Supreme Court Number S263186

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

In re LESLIE VAN HOUTEN,	)
On Habeas Corpus.	)

Second Appellate District, Division One, Case No. B304258
Los Angeles County Superior Court, Case No. BH012512
Hon. William C. Ryan, Judge

REPLY TO ANSWER TO PETITION FOR REVIEW

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

Attorneys for Petitioner
Leslie Van Houten

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

CASES:

PENAL CODE:

UNITED STATES & CALIFORNIA CONSTITUTIONS:

CALIFORNIA RULES OF COURT:

Supreme Court Number S263186

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

In re LESLIE VAN HOUTEN,	)
On Habeas Corpus.	)

Second Appellate District, Division One, Case No. B304258
Los Angeles County Superior Court, Case No. BH012512
Hon. William C. Ryan, Judge

REPLY TO ANSWER TO PETITION FOR REVIEW

INTRODUCTION

Petitioner, Leslie Van Houten, respectfully replies to Respondent's answer pursuant to this Honorable Court's July 9, 2020 order.

At the outset, after reading the answer, it appears clarification is warranted. Respondent repeatedly stated that Petitioner required the Governor to consider the Charles "Tex" Watson tapes ("tapes"), that are the most accurate description of the commitment offense. To be clear, *because the Governor relied on the gravity of the crime alone* as a sufficient reason to reverse the grant of parole[1], for that reason, the Governor should have

---

[1] In *In re Lawrence* (2008) 44 Cal.App.4th 1181 (*Lawrence*), this Court recognized that "the underlying circumstances of the commitment offense alone rarely will provide a valid basis for denying parole when there is strong evidence of rehabilitation and no other evidence of current dangerousness." (*Id.*, at p. 1211.) The Governor used that sentence and found that Ms. Van Houten was that rare case. (Exhibit A, p. 2.) No published case since *Lawrence* has held that the commitment offense was

used the most accurate description of the commitment offense, which is likely the transcripts of the tapes. Respondent also argued "there is no evidence that these tapes present the 'most accurate description of the commitment offense.'" (Answer, p. 17.) It has to be recognized that the tapes were made when Tex Watson learned he had a warrant while he was in Texas. He retained an attorney and made the tapes for his attorney. The tapes were made in 1969, prior to any public disclosure of the facts of Manson's crimes. Therefore, the tapes were not influenced by any outside source. When the tapes were made, they were protected by the attorney-client privilege. Tex Watson had no incentive to not disclose the accurate facts of the crimes and the environment surrounding the crimes. If that were not enough, 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. (Exhibit F) The People argued that the tapes were cumulative because the People's theory of the case was that Manson had complete control over those who committed the murders at his behest. (Exhibit F, pp. 8-9, 11, 13.) In making this argument, the People conceded the content of the tapes was accurate.

Petitioner concedes the tapes are not a part of the parole record because the superior court, after reading the transcripts of the tapes, failed to include the transcripts as part of the evidence at the *Franklin*[2] proceeding

---

a sufficient reason to deny parole to a rehabilitated inmate.

[2] In *People v. Franklin* (2016) 63 Cal.4th 261, this Court authorized a *Franklin* proceeding to provide an opportunity for the parties to make an accurate record of the youthful offender's characteristics and circumstances at the time of the offense to enable the Board to give great weight to youth-related factors. (*Id.*, at p. 284; *In re Cook* (2019) 7 Cal.5th 439, 449.)

held on August 31, 2017. The transcripts of the *Franklin* proceeding were attached to the appellate court writ petition as exhibit E. The fact that the tapes are not a part of the parole hearing record is in no part due to a lack of effort to include them by Petitioner's attorneys, who repeated efforts throughout the last six years to release the tape transcripts.

