Supreme Court Number _____

IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

In Re	)	Court of Appeal Case No. B291024
	)	
LESLIE VAN HOUTEN,	)	
	)	Related Cases: S230851; S45992;
Petitioner,	)	S238110; S221618
	)	Superior Court Case Nos. BH011585
on Habeas Corpus.	)	A253156
_____	)	

APPEAL FROM THE SUPERIOR COURT OF LOS ANGELES COUNTY
Honorable William C. Ryan, Judge Presiding

PETITION FOR REVIEW
AFTER A DECISION BY THE COURT OF APPEAL
SECOND APPELLATE DISTRICT, DIVISION ONE

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES:

PENAL CODE:

///

UNITED STATES CONSTITUTION:

CALIFORNIA CONSTITUTION:

CALIFORNIA RULES OF COURT:

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After a decision by the Court of Appeal,
Second Appellate District, Division One

PETITION FOR REVIEW

TO THE HONORABLE TANI CANTIL-SAKAUYE, CHIEF JUSTICE, AND TO THE HONORABLE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE STATE OF CALIFORNIA:

Defendant and petitioner, Leslie Van Houten, respectfully petitions this Honorable Court for review in the above-entitled matter following the filing of an unpublished opinion by the Court of Appeal of the State of California, Second Appellate District, Division One, on September 20, 2019. The Court of Appeal affirmed appellant's conviction in full, with a dissent by Justice Chaney. (Exh. A.)

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I.
ISSUES PRESENTED FOR REVIEW

1. Review is required to settle the issue of whether the Governor's reversal of parole in a murder case is supported by a modicum of evidence with a rational nexus to the question of the inmate's current dangerousness, where the Governor cites isolated facts out of context and does not analyze those facts within the context of the inmate's current circumstances.

2. Review is required to settle the issue of whether the Governor's reversal of parole in a murder case violates due process, where he fails to place "great weight" on the youthful offender factors by merely reciting those factors but not analyzing them within the context of the entire record.

3. Review is required to determine if the Governor violates due process by relying on the gravity of the commitment offense as the sole basis for reversing a grant of parole in a murder case without connecting independent facts of the commitment offense to the central issue of the defendant's current risk of danger in light of the full record.

II.
STATEMENT OF THE CASE

In 1971, Ms. Van Houten was convicted of two counts of murder of Rosemary and Leno LaBianca, and one count of conspiracy to commit murder, together with codefendants Charles Manson, and Patricia Krenwinkel. Charles "Tex" Watson, also a participant in Ms. Van Houten's crimes, was convicted in a later trial. Manson, Krenwinkel, and Susan Atkins were convicted for the Tate murders, and the Tate and LaBianca murders were tried together. The jury sentenced all defendants to death. While the automatic appeals were pending in this Court, the Court invalidated the death penalty in 1972. The appeals were transferred to the Court of Appeal. Division One of the Second Appellate District reversed Ms. Van Houten's conviction and affirmed the judgments of the other defendants. (*People v. Van Houten* (1981) 113 Cal.App.3d 280, 283.) She was retried by a jury on the same charges and the jury deadlocked. (*Id.,* at pp. 282-283.) In her third trial, Ms. Houten was convicted by a jury of two counts of first degree murder and one count of conspiracy to commit first degree murder. The trial court imposed concurrent life sentences on each count, which carried a minimum service term of seven years. Against this sentence, the court granted Ms. Van Houten presentence custody credits of eight-years and twenty-days. The judgment was affirmed on appeal. (*Id.,* at p. 293.)

Ms. Van Houten appeared before the Board of Parole Hearings (BPH) 20 times before she was found suitable for parole in 2016 at her twenty-first parole hearing. (*In re Van Houten* (2019) typed opn., at p. 6.) Governor Brown reversed the grant of parole. (Petition for Writ of Habeas Corpus [hereinafter "Petition"], Exh. 2.)

The BPH again found Ms. Van Houten suitable for parole in 2017 at her twenty-second parole hearing. The Governor reversed the second grant of parole. (Petition, Exh. A.) Ms. Van Houten filed a petition for writ of habeas corpus challenging Governor Brown's second parole reversal. The Court of Appeal affirmed the Governor's reversal on September 20, 2019. Justice Chaney dissented, finding instead that Ms. Van Houten is suitable

for parole and concluding that the writ should have been granted. The second reversal is the subject of this petition for review.[1] (Exh. A.)

