence*, of countervailing considerations indicating the offender is unsuitable for release**." (*Palmer* at p. 28, italics in original, emphasis added.) Because this very issue goes to the heart of the pending petition for writ of habeas corpus, Petitioner respectfully requests this Court use the *Palmer* standard in deciding her pending writ petition that was filed on June 29, 2018. Because "great weight" had never been defined in a parole context until *Palmer*, it was impossible for the Governor to use the correct evidentiary standard when he reversed Ms. Van Houten's latest grant of parole.

It appears that the superior court struggled to find even "some evidence" to support the Governor's latest reversal of Ms. Van Houten's parole. Regarding the gravity of the commitment offense alone being sufficient to deny parole, the superior court found that the dicta in *Lawrence* (2008) 44 Cal.4th 1181, 1211, which stated that the commitment offense alone could provide a valid basis to deny parol, and if this is not the case, "then the Supreme Court's comment in *Lawrence* must be illusory."

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[2] Section 3055, subdivision (a) requires the Elderly Parole Program apply to inmates at least 60 years old who have served a minimum of 25 years of continuous incarceration.

(Exhibit G, p. 15.) However, the court also found that Ms. Van Houten's commitment offense *may someday not be enough* to deny her parole. (Exhibit G, pp. 15-16.) Nothing in *Lawrence* states that the gravity of the commitment offense diminishes over time. That finding is a yes or no determination - - not a - - not now but maybe later determination. Additionally, the superior court wrote that the Governor stated Ms. Van Houten downplayed her role in the commitment offense by shifting blame to Manson. However, the court also conceded that "Petitioner does appear unable to discuss the commitment offense without imputing some responsibility on Manson, although it is unclear to what degree petitioner is minimizing her role in the commitment offense and to what degree she is simply recounting the events as she perceives them." (Exhibit G, p. 14.) The superior court recognized that Ms. Van Houten was forced to testify about the circumstances surrounding her crime when so asked by the BPH, and at the same time her truthful testimony was used by the Governor to claim she failed to take complete responsibility for her actions involved in her crime.

Using the "some evidence standard," where only a modicum of evidence is needed to support the Governor's reversal, "does not equate to the more demanding 'substantial evidence' standard of review." (*In re Stevenson* (2013) 213 Cal.App.4th 841, 866, citing *In re Shaputis* (2011) 53 Cal.4th 192, 214.) "Any relevant evidence that supports the parole authority's determination is sufficient to satisfy the 'some evidence' standard." (*Id*. at p. 214.)

The words "substantial evidence" imply evidence of ponderable legal significance, reasonable in nature, credible, and of solid value.

(*People v. James* (1985) 176 Cal.App.3d 795, 797.) It was not reasonable in nature to find that the gravity of the commitment offence is sufficient to reverse parole today - - but might not be in the future, or that testifying truthfully to the circumstances surrounding the crime somehow equated to Ms. Van Houten failing to take complete responsibility for her actions. (Exhibit G, pp. 14-16.)

MEMORANDUM OF POINTS AND AUTHORITIES

I.
SUBSTANTIAL EVIDENCE WAS THE CORRECT STANDARD WITH WHICH TO REVIEW THE GOVERNOR'S REVERSAL OF MS. VAN HOUTEN'S LATEST GRANT OF PAROLE.

A. IN RE PALMER.

In *Palmer*, the inmate was a youthful offender committing his crime at the age of 17. (*Palmer*, p. 8.) The inmate was denied parole for five years, in large part due to his multiple recent 115 disciplinary rule violations.[3] While the inmate told the BPH he had acted on his impulses, he also claimed that had recently had made a positive change. (*Palmer*, at p. 6.) Two BPH psychologists differed in their risk assessments, one found the inmate to be a moderate risk even though his 115's were not major rule violations, but the inmate had only begun in the most recent months to mitigate his risks. (*Palmer*, at p. 7.) The BPH found that as a youthful offender, the inmate lacked maturity, had an underdeveloped sense of responsibility, and failed to weigh long-term consequences of his actions. However, he had shown growth and maturity and was now at an age that

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[3] "According to the California Code of Regulations, a CDC 115 documents misconduct believed to be a violation of law which is not minor in nature." A form 128 documents incidents of minor misconduct. (*In re Gray* (2007) 151 Cal.App.4th 379, 389.)

would reduce the probability of recidivism. (*Palmer*, p. 8.)