At a *Franklin* proceeding, submissions and "testimony pursuant to procedures set forth in section 1204 and rule 4.437 of the California Rules of Court, and subject to the rules of evidence. [The defendant] 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.) Because the tapes describe the crimes and environment surrounding the crimes, they should have been admitted as part of the parole hearing record to support the youthful offender characteristics.

What Respondent completely failed to address is the lack of fundamental fairness. The Office of the District Attorney, the Office of the Attorney General, the superior court, and the appellate court all have transcripts of the tapes. This Court has access to the transcripts by obtaining the appellate court record where the sealed transcripts were ordered. The only one that doesn't have the tape transcripts is Ms. Van Houten's attorneys. The People have cited to, and relied on, pages contained in the transcripts.

///

///

///

ARGUMENT

I.
PETITIONER ESTABLISHED A PRIMA FACIE CASE FOR RELIEF AND THERE IS NOT A MODICUM OF EVIDENCE TO SUPPORT THE NOTION THAT MS. VAN HOUTEN POSES AN UNREASONABLE RISK TO PUBLIC SAFETY IF PLACED ON SUPERVISED PAROLE.

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 CDCR. Ms. "Van Houten returned to prison with a good attitude, which she has maintained since, as demonstrated by consistently good reports and evaluations concerning her participation and leadership in self-help, service, education, counseling, religious programs, and her work assignments." (*People v. Van Houten* (1980) 113 Cal.App.3d 280, 347.)

A. THE NEW YOUTHFUL OFFENDER REGULATIONS WILL NOT LIKELY ACHIEVE A DIFFERENT OUTCOME WITH A NEW GOVERNOR REVIEW.

As Respondent pointed out, Ms. Van Houten was again found suitable for parole by the Board of Parole Hearings (BPH or Board) on July 23, 2020. The Governor will have another opportunity to review that grant in the near future.[3] (Answer, pp. 7, 21-22.) The latest grant of parole cannot

[3] On July 14, 2020, the Executive Officer of the BPH announced that as a result of COVID-19, and CDCR's on-going efforts to promote the health and safety of CDCR staff and inmates, the Board and Governor's Office are expediting review of parole grants. Under Penal Code section 3041(b)(2), decisions made by parole panels finding an inmate suitable for parole are

be consolidated with the previous Governor reversals because the content of the hearing addressed the reasons for previous Governor reversals, and the BPH hearing panel made a different record in order to address the Governors' prior reasons for reversal.

While there are new regulations pertaining to youth offender parole hearings, when looking at the transcripts of Ms. Van Houten's parole suitability hearing, the BPH appears to have considered and made a record of the appropriate factors. The Governor has already had an opportunity to read those transcripts and has reversed the grant of parole. In reading the new regulations, it is not realistic the Governor would change his position after reading the parole hearing transcripts.

B. MS. VAN HOUTEN DID NOT FAIL TO TAKE COMPLETE RESPONSIBILITY FOR HER CONDUCT IN HER COMMITMENT OFFENSE.

Ms. Van Houten testified that she took responsibility for her actions and did not blame Manson by stating:

> There is nothing in that night of murder that I don't take responsibility for or all that came before. I went to the ranch. I became a participant in the group at the ranch. I wanted to be a part of the revolution and the murders that were going to spark it. There's no part of me that says it was his [Manson's] fault that I did all that. I willingly sat and listened. I let myself let go of who I had been . . . . I don't minimize. I feel like if I minimized, I would find easy ways to live with the guilt of what happened because I'm passing the buck onto

---

final within 120 days. The Board's legal department is regularly screening the list of inmates granted parole to prioritize review of grants for inmates who face the greatest risk due to COVID-19. Review of inmates granted parole while housed at institutions with COVID-19 outbreaks, is being completed even faster. Ms. Van Houten's prison currently has positive COVID 19 inmates. Therefore, the Governor's review of the recent parole grant may happen faster than the normal five months.

somebody else so my conscience doesn't have to deal with it. But that's not who I am and it's not what I do with my life. (Exhibit D, pp. 86-87.)