III.
STATEMENT OF FACTS

For the purposes of this Petition for Review, Ms. Van Houten adopts the facts as stated in the opinion of the Court of Appeal. (Exh. A; Typed Opn., at pp. 3-6.) Additional facts relevant to the issues presented herein are incorporated into the arguments.

IV.
PETITION FOR REHEARING

Ms. Van Houten file a petition for rehearing on September 27, 2019. The petition for rehearing requested that the court vacate its decision and adopt Justice Chaney's dissent as the majority opinion of the court. The Court of Appeal, First Appellate District, denied the petition for rehearing on September 30, 2019.

V.
COMBINED NECESSITY FOR REVIEW AND SUPPORTING LEGAL BASIS

Petitioner respectfully requests that review of the issues presented in this petition be granted under California Rules of Court, rule 8.500(b),

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[1] On January 30, 2019, while this proceeding was pending, the BPH again granted Ms. Van Houten parole at her twenty-third parole hearing. Governor Gavin Newsom reversed the grant of parole on June 3, 2019. (Exh. A [*In re Van Houten* (Sept. 20, 2019), B291024, typed opn., at fn. 1].) Ms. Van Houten filed a petition for writ of habeas corpus in the Los Angeles Superior Court challenging the third parole reversal. The case is pending in the Superior Court.

based on the necessity to settle these important questions of law.[2]

Review is additionally necessary under rule 8.500(b)(1), to secure uniformity of the decisional law addressing these issues, as set out below:

A. The Governor's Reversal Violated Constitutional Due Process Because it Was Not Supported by a Modicum of Evidence with a Rational Nexus to the Central Question of Ms. Van Houten's Current Risk of Danger to Public Safety, Where the Governor Cited Isolated Facts out of Context And Failed to Evaluate the Record as a Whole.

The central question in this case is whether Ms. Van Houten currently poses an unreasonable risk of danger to public safety. It is not whether the crimes she committed at the age of 19 were particularly heinous. Without question, the commitment offenses were egregious. She, however, committed these offense 50 years ago. She has spent the last five decades understanding the forces that drove her to commit such crimes. Now, at the age of 70, Ms. Van Houten currently poses no risk of danger. The Governor's terse and ill-reasoned decision does not prove otherwise.

The standard for evaluating parole suitability is straightforward. The BPH and Governor "shall" grant parole unless they determine that public safety requires a more lengthy period of incarceration. (Pen. Code, § 3041, subd. (b).)[3] This determination falls within constitutional due process. (*In re Rosenkrantz* (2002) 29 Cal.4th 616, 664.) Due process requires that a parole suitability decision is supported by "some evidence" in the record. (*Ibid*.) It also subjects the decision to judicial review to ensure it complies

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[2] All rule references are to the California Rules of Court.

[3] Statutory references are to the Penal Code unless otherwise stated.

with this constitutional mandate. (*Ibid.*)

In exercising judicial review, courts are required to do more than identify some evidence in the record supporting a conclusion that the commitment offense was particularly egregious, or that a particular piece of evidence supports the decision by the Governor or Board. Due process requires that there be evidence in the record with a direct nexus to the inmates current risk of danger, when viewed in the context of the inmate's entire circumstances. (*In re Lawrence* (2008) 44 Cal.4th 1181, 1210-1212 (*Lawrence*).) Applying this standard reveals the Governor's error.

Ms. Van Houten's postconviction record proves she is fully rehabilitated and poses no danger to public safety. The Governor neither disputes this record, nor did he relate his negative findings to any of her current circumstances. He also failed to suggest anything further she might do to change the serial reversal of the BPH's grant of parole. The Governor's recitation of isolated incidents taken out of context, or immutable factors from Ms. Van Houten's past, without the articulation of a rational nexus between those facts and her current dangerousness, "fail[ed] to provide the required 'modicum of evidence' of unsuitability." (*In re Lawrence, supra,* 44 Cal.4th at pp. 1226-1227.)