The appellate court acknowledged that "great weight' had to be given to the three youth offender factors, that included the diminished culpability of juveniles, the hallmark features of youth, and subsequent growth and maturity. (*Palmer*, p. 14.) The Legislature mandated that "youth offenders sentenced to indeterminate life terms and eligible for parole, or to substantial determinate terms, must *all* be treated differently from other life inmates." (*Palmer*, p. 14, italics in original.) No court had defined how "great weight" should apply to the youthful offender factors. (*Palmer*, p. 15.) The *Palmer* court found that the "Board must accept [youth offender] factors as indicating suitability for release absent substantial evidence of countervailing considerations indicating unsuitability." (*Palmer*, p. 17.) Despite the Board referencing that it gave "great weight" to the inmates's youthful factors 10 times during the parole hearing, the Board "failed to address the meaning of the statutory phrase 'great weight,' and treat the youth offender factors as no more significant than the regulatory and other" traditional factors. (*Palmer*, pp. 17-18.) If the Board (or Governor) is not required to explain why a youth offender is not entitled to a finding of suitability for release, "the statutory directive will all too easily become meaningless." (*Palmer*, p. 23.)

B. "SUBSTANTIAL EVIDENCE" AS COMPARED TO "SOME EVIDENCE."

The "some evidence" standard of review does not equate to the more demanding "substantial evidence" standard of review. (*Shaputis* at p. 214.) A court reviewing a parole unsuitability determination by the Board, or by the Governor, "must consider the whole record in the light most favorable to the determination before it, to determine whether it discloses some

evidence - - a modicum of evidence - - supporting the determination that the inmate would pose a danger to the public if released on parole. (*Jackson v. Virginia* (1979) 443 U.S. 307, 318–320; *People v. Johnson* (1980) 26 Cal.3d 557, 578.) "The court is not empowered to reweigh the evidence." (*Shaputis*, at p. 221.)

Section 4801 requires that the Board "shall give great weight to the diminished culpability of juveniles as compared to adults, the hallmark features of youth, and subsequent growth and increased maturity of the prisoner in accordance with relevant case law." (Section 4801, subd. (c).)

The California Supreme Court acknowledged in *People v. Franklin* (2016) 63 Cal.4th 261, 277 (*Franklin*), that the Legislature passed Senate Bill No. 260 for the explicit purpose of bringing the parole process into conformity with the opinions of the United States Supreme Court in *Miller v. Alabama* (2012) 567 U.S. 460 (*Miller*) and *Graham v. Florida* (2010) 560 U.S. 48, and noted that under the Eighth Amendment prohibition against cruel and unusual punishment, "the 'imposition of a State's most severe penalties on juvenile offenders cannot proceed as though they were not children.'" (*Franklin*, at p. 273, quoting *Miller*, at p. 474.)

The youth offender statutes mean that such punishment cannot be imposed on a youthful offender without giving "great weight" to the factors that account for the diminished culpability of youth offenders, and point to the constitutional disproportionality of the punishment. "By enacting the youth offender statutes, which are not crime specific, the Legislature mandated" that "youth offenders sentenced to indeterminate life terms and eligible for parole, or to substantial determinate terms, must all be treated differently from other life prisoners. (*Palmer*, at p. 14.)

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; *Palmer*, at p. 16.) Applying *Martin* to reviewing the Board's or Governor's consideration of the youthful offender factors, "*Martin* directs that in order to give 'great weight' to the youth offender factors as required under section 4801, subdivision (c), the Board must accept those factors as indicating suitability for release on parole absent substantial evidence of countervailing considerations indicating unsuitability." (*Palmer,* p. 17.)

