IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT, DIVISION ONE

In Re	)	**CASE No. B_____**
	)	
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

PETITION FOR WRIT OF HABEAS CORPUS;

MEMORANDUM OF POINTS & AUTHORITIES

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TO THE HONORABLE, JUSTICE FRANCES ROTHSCHILD AND HONORABLE ASSOCIATE JUSTICES OF THE COURT OF APPEAL:

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

INTRODUCTION:

In 1969, at the age of nineteen, Petitioner Leslie Van Houten participated in the murders of Leno and Rosemary LaBianca under the direction of Charles Manson. Manson was in charge of what became known as the Manson "Family" but as Commissioner Roberts appropriately pointed out, the term "family" is not appropriate and the word "cult" should be used. "I think we all think of something of family far different than that." (Exhibit C, pp. 279-280.) The Governor continues to specifically refer to the cult as " 'the Family.' " (Exhibit A, p. 1.)

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 more than 48 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 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." (Exhibit C, p. 139.) Ms. Van Houten stated: "I take responsibility for the entire crime." (Exhibit C, p. 172.) At the parole hearing, the commissioners found that Ms. Van Houten's testimony regarding her intent at the time of the crime, was to go into the LaBianca house "with full intent to kill those people. That was the plan. Um, and you accepted responsibility for that." (C.T. p. 287.) She not only accepted responsibility for her own actions, she 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.) The hearing Panel found that Ms. Van Houten expressed her sincere, heartfelt, and genuine remorse for the deaths of her victims. (C.T. p. 297.) Ms. Van Houten testified that: "the older I get, the harder it is to live with all of this," knowing what she did to her victims. (Exhibit C, p. 105.) "I feel absolutely horrible about [the crime], and I have spent most of my life trying to find ways to live with it." (Exhibit C, p. 157.)

On September 6, 2017, Ms. Van Houten attended a subsequent parole suitability hearing where she was found suitable for parole for the second time. On January 19, 2018, Governor Edmund G. Brown again reversed the grant of parole, finding that Ms. Van Houten was a youthful offender, and a victim of intimate partner battering by Manson. (Exhibit A, p. 2.) The Governor found that despite "strong evidence of rehabilitation and no other evidence of current dangerousness" the "aggravated nature of the crime can provide a valid basis for denying parole." (Exhibit A, p. 2.)

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 A, 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 A, p. 3.) This is a Catch-22[2], if Ms. Van Houten fails to recognize the true facts how Manson controlled the cult, she has no insight and remains a risk of danger because someone else might control her upon release. 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 Governor cannot have it both ways.

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[1] The panel found that Ms. Van Houten took responsibility for her crime and did not minimize that "in any way." (C.T. p. 298.)

[2] The phrase "catch-22" was coined in a novel of the same name by Joseph Heller. The novel followed the efforts of a World War II bombardier named Yossarian who tried to avoid participation in additional bombing missions. The "catch-22" was explained by a medical officer to Yossarian and indicated that military rules required an insane airman to be grounded if that insane airman asked to be grounded. "There was only one catch and that was Catch-22, which specified that a concern for one's own safety in the face of dangers that were real and immediate was the process of a rational mind. [The pilot] was crazy and could be grounded. All he had to do was ask; and as soon as he did, he would no longer be crazy and would have to fly more missions. [The pilot] would be crazy to fly more missions and sane if he didn't, but if he was sane he had to fly them. If he flew them he was crazy and didn't have to; but if he didn't want to he was sane and had to. Yossarian was moved very deeply by the absolute simplicity of this clause of Catch-22 and let out a respectful whistle." (See *People v. Broome* (1988) 201 Cal.App.3d 1479, 1489, fn. 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 (except for the superior court's decision in this 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 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.)