The BPH, in finding Ms. Van Houten suitable for parole, relied on the fact she earned a master's degree in prison; successfully participated in programming and counseling for over three decades, expressed deep and sincere remorse; took responsibility for her actions; lacked any history of violent crime apart from the commitment offense; and had 17 psychological assessments dating back to 2006 that uniformly concluded she presents a low risk for future violence. The BPH also gave great weight to Ms. Van Houten's young age when she committed the murders. (Petition, Exh. C, pp. 277-304.)

The Governor's written decision is four pages long with less than two pages of analysis. (Petition, Exh. A.) In the decision, the Governor makes the incongruous findings that Ms. Van Houten has not wholly accepted responsibility for her crimes, and that she fails to understand the control Charles Manson exerted over her conduct. (Petition, Exh. A, at p. 3.) He bases these irreconcilable findings on isolated factors unconnected

to Ms. Van Houten's current circumstances.

The Governor first cites Ms. Van Houten's response to the BPH when asked what she took responsibility for as stating, "I take responsibility for the entire crime. I take responsibility going back to Manson being able to do what he did to all of us. I allowed it." (Petition, Exh. A, at p. 3.) The Governor interpreted this to be an ill-considered blanket acceptance for everything done by Manson and his followers. (Petition, Exh. A, at p. 3.) In making this finding, the Governor fails to state Ms. Van Houten's clarifying statement that, "I take responsibility for Mrs. LaBianca, Mr. LaBianca." (Petition, Exh. C, at p. 172.) This statement narrowed the meaning of her taking responsibility for "everything," to the crimes that occurred at the LaBianca house, the only crimes Ms. Van Houten participated in. Ms. Van Houten was not aware of the Tate murders until the next day.

The Governor next cited Ms. Van Houten's comment to the BPH, "I accept responsibility that I allowed [Manson] to conduct my life in that way" as establishing that she blamed Manson for her criminality. (Petition, Exh. A, at p. 3.) This is a clear example of the Governor mining the record for a single comment taken out of context to support a predetermined conclusion. Ms. Van Houten made the comment to clarify a confusing statement she made during 2016 parole hearing. At the 2016 parole hearing, Ms. Van Houten stated in the context of discussing Manson's order that they play "creepy-crawly games," and take "karate lessons," that "He conducted what we did, but we did it, you know? You know? I'm not – I hope you're not understanding that I know it's my responsibility that I allowed this to happen to me." (Petition, Exh. A, at p. 210.) The Deputy District Attorney at the 2017 parole hearing asked Ms. Van Houten to explain that comment. She responded, "That it's difficult to say that things were being conducted by Manson and that I – I accept responsibility that I allowed him to conduct my life in that way." (Petition, Exh. A, at p. 211.) The Deputy District Attorney asked if Ms. Van Houten meant she was taking responsibility for her own actions, or whether she was taking responsibility for allowing Manson to make her conduct her life in that way. (Petition, Exh. A, at p. 211.) Ms. Van Houten responded, "I – I think I

know – I take responsibility for the action and for him saying it. Do you – I take responsibility that I allowed myself to follow him, and in that, I take responsibility for the actions that I did by allowing him to influence me in the manner he did . . . without minimizing my – my, uh involvement." (Petition, Exh. A, at p. 211-212.)

This conversation established that Ms. Van Houten recognized that she allowed herself to be influenced and controlled by Manson, but that she took personal responsibility for her actions and her decision to submit to Manson's control. The context of the single statement cited by the Governor dispels the conclusion reached by the Governor.

The last comments cited by the Governor begins with Ms. Van Houten's statement to a psychologist in 2016 that she "bit into it, hook, line and sinker" when she was asked to join Manson's "utopia." (Petition, Exh. A, at p. 3.) The Governor attempted to tie this 2016 statement to statements made by Ms. Houten at the 2017 parole hearing in which she said she, "desperately wanted to be what [Manson] envisioned us being" (Petition, Exh. C, at p. 108) and that after the Tate murders she wanted to participate in the LaBianca murders "to commit to the to the cause" (Petition, Exh. C, at p. 120) so she could "prove my dedication to the revolution and what I knew would need to be done to, um, have proved myself to Manson." (Petition, Exh. A, at p. 142.)