She went on to testify, "So I suppose it's always there to say I'm blaming [Manson]." She explained that "[h]e was convicted for controlling us and we were convicted for doing what we did in the houses. I don't - - I don't let myself off from personal responsibility."

While Ms. Van Houten told the commissioners she didn't know how else to answer the question regarding her taking responsibility, the presiding commissioner stated: "All right. I think you've answered it." He added: "I did want to put on the record that, you know, it doesn't show over the, uh, microphones, but I do want to note the expression of remorse I saw on your face when you talked about the abortion and when you talked about the murders and the realization of - - of how awful, how horrific it was ." (Exhibit D, pp. 87-88.)

When the Governor found Ms. Van Houten continued to minimize her participation in the commitment offense, the Governor did not have the benefit of witnessing her testimony. The impact of personally being present during that testimony was preserved by the presiding commissioner but ignored by the Governor.

The presiding commissioner found that Ms. Van Houten's personal growth over the past nearly five decades caused her to tirelessly engage in positive behavior as a way to make amends for her actions. Her behavior in prison "is probably one of the most exemplary I've ever seen." The hearing Panel found that, although Ms. Van Houten was directly involved in the murders, her conduct did not match the extent of the others in Manson's group. (Exhibit D, p. 156.) "You've shown signs of remorse, accepted

responsibility for your criminal actions as evidenced by your - - by your life - - you basically turned your life around. Very shortly after the life crime, you turned your life around. Your behavior, uh, lines up with your testimony today." (Exhibit D, p. 158.)

Because Ms. Van Houten, in no uncertain terms, did not minimize her participation in her commitment offense, and no evidence supports the notion she did minimize her participation, the cases cited by Respondent simply do not apply to Ms. Van Houten. (Answer, pp. 9-10, fn. 2.)

C. THE GRAVITY OF MS. VAN HOUTEN'S COMMITMENT OFFENSE ALONE IS NOT A SUFFICIENT REASON TO DENY MS. VAN HOUTEN PAROLE.

As noted earlier, in *In re Lawrence, supra,* 44 Cal.App.4th at p. 1112, this Court stated in dicta that "the underlying circumstances of the commitment offense alone rarely will provide a valid basis for denying parole when there is strong evidence of rehabilitation and no other evidence of current dangerousness." (*Id.*, at p. 1211.) The Governor found that Ms. Van Houten was that rare case. (Exhibit A, p. 2.) Despite the reviewing courts being required to be "exceedingly deferential" to the Board's or Governor's findings, that standard does not convert a court reviewing the denial of parole into a potted plant. (*Lawrence*, at pp.1211-1212.)

In *Lawrence*, this Court followed the "rare case dicta" with a clear and plain finding that "when a court reviews a decision of the Board or the Governor, *the relevant inquiry* is whether some evidence supports the decision of the Board or the Governor that the inmate constitutes a *current threat to public safety*, and not merely whether some evidence confirms the existence of certain factual findings." (*Lawrence*, at pp. 1212-1213.)

The Governor described Ms. Van Houten's commitment offense as Manson's plan to take control of the world and described the Tate murders

to bolster that position. But Ms. Van Houten had nothing whatsoever to do with the Tate murders, and didn't even know about them until the day after those murders. (Exhibit A, pp. 1, 3.)

While the Manson's crimes may be the rare case where the commitment offense alone is sufficient to deny parole to a rehabilitated inmate, the crimes Ms. Van Houten participated in, especially when considering the youthful offender laws, is not on that level. If the Governor believed Ms. Van Houten's commitment offense was sufficient to forever deny her parole, he would have no need to attribute Manson's crimes to Ms. Van Houten in order to justify his reversal.