Additionally, the Governor's 2016 reversal of Ms. Van Houten's grant of parole was based in large part on the Governor relying on unsworn statements made by Manson cult member Barbara Hoyt. Hoyt stated that the Manson cult members were free to come and go as they pleased, inferring there was no pressure or control exerted by Manson. The Governor used that statement to claim that Ms. Van Houten's testimony, under oath, gave a false impression she was forced to remain with Manson with no way out. (Exhibit C, pp. 1, 4-5.) Hoyt's unsworn statements, that were not subject to cross examination, were impeached at Ms. Van Houten's 2017 *Franklin* hearing held pursuant to *People v. Franklin* (2016) 63 Cal.4th 261 (*Franklin*).) (Exhibit D, pp. 45-50.) Because the Governor was unable to continue to rely on Hoyt's statements, the Governor was forced to change his reason for the second reversal of parole, and he based it on the aggravation of the commitment offense. But the commitment

offense occurred 48 years ago and had not changed during the two Governor reversals, and was not a reason to deny parole in 2016. The Governor reversals appear to be a moving target. When Ms. Van Houten successfully addresses reasons for a reversal, the Governor comes up with new reasons that should have been asserted at the first reversal. This moving target strategy is unfair, it prevents Ms. Van Houten from being able to address all of the Governor's concerns in a timely manner, resulting in her continued incarceration.

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; Pen.C. § 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* (1980) 113 Cal.App.3d 280, and *In re Van Houten* (2004) 116 Cal.App.4th 339 ("*Van Houten*"), and the September 6, 2017 parole suitability hearing transcripts (Exhibit C).

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 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 F, p. 131.) Ms. Van Houten was sentenced to three,

seven-years-to-life terms for the three counts, and the court ordered "[a]ll three sentences to be served concurrently." (Exhibit F, 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, 40 years ago. (Exhibit F, 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 re-committed to prison.

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, the BPH found Ms. Van Houten suitable for parole. The Governor reversed that parole grant on July 22, 2016. (Exhibit B.) On September 6, 2017, Ms. Van Houten was again found suitable for parole and the Governor reversed parole a second time on January 19. 2018, the Governor reversed parole a second time. (Exhibit A.)

POST SEPTEMBER 6, 2017, HEARING PROCEDURAL HISTORY, CASE S238110

At the conclusion of the August 31, 2017, *Franklin* hearing, the superior court took under submission the discovery of the Tex Watson

Tapes. The court had just begun reading the transcripts on the day of the *Franklin* hearing, and reserved ruling on their release pending reading the entire transcripts. On September 12, 2017, the court issued a written decision denying release of the tapes because they contained nothing that was not already "very well known."

After a motion to reconsider the ruling denying access to the tapes, a petition was filed in this Appellate Court who stayed proceeding on the issue until the Governor completed his review. Ms. Van Houten then filed a petition for review in case number S238110 stating discovery at a *Franklin* hearing needs to be determined whether or not Ms. Van Houten is released on supervised parole. The petition for review was denied.

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 C, p. 47.) 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, and she began abusing marijuana. (Exhibit C, pp. 47-49.)

At age 15, while associating with single parent children, her brother and boyfriend introduced her into drug use. (Exhibit C, pp. 49-58.) At age 17, Ms. Van Houten and her boyfriend ran away to San Francisco and she became pregnant. (Exhibit C, p. 59.) 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 C, pp. 63-64.) Ms. Van Houten was brokenhearted and "kind of flat lined on the rest of high school." (Exhibit C, p. 64.)

Ms. Van Houten graduated from business college as a certified secretary. (*Van Houten* at p. 343.) 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 A, pp. 48-49.) The ranch was described as a commune that was run by a wonderful "Christlike" man. (Exhibit C, p. 80.) 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 seemed idyllic," it was welcoming but Manson was a strong personality. (*Van Houten* at p. 344; Exhibit C, pp. 80, 84-85.) In the beginning Manson showed his cult members a "whole lot of love. And in the end, it turned into fear and survival." (Exhibit D, p. 45.) However, 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 C, pp. 87-91.)

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, who was 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 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.) 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 do something." (Exhibit A, pp. 77, 80, 143.) 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

did Tex and Pat." (Exhibit A, p. 78.) Ms. Van Houten did not see Tex stab Mrs. LaBianca. (Exhibit A, p. 78.) At that moment, 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.)

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.) "The Family's willingness to follow Manson's directions is 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.) 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.) 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 E.)