It is evident from the page cites, this was not a contiguous series of statements. The Governor hobbled together statements from different parts of the record to support his finding. What is more, Ms. Van Houten made these statements to describe her thinking 50 years earlier when she was a member of the Manson cult. She made these statements to describe the root causes of her criminality, as well as the mental deficiencies she has worked so hard to successfully eradicate.

As aptly stated by Justice Chaney in the dissent, Ms. Van Houten made these statement to explain what she had learned about herself and the tools she had developed to ensure that she never would again involve herself in this type of a situation. (*In re Van Houten, supra,* at p. 3 [dissent].) In Ms. Van Houten's words, "Well, I learned that I was weak in character. I was easy to give over my belief system to someone else. That I

sought peer attention and acceptance more than I did my own foundation. That I looked to men for my value, and I didn't speak up. I avoided any kind of conflicts." She explained that her self-esteem had been "very, very, very low" and described the steps, including therapy and education, she has undertaken to address that character defect. (*In re Van Houten, supra,* at pp. 3-4 [dissent].) The Governor failed to include these additional statements in his analysis of Ms. Van Houten's current dangerousness.

The Governor characterized Ms. Van Houten's comments as minimizing her role in the murders by "still shifted blame for her own actions onto Manson to some extent." (Petition, Exh. A, at p. 3.) As acknowledged by Justice Chaney, this places Ms. Van Houten in a "Catch-22" conundrum. (*In re Van Houten, supra,* at p. 9.)
If, on the one hand, Ms. Van Houten takes full responsibility for her criminal conduct, the Governor concludes she has no insight and remains a risk of danger because someone else might control her upon release. (Petition, Exh. A; Exh. B.) If she acknowledges Manson's control, the Governor faults her for shifting blame to Manson and not taking responsibility for her own conduct. Ms. Van Houten was honestly trying to express her state of mind at the time of the commitment offense. Failing to recognize Manson's control would mean she lacked insight into the influences that contributed to her crime. Accepting responsibility for her part in the murders is an equally important step in confronting the causes of her criminal behavior. The complex psychological factors that caused Ms. Van Houten to fall under the control of Charles Manson, and her own responsibility in committing the murder requires that she recognize and address both of these factors.

The only modicum of evidence found by the majority opinion to support the Governor's reversal was that Ms. Van Houten, under oath, testified to the questions the BPH asked her about Manson's conduct and control of the cult. Somehow, the Governor and majority believed that truthfully testifying to what actually took place resulted in Ms. Van Houten casting some of the blame for her crimes on Manson. It has never been questioned that Ms. Van Houten's testimony coincided completely with the People's version of the crime. Truthful testimony at parole suitability

hearings is not an unreasonable risk to public safety, and should be encouraged.

As eloquently explained by Justice Liu,

> [O]lder evidence of lack of insight may be eclipsed by more recent evidence: "Usually the record that develops over successive parole hearings has components of the same kind: CDCR reports, psychological evaluations, and the inmate's statements at the hearings. In such cases, the Board or the Governor may not arbitrarily dismiss more recent evidence in favor of older records when assessing the inmate's current dangerousness. In *Lawrence*, for example, we rejected the Governor's suggestion that the petitioner continued to pose a danger due to serious psychiatric problems, concluding that the Governor's position was based on earlier, superseded psychological evaluations. Courts may properly intervene when the Board or the Governor rely on outdated evidence of lack of insight in denying parole.

(*People v. Shaputis* (2011) 53 Cal.4th 192, 226 [Liu, J [concurring].)

The fact an explanation falls outside the range of common experience does not make it untrue. The California Supreme Court has cautioned, "expressions of insight and remorse will vary from prisoner to prisoner and . . . there is no special formula for a prisoner to articulate in order to communicate that he or she has gained insight into, and formed a commitment to ending, a previous pattern of violent behavior." (*In re Shaputis* (2008) 44 Cal.4th 12 41, 1260, fn. 18 (*Shaputis I*).)

The Governor's refusal to accept undisputed evidence that Ms. Van Houten has acknowledged the historic factors motivating her criminal conduct and engaged in decades-long work to understand those causes, is not "a rational or sufficient basis upon which to conclude that the inmate lacks insight, let alone that he or she remains currently dangerous." (*People v. Ryner* (2011) 196 Cal.App.4th 533, 548-549.) It is questionable that

anyone can articulate to the satisfaction of everyone the complexity and consequences of an inmate's past misconduct and atonement. (*Id.,* at p. 549.) The Governor erred in basing his reversal on the fact Ms. Van Houten occasionally had trouble articulating in exacting detail the complex set of historic factors that caused her to join the Manson cult and commit to its criminal mission 50 years ago.

