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November 5, 2018

Court of Appeal, Second Appellate Dist., Div, One
300 South Spring Street, Room 2217
Los Angeles, CA 90013

Re: *Leslie Van Houten on Habeas Corpus*
Case No. B291024; Sup. Ct. Case No. A253156
Informal Reply

TO THE HONORABLE PRESIDING JUSTICE FRANCES ROTHSCHILD, AND HONORABLE ASSOCIATE JUSTICES OF THE COURT OF APPEAL, SECOND APPELLATE DISTRICT, DIVISION ONE:

On October 4, 2018, this Honorable Court ordered opposition to be filed by Respondent and Petitioner respectfully submits this informal reply to that opposition ("informal opposition"). Petitioner Leslie Van Houten incorporates her writ petition and supplemental writ petition in this reply, and only responds to the issues raised in Respondent's informal opposition. To any extent any issue raised in the writ petitions is not restated herein, it is not to be construed as an abandonment or waiver of that issue.

INTRODUCTION

At the outset, Respondent argued that *In re Palmer* (2018) 5 Cal.App.5th __ [2018 WL 435791] (*Palmer*) should not be considered by this Court because it "is at odds with longstanding, well-established case law which describes the standard of review" in parole matters. (Informal Opposition, p. 3, fn. 2.) *Palmer* defined the term "great weight" in a parole context. That term had never been defined and therefore could not possibly be at odds with any prior definitions or opinions. Without a definition, not only can the Governor and Board of Parole Hearings (BPH or Board) not

competently apply the term, a reviewing court can also not determine if the Governor applied the correct standard. It should be noted that Respondent offers no suggestion of the definition of the term "great weight" and argues the lesser definition of "some evidence" be used despite the Legislature's direction to use the higher the standard of "great weight." (Informal Opposition, p. 3.)

The heart of Respondent's argument is that some evidence supports the Governor's finding that Petitioner failed to take responsibility for her crime and continued to shift blame onto Charles Manson. However, Respondent failed to state how it would even be possible for Ms. Van Houten to honestly and accurately describe Manson's control and manipulation of the entire cult, without pointing some blame at Manson. The superior court noted 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.)

Petitioner respectfully requests this Court take judicial notice of Exhibit E that was attached to the writ petition. Exhibit E was a California Supreme Court brief filed by the Office of the District Attorney on December 21, 2015, in case number S230851.[1] The district attorney argued that obtaining the Charles Tex Watson tapes to demonstrate that Manson controlled the cult was cumulative "in light of the undisputed facts . . . that Manson was in control of the 'family' who committed the murders at his behest." (Exhibit E, p. 9.) "There are numerous references to Charles Manson controlling the family and directing the killings but nothing about that is new and is decidedly cumulative to the record . . . . The People and

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[1] Evidence Code sections 452, subdivision (d) permits a reviewing court to take judicial notice of records of any court of this state. Section 452, subdivision (g) permits judicial review of "[f]acts and propositions that are of such common knowledge within the territorial jurisdiction of the court that they cannot reasonably be the subject of dispute." In this case, the People argued to the Supreme Court that Manson's control over those who committed the murders at his direction was indisputable. (Exhibit E, p. 9.)

the various defendants in the 'family' relied on it to a large extent and this theory formed the basis for the conviction of Manson himself." (*Ibid.*)

Today, the People want to change the "undisputed facts" to allege that Ms. Van Houten acted on her own free will, and any acknowledgment of Manson's control is not merely describing what had happened, but instead a minimizing and failure to take complete responsibility for her crimes making her a current unreasonable risk to public safety. (Informal Opposition, pp. 2-5.)

1. "SOME EVIDENCE" IS NOT AN APPROPRIATE STANDARD TO USE WHEN THE LEGISLATURE REQUIRES "GREAT WEIGHT" BE GIVEN TO PETITIONER.

In 2013, the Legislature passed SB 260, which required the Board and Governor to give "great weight" to youthful offenders in determining their eligibility for parole. (Penal Code section 3051, subdivision (b)(1). That term was not, and has not, been defined in a parole context until *Palmer*.