At the *Franklin* hearing, it became clear that 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. Later in the desert, "it was very clear [the cult members] couldn't leave" Manson. (Exhibit C, pp. 222-223; Exhibit D, pp. 57-58.)

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, were impeached at the *Franklin* hearing. (Exhibit D., pp. 45-50, 57-58.)

Ms. Van Houten recalled Manson's agenda of slowly stripping the Family members of their identities and personalities to be indoctrinated into what he wanted. All cult members became "all of one mind." (Exhibit C, pp. 95, 107-108.) Cult members disappeared from the ranch after Manson used up their bank accounts, or took their pink slips to their cars. Cult members had to give Manson everything of value that they had. (Exhibit C, pp. 97-98.) If a cult member no longer served one of Manson's purposes, Manson no longer wanted them to remain at the ranch. (Exhibit C, pp. 224-225.) The women at the ranch were basically used for sex and fixing dinner. Ms. Van Houten's job was to keep Bobby Beausoleil happy because Manson wanted Bobby to remain at the reanch. Bobby, like Manson, was a good musician. (Exhibit C, pp. 100-102.) Ms. Van Houten also was to keep visitors who were "part of the music industry" welcomed at the ranch. (Exhibit C, p. 225.)

Prior to the crime, Ms. Van Houten had gotten too involved with bikers who were at the ranch and Manson ordered Tex Watson to "keep an eye on" her. Tex and Patricia Krenwinkle remained with Ms. Van Houten at all times 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 C, pp. 215-217, 222.) Manson convinced Ms. Van Houten that to leave him was to die. (Exhibit C, p. 223.)

Cult members believed Manson was Jesus Christ and if they died for him they would be one with him. Their bodies were just shells. Manson (Christ's) next crucifixion would go "differently" in that Manson (Christ) would not be as "forgiving" as he was at his first crucifixion. Ms. Van

Houten and the other cult members believed, and/or acted as if they believed, that Manson was Jesus Christ. (Exhibit C, pp. 109-110, 222-223, 225-226.) Nobody questioned Manson. In the beginning, he seemed to have all the answers. (Exhibit C, pp. 113-114.) Ms. Van Houten wanted to prove herself to Manson and the cult. (Exhibit C, p. 142.) 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 members the murders were "a lot of fun cause everything at the ranch was supposed to be fun." (Exhibit C, p. 154.) Mr. Van Houten was instructed to never talk about the murders again. (Exhibit C, p. 155.) After the murders, 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 D, p. 50.)

When Ms. Van Houten was recruited by Catherine Share, Ms. Van Houten was very lonely and was trying to get herself together after the illegal abortion. Ms. Share was older and Ms. Van Houten looked up to her as a substitute mother. Ms. Share was caring and embracing. (Exhibit C, p. 115.)

Shortly after arriving in prison, Ms. Van Houten began to emerge out of Manson's control and made a commitment to herself to recreate a life where she would not harm another person. (Exhibit C, p. 175.) That process took two or three years. When Catherine Share and Mary Brunner were sent to prison and placed with the other Manson women, and they were talking the Manson language. At that point, Ms. Van Houten realized she "wasn't in that place with them." (Exhibit C, pp. 176-177, 221.)

Catherine Share testified that at that time, Ms. Van Houten "was more withdrawn that I had ever seen her. She really didn't talk very much, never laughed, she looked extremely depressed, and looked very anorexic."[3] (Exhibit D, p. 51.) 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 C, pp. 221-222; Exhibit D, pp. 52-53.)

True to Ms. Van Houten's commitment to help others, the record indicated there were over 100 letters from people Ms. Van Houten knew and the "recurrent theme" was the change they witnessed in Ms. Van Houten's behavior over the years, "and how [she'd been] helping everybody." Letters also came from the prison staff. That record fit with Ms. Van Houten's testimony at the parole hearing. (Exhibit C, pp. 189-190.) 117 current inmates, who were an important part of Ms. Van Houten's life, signed a letter that described how Ms. Van Houten had been an important part of their ongoing rehabilitation. (Exhibit C, pp. 220-221.)