In Ms. Van Houten's case, 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." (*People v. Van Houten, supra,* 113 Cal.App.3d 280, 347.) During her third 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.[4] The sentence imposed was 7 years-to-life with the possibility of parole, with a ***minimum eligible parole date of August 17, 1978***. Ms. Van Houten's conviction was based on the felony murder rule where the homicides Ms. Van Houten assisted in committing occurred

---

[4] Today, with changes in the youthful offender laws, those laws would have provided additional mitigation.

during the commission of a robbery. The prosecutor's previous two attempts to convict Ms. Van Houten of premeditated murder at trial had failed.

After seeing the evidence, and hearing and seeing the witnesses testify, the sentencing court gave "serious attention" to sentencing Ms. Van Houten to probation. However, after acknowledging that nobody ever convicted of first degree murder in California had ever been granted probation, the sentencing court sentenced Ms. Van Houten to three, seven-years-to-life terms for the three counts, and the court ordered "[a]ll three sentences to be served concurrently." (Exhibit G, pp. 131-132.) If the commitment offense was sufficient to deny Ms. Van Houten parole forever, then the sentencing court certainly would have ordered the three counts to be served consecutively instead of concurrently. 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, 42 years ago. (Exhibit G, p. 132.) No party appealed that sentence and it is too late to complain about it today.

The sentencing court and BPH, after seeing and hearing Ms. Van Houten testify, did not believe her crime was the rare crime that would keep her in prison until she died despite being completely rehabilitated.

D. THE FACT THAT MANSON RAPED AND SODOMIZED MS. VAN HOUTEN IS NOT A SUFFICIENT REASON TO DENY HER PAROLE.

Respondent argued that it was an *aggravating* factor when the Governor found Ms. Van Houten downplayed Manson's violent and controlling actions when she described how Manson drugged and sexually assaulted her. (Answer, p. 14.) But, Respondent also argued that the Governor gave great weight to the *mitigating* factor that Ms. Van Houten

was a victim of intimate partner battering. (Answer, p. 15.) Which is it, aggravating or mitigating?

The Governor found that Ms. Van Houten was not capable of acting differently in the future because when Manson drugged and sodomized her, she accepted some responsibility for being a rape victim because she went at the ranch willingly. The Governor interpreted this as "not fully examined her ongoing susceptibility to negative influences and manipulation" which makes it uncertain if Ms. Van Houten is capable of acting differently in the future. (Exhibit A, p. 4.)

Every date rape victim had some part, however small, in being involved with their attacker. That did not mean they any less a victim or not capable of acting differently in the future. Additionally, for 50 years, Ms. Van Houten has been repeatedly criticized by the People (including and not limited to the answer in this case), for not taking enough responsibility for her actions. That continued and ongoing claimed justification resulted in Ms. Van Houten taking complete responsibility for everything she possibly could, including willingly going to the ranch where Manson drugged and raped her. Ms. Van Houten's recognition that she went willingly to the ranch demonstrated insight into not letting something like that happen again in the future. This is mitigating, not aggravating.

The superior court faulted Governor Newsom's reference to the rape as "problematic." (Exhibit I, p. 22, fn. 9.) Ms. Van Houten's statement supports her suitability because it demonstrated that she had confronted even the most painful aspects of her association with Manson. There is nothing in the record supporting Governor's Newsom's conclusion that the incident demonstrated that Ms. Van Houten is incapable of acting differently in the future. Indeed, the opposite is true. (Exhibit A, p. 4.)

E. THE GOVERNOR HAS AN ACTUAL CONFLICT OF INTEREST IN REVIEWING MS. VAN HOUTEN'S PAROLE SUITABILITY.

While Ms. Van Houten concedes that the California Constitution, Article V, section 8, subdivision (b), and Penal Code section 3041.2, subdivision (b) authorize the Governor to review and reverse a grant of parole, the notoriety of the case (as described *throughout* Respondent's answer) because it involved Charles Manson, created a conflict of interest in the Governor permitting Ms. Van Houten to be paroled on his watch while it is very likely he would run for public office in the future and that decision could cost him a lot of votes. The Governor and Respondent argued that "Ms. Van Houten and the Manson Family committed some of the most notorious and brutal killings in California's history. The gruesome crimes perpetrated by Ms. Van Houten and other Manson Family members in an attempt to incite social chaos continue to inspire fear to this day." (Exhibit A, p. 3; Answer, p. 10.) "[T]he crimes were 'heinous, cruel, and inexplicably disturbing and dispassionate.' Almost 50 years later, the magnitude of these crimes and their impact on society endure." (Exhibit A, p. 3.)