Review is required to establish that the Governor's contrary ruling violated Constitutional due process and state law. (U.S. Const., 5th & 14th Amends.; Cal. Const., art. 1, §§ 7, subd, (a), 15; *Kentucky Dep't of Corrections v. Thompson* (1989) 490 U.S. 454, 459-460.)

B. The Governor Violated Due Process By Failing to Place "Great Weight" on the Youthful Offender Factors, Where he Merely Recited Those Factors in His Written Decision Without Analyzing Them Within the Context of the Entire Record.

In a succession of cases beginning with *Roper v. Simmons* (2005) 543 U.S. 551 [125 S.Ct. 1183, 161 L.Ed.2d 1] ("*Roper*"), followed by *Graham v. Florida* (2010) 560 U.S. 48, 88 [130 S.Ct. 2011, 176 L.Ed.2d 825] ("*Graham*"), and *Miller v. Alabama* (2012) 567 U.S. 460 [132 S.Ct. 2455, 183 L.Ed.2d 407] ("*Miller*"), and concluding with *People v. Caballero* (2012) 55 Cal.4th 262, the United States and California Supreme Courts have explored the constitutional limits of the government's power to punish minors tried as adults. The rationale behind this body of decisional law is that children, because of their lack of maturity, are more prone to impulsivity, and since their character is not as " 'well-formed' " as adults', it was less likely that their actions were motivated by depravity, which would otherwise justify just harsh punishment. (*Miller, supra*, 567 U.S. at pp. 471-472, quoting *Roper, supra*, 543 U.S. at p. 569-570.)

Sections 3051 and 4801 were recently added to the California Penal Code in response to *Miller* and *Graham*, thereby granting most youth

offenders serving life sentences their first parole eligibility hearing after a certain number of years of incarceration, in order to provide them a *"*meaningful opportunity for release." (Stats 179 2013, ch. 312, § 1 (SB 260), effective January 1, 2014.) As the Legislatures expressly stated: "The Legislature recognizes that youthfulness both lessens a juvenile's moral culpability and enhances the prospect that, as a youth matures into an adult and neurological development occurs, these individuals can become contributing members of society. The purpose of this act is to establish a parole eligibility mechanism that provides a person serving a sentence for crimes that he or she committed as a juvenile the opportunity to obtain release when he or she has shown that he or she has been rehabilitated and gained maturity." (Stats. 2013, ch. 312, § 1.)

The statutes were subsequently amended to redefine a youthful offender as a person under the age of 23. (Stats 2015, ch 471, § 1 (SB 261), effective January 1, 2016; see § 3051, subd. (a)(1).) In doing so, the Legislature declared that all such "youthful offenders" deserved a *"*meaningful opportunity for parole" due to their developing emotional characteristics and the "neurological" changes that continue into early adulthood. (Stats 2015, ch. 471, § 1 (SB 261), effective January 1, 2016; Stats. 2013, ch. 312, § 1.) This Court in *People v. Caballero, supra,* 55 Cal.4th 262 applied this standard to sentences that are the "functional equivalent" of life without the possible of parole.

This body of law directly impacts the Governor's serial denials of parole in this case. Ms. Van Houten was 19 when the murders occurred. It was not until her twenty-first hearing that the BPH granted her parole. Since then the BPH has twice more granted her parole. The Governor reversed all three BPH decisions.

In the current case, Governor Brown acknowledged Ms. Van Houten's minority and claimed to have given "great weight to all the factors relevant to her diminished culpability as a youthful offender – her immaturity, impetuosity and failure to appreciate risks and consequences – and her other hallmark feature of youth." (Petition, Exh. A, at p. 3.) The Governor went on to state "I have also given great weight to her subsequent growth in prison during my consideration of her suitability for parole."