The BPH psychologist's report found Ms. Van Houten was a low risk for violence if paroled. The commissioners also looked at multiple reports dating back 11 years. (Exhibit C, p. 196.) The only negative factors were historical events that Ms. Van Houten could never change. (Exhibit C, pp. 197-198.) The clinician indicated Ms. Van Houten exhibited prosocial

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[3] This statement was stricken at the *Franklin* hearing 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.)

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 C, p. 198.) The clinician recognized Ms. Van Houten was "living a life of amending" by making efforts to make living amends for her crime. (Exhibit C, p. 201.) Ms. Van Houten's remorse was sincere, her experience of living in a dysfunctional family, the abandonment by her father, the trauma of the abortion led to addiction and dependence on others and Ms. Van Houten "evidenced an understanding" of what led to the cult and the crime. (Exhibit C, pp. 202-203.) The clinician looked at Ms. Van Houten's youthful offender status, her subsequent maturity and her elderly age mitigated any risk. (Exhibit C, pp. 203-204.) The conclusion was that Ms. Van Houten was a low risk for future violence, and the presiding commissioner stated: "[a]gain, this is not news." (Exhibit C, p. 205.)

Ms. Van Houten had been taking complete responsibility for the crime without minimizing any of it for more than 20 years ago. (Exhibit C, pp. 207-209.)

A factor regarding the youthful offender status was the failure to appreciate consequences. The Governor's 2016 reversal found that when growing up, Ms. Van Houten lacked real consequences. (Exhibit C, p. 217; Exhibit B, p. 4.) 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 against Ms. Van Houten or any of the cult members, including Manson who was on parole. 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 C, pp. 217-218; Exhibit D, pp. 41-43.) There simply were no consequences at the ranch unless one displeased Manson. (Exhibit C, pp. 217-220; Exhibit D, pp. 44-47.)

SEPTEMBER 6, 2017, 2017 PAROLE HEARING DECISION

The hearing lasted more than six hours and the commissioners unanimously found Ms. Van Houten was again suitable for parole. (C.T. p. 276.) The commissioners considered the "huge Central File," past and current psychological risk assessments, prior Board reports, youthful offender criteria and subsequent growth and maturity, statements submitted to the BPH from the "plethora" of people who knew Ms. Van Houten, Ms. Van Houten's testimony, the public's positive and negative comments, a letter from the Los Angeles Police Department opposing parole, Ms. Van Houten's confidential file that contained no negative information, the April 14, 2016 Parole Hearing Transcripts, the probation officer's report, progress reports, 2016 Governor's reversal, the intimate partner battering report by the BPH investigators, the Steinberg psychological report, the Hoyt interview transcripts, and appellate court opinion. (C.T. pp. 277-280, 282-284.) The commissioner wanted to address the reasons given for the first Governor reversal to "enlighten the Governor" regarding his "very difficult decision [he has] to make." (C.T. p. 283.) The commissioner appropriately pointed out that the Governor's difficulty in trying to rationalize the crime that can never be understood because "it's truly not understandable." (C.T. pp. 283-284.)

The presiding commissioner found Ms. Van Houten was "very open"

about her first three years of incarceration that helped document the changes in Ms. Van Houten's growth and maturity over the decades. (Exhibit C, pp. 280, 294.) At the parole hearing, Ms. Van Houten testified that at the time of the crime, she went into the LaBianca house "with full intent to kill those people. That was the plan. Um, and you accepted responsibility for that." (C.T. p. 287.)

The hearing Panel 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.) While Manson's teachings were not real, Ms. Van Houten "believed it to be." (C.T. p. 292.) 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.)

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POST SEPTEMBER 6, 2017, HEARING PROCEDURAL HISTORY, CASE S238110

At the conclusion August 31, 2017, *Franklin* hearing, the superior court took under submission the discovery of the Tex Watson Tapes. The court had just begun reading the transcripts on the day of the *Franklin* hearing, and reserved ruling on their release pending reading the entire transcripts. On September 12, 2017, the court issued a written decision denying release of the tapes because they contained nothing that was not already "very well known."