The standard for disqualification of a judicial decision maker is only that "a reasonable member of the public at large, aware of all the facts, would fairly entertain doubts concerning the judge's impartiality, disqualification is mandated. The existence of actual bias is not required." (*Flier v. Superior Court* (1994) 23 Cal.App.4th 165, 169.) In this case, the public at large is very aware of the Governor's authority and ability to reverse Ms. Van Houten's grant of parole. The public is also aware that in failing to reverse Ms. Van Houten's grant of

parole, that it would likely cost a lot of votes in any future election. It does not matter that the Governor may not be actually biased against Ms. Van Houten.

II.
THE APPROPRIATE REMEDY.

The Governor may only affirm, modify or reverse the Board's decision on the basis of the same factors which the BPH was required to consider. (*In re Smith* (2003) 109 Cal.App.4th 489, 507.) Therefore, when there is no evidence to support a decision other than the one reached by the Board, a remand to the Governor would amount to an idle act. (*Ibid*.)

In this case, remanding the matter to the Governor would be an idle act because the Governor has already reviewed the materials provided by the Board, and erroneously concluded there was some evidence to support a reversal of the Board's decision. (*In re Masoner* (2009) 179 Cal.App.4th 1531, 1538.) A remand to the Governor would "entitle the Governor to repeatedly 'reconsider' the release of the prisoner no matter how many times the courts found that there was no evidence that the prisoner was currently dangerous. Such a rule would violate principles of due process and eviscerate judicial scrutiny of the Governor's parole review decisions." (*Id*. at p. 1540.)

For these reasons, Ms. Van Houten's position for remanding the matter to the Governor to again review the 2019 grant of parole, is an idle act, is futile, and is a waste of time and resources.

Additionally, as Respondent pointed out, Ms. Van Houten was again found suitable for parole by the Board of Parole Hearings (BPH or Board) on July 23, 2020. The Governor will have another opportunity to review

that grant in the near future.[5] (Answer, pp. 7, 21-22.) The latest grant of parole cannot be consolidated with the previous Governor reversals because the content of the most recent parole suitability hearing addressed the reasons for previous governor reversals, and the BPH hearing panel made a different record in order to address the Governor's prior reasons for reversal. Therefore, it would be inappropriate to consolidate the third and fourth reversals of Ms. Van Houten's grants of parole at the appellate court. Each of these is a different and separate case.

Therefore, remand to order the appellate court issue an order to show cause why relief should not be granted is appropriate. That order should order the court to reinstate Ms. Van Houten's parole.

Finally, pursuant to the case *In re Palmer II* (2019) 33 Cal.App.5th 1199, currently pending review before this Court in case where the issues address a life prisoner's continued confinement becoming constitutionally disproportionate under article I, section 17 of the California Constitution and/or the Eighth Amendment of the United States Constitution and if so, determine the proper remedy. In that case, the appellate court determined defendant's "serial denial of parole . . . resulted in punishment so

---

[5] On July 14, 2020, the Executive Officer of the BPH announced that as a result of COVID-19, and CDCR's on-going efforts to promote the health and safety of CDCR staff and inmates, the Board and Governor's Office are expediting review of parole grants. Under Penal Code section 3041(b)(2), decisions made by parole panels finding an inmate suitable for parole are final within 120 days. The Board's legal department is regularly screening the list of inmates granted parole to prioritize review of grants for inmates who face the greatest risk due to COVID-19. Review of inmates granted parole while housed at institutions with COVID-19 outbreaks, is being completed even faster. Ms. Van Houten's prison currently has positive COVID 19 inmates. Therefore, the Governor's review of the recent parole grant may happen faster than the normal five months.

disproportionate to his individual culpability for the offense he committed, that it must be deemed constitutionally excessive."
the appropriate remedy was to release Mr. Palmer from all forms of custody, including parole supervision. (*Id.*, at pp. 1210-1214, 1224.)