Merely stating youthful factors were given "great weight" fails to address the "meaning of the statutory phrase 'great weight,' and treat the youth offender factors as no more significant than the regulatory and other factors it conventionally relies upon to determine whether a life prisoner is suitable for release." (*Palmer*, p. 18.)

While the Board and Governor are the sole decisionmakers that consider and weigh relevant factors, giving "great weight" to the "youth factors comes from the Legislature. The Legislature 'is thus accorded the broadest discretion possible in enacting penal statutes and in specifying punishment for crime.'" (*Palmer*, p. 18, quoting *In re Lynch* (1972) 8 Cal.3d 410, 414.)

Palmer did not interpret the youth offender statutes to mean that any juvenile offender is suitable for parole simply based on his age when he

committed the life crime, it only means that life prisoners who committed their controlling offense as a youthful offender are less culpable than adult offenders, and "absent 'substantial evidence of countervailing considerations,' [citation] - - should therefore be punished less harshly than otherwise comparable adult offenders." (*Palmer*, p. 22.) A requirement of articulated reasons to support a given decision is essential to meaningful review; it guards against careless decisions. It requires the Board of Governor to analyze the problem and recognize the grounds for the decision. (*Palmer*, p. 23.) If the Board or Governor is not required to explain why a youth offender is not entitled to a finding of suitability for release despite the presence of the statutory youth offender factors to which it must give "great weight," the statutory requirement will become meaningless. (*Palmer*, 23.)

Therefore, giving "great weight" to a parole suitability factor requires there must be "*substantial evidence*, not merely *some evidence*, of countervailing considerations indicating the offender is unsuitable for release." (*Palmer* at p. 28, italics in original.)

C. APPLICATION OF PALMER TO MS. VAN HOUTEN.

In applying this to Ms. Van Houten, the Governor's 2018 parole reversal acknowledged that he was "required to give 'great weight' to the diminished culpability of juveniles as compared to adults, the hallmark features of youth, and any subsequent growth and increased maturity of the prisoner' when determining a youthful offender's suitability for parole." (Exhibit A, p. 2.) The Governor also conceded he was required to give "great weight to any information or evidence that, at the time of the commission of the crime, the prisoner had experienced intimate partner

battering." (Exhibit A, p. 2.) The Governor acknowledged Ms. Van Houten made "laudable strides in self-improvement in prison." (Exhibit A, p. 3.) Ms. "Van Houten has made admirable efforts at self-improvement while incarcerated and appears more willing today to accept responsibility for the part she played in these crimes." (Exhibit A, p. 4.) The Governor stated he "carefully examined the record for evidence demonstrating [Ms.] Van Houten's increased maturity and rehabilitation, and gave great weight to all the factors relevant to her diminished culpability as a juvenile" as well as having "been a victim of intimate partner battering at the hands of Manson." (Exhibit A, pp. 3, 4.) The Governor also stated he "considered and gave great weight to evidence in the record that Manson was clearly abusive to her and other [Cult] members at the time of the crime." (Exhibit A, p. 4.)

The Governor failed to give "great weight" to the Elderly Parole Program factors. (Exhibit A)

In *Palmer*, the Board referenced that it gave "great weight" to the inmates's youthful factors 10 times during the parole hearing, however, the Board "failed to address the meaning of the statutory phrase 'great weight,' and treat the youth offender factors as no more significant than the regulatory and other" traditional factors. (*Palmer*, pp. 17-18.) Merely stating youthful factors were given "great weight" failed to address the "meaning of the statutory phrase 'great weight,' and treat the youth offender factors as no more significant than the regulatory and other factors it conventionally relies upon to determine whether a life prisoner is suitable for release." (*Palmer*, p. 18.)