After a motion to reconsider the ruling denying access to the tapes, a petition was filed in this Appellate Court, who stayed proceeding on the issue until the Governor completed his review. Ms. Van Houten did not wait for the Governor's decision, and filed a petition for review in case number S238110, stating the scope of discovery at a *Franklin* hearing needs to be determined whether or not Ms. Van Houten is released on supervised parole. That petition for reviews was denied.

SUPERIOR COURT WRIT DECISION

On June 29, 2018, the superior court denied Ms. Van Houten's petition for writ of habeas corpus. (Exhibit G.) The court's statement of facts regarding the commitment offense described the Manson cult and all of the crimes committed on behalf of the cult, even crimes Ms. Van Houten was not aware of when they occurred. The court stated that "[i]f any crimes were considered heinous enough to support a denial of parole based on their circumstances alone years after occurrence, they must certainly be the crimes perpetrated by the Manson Family." "Indeed, if not Petitioner's

case, then it is hard to envision what sort of case would support parole denial on the facts of the offense alone." (Exhibit G, p. 11.) If the dicta in *Lawrence* at p. 1211, which states the commitment offenses alone would provide a valid basis to deny parole is valid, if this is not the case "then the Supreme Court's comment in *Lawrence* must be illusory." (Exhibit G, p. 15.) However, the court found that her commitment offense may someday not be enough to deny her parole. (Exhibit G, pp. 15-16.)

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, "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.)

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.)

The Governor cites to no evidence of a nexus between the commitment offense and a current unreasonable risk to public safety other than Ms. Van Houten recognized the power of cults, and in particular people like Manson who persuade others to act as he so orders. That understanding is not a risk. In fact, it enables Ms. Van Houten to remain on alert as to never being deceived in a similar manner again. This awareness is just another demonstration of the rehabilitation Ms. Van Houten continues to demonstrate over the decades. Instead, the Governor viewed understanding Manson's manipulation as blaming Manson, her abuser (while the Governor inconsistently found Ms. Van Houten suffered an intimate partner battering "at the hands of Manson"), for her criminal actions. (Exhibit A, p. 3.) No modicum of evidence suggests Ms. Van Houten's insight into other people exercising inappropriate control over individuals is a risk factor of any kind on any level.

Ms. Van Houten testified: "***I take responsibility for the entire crime***." (Exhibit C, p. 172, emphasis added.) At the parole hearing, the commissioners found that ***Ms. Van Houten's testimony regarding her intent at the time of the crime, was to go into the LaBianca house "with full intent to kill those people.*** That was the plan. . . . [and she] ***accepted responsibility for that.***" (C.T. p. 287, emphasis added.) But Ms. Van Houten not only accepted responsibility for her own actions, she 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.) The hearing Panel found that Ms. Van Houten expressed her sincere, heartfelt, and genuine remorse for the deaths of her victims. (C.T. p. 297.) Ms. Van Houten testified that: "the older I get, the harder it is to live with all of this," knowing what she had done to her victims. (Exhibit C, p. 105.) "I feel absolutely horrible about [the crime], and I have spent most of my life trying to find ways to live with it." (Exhibit C, p. 157.)

In no uncertain terms, this was not a minimization or blaming Manson for Ms. Van Houten's 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. All of the courts had recognized Manson had his part in the murders. Ms. Van Houten recognizes the same thing. The Governor needs to also recognize the facts in a correct context.

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. But by Ms. Van Houten recognizing Manson's control, the Governor, with no support when looking at the complete record, 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.) As stated in the Introduction, this is a Catch-22. If Ms. Van Houten fails 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 superior court recognized that the Governor stated Ms. Van Houten downplayed her role in the commitment offense by shifting blame to Manson. However, the court also recognized 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.) It appears that the superior court also recognized the impossible Catch-22 position Ms. Van Houten is in.

2. The De Novo Standard of Review is Appropriate.

In this case, because no evidence supports the Governor's conclusion that Ms. Van Houten blamed Manson for her crime and only described Manson's actions, the Governor found that despite "strong evidence of rehabilitation and no other evidence of current dangerousness" the "aggravated nature of the crime can provide a valid basis for denying parole." (Exhibit A, p. 2, Exhibit G. P. 14.) However, in *Lawrence*, the California Supreme Court 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.)