While *Palmer* dealt with giving "great weight" to the youth factors at a youthful offender parole consideration hearing, *Palmer* 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[2] section 4801, subdivision (b)(1)) and the Elderly Parole Program (Penal Code section 3055, subdivision (c). (*Palmer* at p. 18, fn. 6.) Ms. Van Houten qualified under all three categories.[3] Respondent relied on the Governor's claim he gave "great weight" to Petitioner's youth offender and intimate partner battering status but that term had never been defined,

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

[3] While Respondent argued the Governor gave "great weight" to Ms. Van Houten's "youth offender status and intimate partner battering by Manson," Respondent and the Governor both ignored the requirement to also give "great weight" to Ms. Van Houten's elderly parole status. (Informal Opposition, p. 5.)

making it impossible for the Governor to convey what he considered without an explanation. The Governor gave no explanation.

When the Legislature required "great weight" be given to the three categories listed above, there is no question that this term required a higher standard than just "some evidence." Because Respondent appears to be unhappy with the *Palmer* definition of "great weight," it chose to use the easier "some evidence" standard instead of proposing a different definition (without any legal authority). Respondent and the Governor completely ignored the Legislature's mandate for a higher standard or additional consideration.

Because no court had interpreted the phrase "great weight" in a parole suitability context, the Court of Appeal in *Palmer* looked to *People v. Martin* (1986) 42 Cal.3d 437 (*Martin*) for guidance. The Supreme Court in *Martin* held that a court must give "great weight" to the Board's determination that a particular sentence was disparate, and had to follow the Board's recommendation unless there was "substantial evidence of countervailing considerations of sufficient weight to overcome the recommendation." (*Martin*, at p. 447.)

Because the Governor did not describe what kind of "great weight" he gave Ms. Van Houten, and *Palmer* had not yet been decided, the only legal authority with guidance would have been *Martin.* Respondent also failed to address *Martin.* Therefore, there is no way to determine what additional considerations the Governor used, if any.

2. IN THE ALTERNATIVE, THERE WAS NOT "SOME EVIDENCE" TO SUPPORT THE GOVERNOR'S REVERSAL.

The Governor used Ms. Van Houten's answers to the parole commissioners' questions regarding the facts of the crime as failing to take responsibility for the crime. However, Ms. Van Houten testified: "I take responsibility for the entire crime." (Exhibit C, p. 172.) Ms. Van Houten also accepted responsibility for letting Charles Manson " 'do what he did to all of us. I allowed it.' " " 'I accept responsibility that I allowed [Manson] to conduct my life that way.' " (Exhibit A, p. 3; Exhibit C, pp. 172, 211-212.)

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. But instead of recognizing Ms. Van Houten's insight into what led to the crime, 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. (Exhibit A, p. 3.) Because Ms. Van Houten had to testify to that control (which the People told the Supreme Court were "undisputed facts . . . that Manson was in control of the 'family' who committed the murders at his behest," she was only testifying truthfully. (Exhibit E, p. 9.) Testifying truthfully is not "some evidence" of failing to take responsibility that would support a current unreasonable risk to public safety if placed on supervised parole.

3. THE REQUEST FOR THE "TEX" WATSON TAPES AT PETITIONER'S *FRANKLIN* HEARING WAS INTENDED TO PRESENT EVIDENCE OF HOW THE YOUTH OFFENDER FACTORS CONTRIBUTED TO THE UNDERLYING CRIME, AND REMAIN IMPORTANT IN ORDER TO GIVE "GREAT WEIGHT" TO THE YOUTH OFFENDER FACTORS.

Pursuant to *People v. Franklin* (2016) 63 Cal.4th 261 (*Franklin*), a youthful offender must be given a sufficient opportunity to make a record of information relevant to his youth offender parole hearing, where the Board of Parole Hearings (BPH or Board) must give great weight to the youth-related factors. (*Id.* at pp. 283-284.) *Franklin* applies retroactively. (*Id.* at pp. 278-279; Penal Code section 3051, subd. (a)(1).)