Because Ms. Van Houten constitutionally disproportionate incarceration also resulted in her "serial denial of parole," she should be ordered released from all forms of custody including parole.

CONCLUSION

While at the ranch, Ms. Van Houten was arrested and released four times without being charged with a crime. Law enforcement had a confidential informant at the ranch a month before the murders. A few days after the murders, they served a search warrant and found stolen cars, multiple weapons that included a machine gun, and no charges were ever filed. While Manson was on parole, his parole was not violated. None of the Manson cult members were charged with any of the routine crimes they committed while at the ranch. (Exhibit D, pp. 108-112.) There were no consequences at the ranch unless one displeased Manson. (Exhibit E, pp. 44-47.) Youthful offender characteristics include not appreciating consequences.

It makes no sense whatsoever that law enforcement encouraged Manson to run a criminal enterprise, and now attempts to keep Ms. Van Houten in prison until she dies for acts she committed when she was only 19-years-old.

The most ironic part of this case is that while the People continue to exercise their attempt to cover up what they had done 50 years ago in permitting these very preventable murders to happen, Ms. Van Houten continues to take complete and full responsibility for everything she did.

Law enforcement could learn how to better deal with the decisions it made so long ago by simply taking responsibility by following the example set by Ms. Van Houten, who continues to take responsibility for all of her past deeds, no matter how embarrassing some of those choices were.

Dated: July 31, 2020

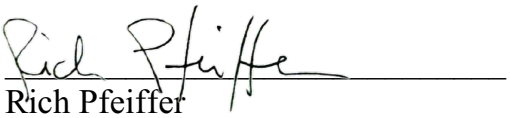
Respectfully submitted,

RICH PFEIFFER
NANCY TETREAULT
Attorneys for Petitioner
Leslie Van Houten

CERTIFICATION OF WORD COUNT

I certify that the foregoing brief complies with California Rules of Court, rule 8.360(b)(1) and contains 4,825 words, including footnotes, according to the word count feature of Corel WordPerfect 10, the computer program used to prepare the brief.

DATED: July 31, 2020



Rich Pfeiffer
Nancy Tetreault
Attorney for Petitioner
Leslie Van Houten

///

///

///

Rich Pfeiffer
Attorney at Law
State Bar No. 189416
P.O. Box 721
Silverado, CA 92676
email: highenergylaw@yahoo.com
Attorney for Petitioner
Leslie Van Houten

In re Leslie Van Houten
On Habeas Corpus

Case No. S263186

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 REPLY TO ANSWER TO PETITION FOR REVIEW** by placing copies thereof in a separate envelope addressed to each addressee in the attached service list or by email as indicated.

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 July 31, 2020.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on July 31, 2020, at Silverado, California.

RICH PFEIFFER

SERVICE LIST:

Hon. William C. Ryan, Judge
Los Angeles County Superior Court
Clara Shortridge Foltz Criminal Justice Center
Department 56W
210 W. Temple Street
Los Angeles, CA 90012

Deputy Attorney General Jennifer Cano
Jennifer.Cano@doj.ca.gov

Los Angeles District Attorney, Appeals Division
320 W. Temple St., Ste. 540
Los Angeles, CA 90012
Truefiling@da.lacounty.gov

Deputy District Attorney Donna Lebowitz
dlebowitz@da.lacounty.gov

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