Therefore 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 facts in the record. The Governor's findings that a commitment offense is sufficient to deny parole was cited in dicta, but has never been a reason to deny parole in a published case since *Lawrence* was decided. (*Lawrence* at p. 1211.) 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 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 writ 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 more than 48 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 superior court applied the *Lawrence* dicta, stating that if that dicta in *Lawrence* at p. 1211, is a valid basis to deny parole is valid, if this is not the case "then the Supreme Court's comment in *Lawrence* must be illusory." (Exhibit G, p. 15.) However, the superior court also found that Ms. Van Houten's commitment offense may someday not be enough to deny her parole. (Exhibit G, pp. 15-16.) Because that commitment offense will never change, it is very unclear how someday it will not be the only reason to deny parole when it is a sufficient reason today.

The gravity of the commitment offense is a legitimate factor for the BPH to consider when determining parole 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 Presiding BPH commissioner 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. (Exhibit C, p. 285.) 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, 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 and shocking" and Ms. Van Houten demonstrated, that in 1969, she was capable of "extraordinary violence" because she "was both fully committed to the radical beliefs of he Manson [Cult] and "she actively contributed to a bloody horror that terrorized the nation." (Exhibit A, p. 4.) To justify the Governor's description of the crime, the Governor (and the superior court) were forced to include in their descriptions, the Tate murders where more than twice as many victims were killed. But Ms. Van Houten had not even known what occurred at the Tate residence until the next day. (Exhibit A, p. 1.) While Ms. Van Houten's crimes were terrible, as are all murders, the

Governor and superior court felt a need to embellish them. 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 48 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, section 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." (CCR section 2402, subd. (d).)

In applying those factors to Ms. Van Houten, the first factor supports the Governor's reversal. The crime was carried out "in an especially heinous, atrocious or cruel manner." 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 maintaining positive relationships[4] 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 had not engaged in a single serious episode of misconduct in jail or prison. The factors that show suitability support parole are: 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 (as was found by the Governor) (Exhibit A, p. 3.); lacked a history of any other violent crimes; is at an old age that greatly reduces recidivism (a factor the

[4] A history of unstable or tumultuous relationships could be argued to exist in Ms. Van Houten's high school years when her boyfriend left her after she became pregnant. But high school love affairs that often don't last, do not relate to any future risk.

Governor should have considered and failed to do[5]); 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 under Manson's control and use of drugs.[6] 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***

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[5] The Governor made no reference at all to Ms. Van Houten's age as a factor indicating suitability for parole. (CCR 2402, subd. (d)(7).) But as was noted in *Stoneroad, supra,* 215 Cal.App.4th at page 634, "the recidivism rate of lifers is dramatically lower than that of all other state prisoners, ***indeed infinitesimal***." (Weisberg et al., Stanford Criminal Justice Center, Life in Limbo: An Examination of Parole Release for Prisoners Serving Life Sentences With the Possibility of Parole in California (Sept. 2011) 1, 17, emphasis added.)

[6] 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.

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 California had ever been granted probation. (Exhibit F, 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 sentence that permitted an imminent parole, that 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 but no party appealed. It is too late to complain about her sentence today.

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 48 years of a 7 years to life sentence, only serves to negate its importance as a vital part of our criminal justice system.

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II.

THE GOVERNOR FORFEITED THE ISSUE OF DENYING PAROLE BASED ON THE GRAVITY OF THE COMMITMENT OFFENSE WHEN HE FAILED TO STATE THAT REASON IN HIS 2016 REVERSAL.