Similarly in the present case, the Governor stated he gave "great

weight" to the youthful offender factors and the intimate partner battering five different times in Ms. Van Houten's latest parole reversal. (Exhibit A, pp. 2-4.) Also similar to *Palmer*, the Governor "failed to address the meaning of the statutory phrase 'great weight,' and treat the youth offender factors as no more significant than the regulatory and other" traditional factors. (*Palmer*, pp. 17-18.)

In *Palmer*, the higher evidentiary standard required the Board to have to hold a new hearing despite the inmate having had a number of recent disciplinary write ups, and only a very recent claim of reform. The inmate in *Palmer* cannot begin to compare with Ms. Van Houten's rehabilitation record. However, the new standard did impact the outcome on a much less desirable record than Ms. Van Houten's record. The Governor conceded that Ms. Van Houten had "*never been disciplined for serious misconduct during her incarceration.*" (Exhibit A, p. 3, emphasis added.)

Because "great weight" was not defined at the time the Governor employed that term in Ms. Van Houten's case, it was impossible for him to use the "substantial evidence" standard when the "some evidence" standard had been used in all parole related matters. Without the correct evidentiary standard, and without an explanation why Ms. Van Houten was not entitled to a finding of suitability for release under the higher standard, the Governor's reversal became meaningless. (*Palmer*, p. 23.)

The hearing Panel who granted parole was educated in the science behind the adolescent brain development and its relationship to the diminished capacity of youthful offenders, and according to the law, gave great weight to that. The Panel specifically recognized youthful offenders

were vulnerable and susceptible to outside pressures, and peer pressures, "there was quite a talk about peer pressures" even before Ms. Van Houten was involved with the Manson cult. (C.T. p. 290.) Being a "very youthful offender" was not an excuse but it gave an understanding how Ms. Van Houten could be more susceptible and become involved with the cult, and the law required great weight be given to that. (C.T. pp. 291-294.) Ms. Van Houten's "great growth and maturity" demonstrated that her youthful characteristics were transitory. (C.T. pp. 295-296.) The panel found that Ms. Van Houten took responsibility for her crime and did not minimize that "in any way." (C.T. p. 298.) The commissioners considered Ms. Van Houten's age and recognized that after the age of 50, one is less likely to recidivate. (C.T. p. 298.)

The Governor claimed no such expertise, education, or training in adolescent brain development, and how that related to the youthful factors in Ms. Van Houten's case. This lack of knowledge further made giving "great weight" to the youthful offender factors, intimate partner battering, and elderly parole, meaningless without explaining why a youth offender is not entitled to a finding of suitability for release despite the presence of those factors to which the Governor must give "great weight." (*Palmer*, 23.)

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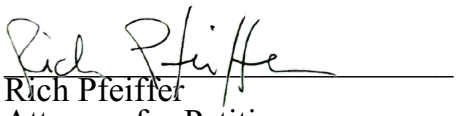
CONCLUSION

Palmer is necessary to employ the correct evidentiary standard and standard of review in Ms. Van Houten's petition for writ of habeas corpus presently pending before this Court. For all of these reasons, Ms. Van Houten respectfully requests this Court consider *Palmer* in this matter.

Dated: September 16, 2018

Respectfully submitted,



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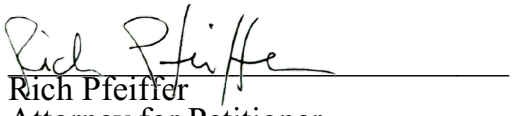
CERTIFICATION OF WORD COUNT

I certify that the foregoing brief complies with California Rules of Court, rule 8.360(b)(1) and contains 3,566 words, including footnotes, according to the word count feature of Corel WordPerfect 10, the computer program used to prepare the brief.

DATED: September 16, 2018



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In re Leslie Van Houten
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Case No. B291024

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, and my email address is highenergylaw@yahoo.com. I caused to be served the **PETITIONER'S SUPPLEMENTAL 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 September 16, 2018.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on September 16, 2018 at Silverado, California.

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