Petitioner previously argued that the audio tapes of Charles Tex Watson, that were made when Watson was arrested in Texas in 1969, were the most accurate description of the circumstances surrounding Petitioner's commitment offense. The tapes were protected by the attorney/client privilege, and were made prior to public disclosure of the facts of the case. Therefore the tapes were not influenced by any outside source. (Exhibit D, pp. 9-10.) The People had previously told the superior court and Supreme Court in case S230851,that disclosure of the tapes would jeopardize ongoing investigations, and Ms. Van Houten was only mentioned four times in the tapes. At the *Franklin* hearing, the superior court spoke to the detective who had the tapes and the detective admitted there were no current investigations regarding the contents of the tapes. The court requested the deputy district attorney flag those four locations where Ms.

Van Houten was mentioned in the transcripts. The superior court discovered there were eight references to "Leslie" in the first 85 pages" of the 326 page transcript. (Exhibit D, pp. 10-11; Exhibit E, p.9.)

Respondent argued that the tapes were cumulative and the superior court noted the tapes "contained nothing that was not already 'very well known.'" (Informal Opposition, pp. 5-6.) However, the *Franklin* hearing disclosed facts about threats, torture, and control not previously known. Manson would administer double doses of LSD by placing the drug directly on the cult members' tongues making sure he controlled the dose. (Exhibit D, p. 43.) Some cult members were not permitted to leave the ranch and were threatened with torture if they did try to leave. (Exhibit D, pp. 45-47.) Ms. Van Houten was not free to leave. (Exhibit C, pp. 222-223; Exhibit D, pp. 57-58.)

Despite Barbara Hoyt's statements in which the Governor relied upon in the 2016 reversal regarding cult members being free to come and go as they chose, Hoyt was impeached at the *Franklin* hearing. Nevertheless, Respondent again suggests that Ms. Van Houten was free to come and go as she pleased. (Informal Opposition, p. 5; Exhibit D., pp. 45-50, 57-58.)

Because the People keep changing their version of "the undisputed facts," and the most reliable evidence of the circumstances surrounding the murders, and the murders themselves, are the Tex Watson tapes, it remains important to know what really happened and great weight must be given to that evidence. (Exhibit E, p. 9.) Therefore, the continuing *Brady* violation in not disclosing the tapes continues to prejudice Ms. Van Houten and continues to prohibit the Governor the most accurate facts and evidence in which to base the "great weight" required to consider in the three categories that continue to apply to Ms. Van Houten.

The superior court acknowledged that the tapes disclosed in multiple locations how Charles Manson had a powerful influence over Tex Watson and other cult members, but this information was already well known and release of the tapes would add nothing new. (Informal Opposition, pp. 5-6.)

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CONCLUSION

The facts continue to change for the People.[4] This puts the facts into dispute. To add to that problem, the Board and Governor must give "great weight" to those facts that relate to youth offender parole, intimate partner battering, and elderly parole. "Great weight" is more than the low standard of "some evidence." But without *Palmer* and/or *Martin*, no definition exists regarding what that elevated standard is. Because the Governor failed to describe any elevated standard, he could not possibly have given "great wight" to the required factors. It remains impossible for any reviewing court to determine if the considerations given by the Governor satisfy the "great weight" requirement.

For these reasons, Petitioner respectfully requests this Court issue an order to show cause why Ms. Van Houten's petition for writ of habeas corpus should not be granted.

Respectfully submitted,

RICH PFEIFFER
Attorney for Petitioner
Leslie Van Houten

[4] Many of the facts in the informal opposition are argued out of context. In fact, Respondent's Exhibit 1 (Abstract of Judgment) attached to the opposition is the abstract of judgment in Ms. Van Houten's first trial that was reversed by the Supreme Court. It is not known if this exhibit was an inadvertent mistake or an additional attempt to spin facts out of context. Ms. Van Houten's second trial ended in a hung jury. Her third trial resulted in a conviction where the court seriously considered probation but then gave her the next lowest possible sentence of seven years to life when she already had eight years of credit, making her eligible for parole at the time of sentencing, more than 40 years ago. (See Exhibit F, pp. 131-132.)

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In re Leslie Van Houten
On Habeas Corpus

Case No. B

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 INFORMAL REPLY TO THE 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 November 5, 2018.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on November 5, 2018 at Silverado, California.

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