"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. The Governor reversed Ms. Van Houten's parole in 2016 and did not rely on the commitment offense. The Governor relied on Hoyt's unsworn statements that were impeached at Ms. Van Houten's 2017 *Franklin* hearing. Either the Governor conceded that the crime alone was not a valid reason to reverse parole in 2016, or he should have believed Ms. Van Houten would rely on his 2016 reversal and only address those reasons why her parole should not be reversed if she were granted parole again. Ms. Van Houten did in fact address each and every reason for the 2016 parole reversal. She could have attacked the commitment offense alone being a sufficient reason to deny parole had that been asserted. That issue was not asserted and Ms. Van Houten saw no reason to address it in light of *Lawrence.* Therefore, Ms. Van Houten was ignorant that the

Governor would come up with this new and different reason to reverse the grant of parole. Because Ms. Van Houten did not anticipate this new and different reason to reverse, she was prejudiced by not addressing an issue that was not asserted. That issue was addressed at her 2016 parole hearing and the Governor did not rely on it. Also addressed was Ms. Van Houten taking responsibility for permitting Manson to control her life. (Exhibit C, pp. 209-212.) Again, the Governor did not state Ms. Van Houten's testimony about Manson's control was blaming the crime on him and not taking full responsibility.

Fundamental fairness requires Ms. Van Houten be given an opportunity to address any facts or evidence that might cause her to be denied parole. The Governor's reasons for this reversal were present and actually litigated at the 2016 parole hearing. Because the Governor failed to assert those reasons in the 2016 reversal, he 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 40 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.

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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* hearing, and her 2017 parole hearing. A *Franklin* hearing permits the introduction of evidence, for both sides, subject to the rules of evidence. (*Franklin* at p. 284.) At the start of the 2017 parole hearing, Ms. Van Houten objected to the Watson Tapes not being disclosed despite counsel making a formal discovery motion for the tapes. (Exhibit C, p. 32.) There was also a motion to disqualify the entire Office of the District Attorney due to the unfairness of the office having that evidence, and the defense being left without it.

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* hearing 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 have been admitted at Ms. Van Houten's *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 have applied in this case.

There is no dispute that the first component of *Brady* (evidence favorable to the defendant) exists in this case. The superior 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 D, pp. 9-10.) 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. The 2018 reversal cited Ms. Van Houten's understanding Manson's control over the cult members as a reason to deny parole. For these reasons, Petitioner asserts that the trial court erred when it found the tapes were not material. 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.

"**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, emphasis added.)

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 her and so many others.[7]

Because all of the evidence indicates Ms. Van Houten is not a *current* 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 29, 2018

Respectfully submitted,

Rich Pfeiffer
Attorney for Petitioner
Leslie Van Houten

[7] The superior court specifically found "Manson" was not the reason Ms. Van Houten was denied parole and the decision was based on Ms. Van Houten's personal conduct and had nothing to do with the involvement of Manson. (Exhibit G, p. 16, fn. 6.) Ms. Van Houten's attorney respectfully disagrees.

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 a current 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 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 because 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

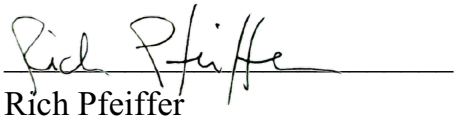
(6) Find the Office of the District Attorney of Los Angeles County committed prosecutorial error and/or misconduct, and order the release of the Tex Watson tapes, and the report related to the tapes, to Petitioner's counsel, or

(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 29, 2018

Respectfully submitted,



Rich Pfeiffer
Attorney for Petitioner
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 hearing conducted on April 14, 2016 and the *Franklin* hearing held on August 31, 2017. I litigated the pre-hearing efforts to attempt to obtain the Tex Watson tapes. I attempted to informally resolve errors by the District Attorney's Office prior to the September 6, 2017 parole suitability hearing. 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 29,

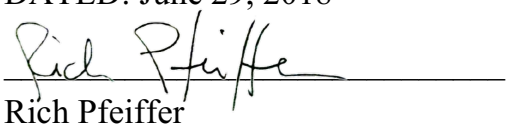
2018, at Silverado, California.

RICH PFEIFFER

CERTIFICATION OF WORD COUNT

I certify that the foregoing brief complies with California Rules of Court, rule 8.360(b)(1) and contains 12,012 words, including footnotes, according to the word count feature of Corel WordPerfect 10, the computer program used to prepare the brief.

DATED: June 29, 2018



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Attorney for Petitioner
Leslie Van Houten

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P.O. Box 721
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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 29, 2018.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on June 29, 2018 at Silverado, California.

RICH PFEIFFER

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