(Petition, Exh. A, at p. 3.) Without discussing how a single youthful factor remains present in Ms. Van Houten current psychological or conduct, the Governor dismissed these factors by stating, "However, these factors are outweighed by negative factors that demonstrate she remains unsuitable for parole at this time." (Petition, Exh. A, at p. 3.) This ill-supported statement violates due process and state law.

This Court's majority opinion in *People v. Franklin* (2016) 63 Cal.4th 261 explains the statutory requirement of "great weight" in parole decisions for inmates who were minors when the engaged in the commitment offense. Writing for the majority of the Court, Justice Liu defined the hallmarks of youth as a "lack of maturity and an underdeveloped sense of responsibility, leading to recklessness, impulsivity, and heedless risk-taking." (*People v. Franklin, supra,* 63 Cal.4th at pp. 274-275 [internal quotations and citations omitted], citing *Miller, supra*, 567 U.S. at pp. 471-472.) Justice Liu further noted "children are more vulnerable to negative influences and outside pressures, including from their family and peers; they have limited control over their own environment and *lack the ability to extricate themselves from horrific, crime-producing settings* . . . . [A] child's character is not as well formed as an adult's; his traits are less fixed and his actions less likely to be evidence of irretrievable depravity." (*Id.,*at p. 275 [internal quotation and citations omitted; emphasis added].)

Justice Liu underscored the need for thorough consideration when considering parole for youthful offenders because the "distinctive attributes of youth diminish the penological justifications for imposing the harshest sentences on juvenile offenders, even when they commit terrible crimes. Because the heart of the retribution rationale relates to an offender's blameworthiness, the case for retribution is not as strong with a minor as with an adult." (*Id.,*at p. 275 [internal quotation and citations omitted].) He admonished,

> Deciding that a juvenile offender forever will be a danger to society would require making a judgment that he is incorrigible—but incorrigibility is inconsistent with youth. And

> for the same reason, rehabilitation could not justify that sentence. Life without parole forswears altogether the rehabilitative ideal. It reflects 'an irrevocable judgment about [an offender's] value and place in society, at odds with a child's capacity for change.

(*Id*., at p. 275-276 [internal citations and quotation marks omitted]; quoting *Miller, supra,* 567 U.S. at pp.471-472.)

The Governor's refusal to permit Ms. Van Houten's repeated grants of parole based on his conclusory written decision raises the specter that his decision was politically motivated. Allowing parole for someone of Ms. Van Houten's infamy would not be popular with the voters. That, however, is not a valid basis for his reversal.

The Governor considered none of the youthful factors in comparing Ms. Van Houten's conduct at 19 with her conduct today as a 70-year-old women who has undergone decades of psychological treatment and rehabilitative programming. He did not mention the conclusions of 17 psychiatrists and psychologists that Ms. Van Houten currently posing a low to very low risk of danger. (*In re Van Houten, supra,* at pp. 18-20, fn. 3.) The Governor failed to discuss how Ms. Van Houten's youth offender factors explained at least some of her behavior at the age of 19, nor did he explain why her "laudable strides in self-improvement in prison" have not overcome the hallmarks of youth.[4]

Certainly, Ms. Van Houten's crimes are appalling. She characterized them as horrific and said at her parole hearing that she has spent most of her life trying to understand and find ways to live with what she did. (Petition, Exh. C, at pp 157, 160-161.) Though nothing can excuse Ms. Van Houten's crimes, she now is 70-years-old. It is not disputed that she has for decades engaged wholeheartedly in the rehabilitative process

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[4] This Court recently granted review of the sole case interpreting the standard for implementing the Legislature's command that the BPH and Governor give "great weight" to the youthful offender factors. The present case presents a strong example of the Governor failing to abide by that Legislature mandate in the context of parole decisions.

and changed her fundamental character.

> Undoubted, giving "great weight" to the youth offended factors entails at least explaining why [Ms.] Van Houten is not entitled to a finding of suitability for release despite the presence of all the statutory factors. Otherwise, the decision's compliance with the Legislature's directive is immune from effective appellant scrutiny.

(*In re Van Houten, supra*, at p. 22 (Chaney, J., dissent); *People v. Martin* (1986) 42 Cal.3d 437, 449-450 [the requirement of articulated reasons supporting a decision is required for meaningful appellate review].)

The Governor's failure to analyze how the youthful factors contributing to Ms. Van Houten conduct as a 19-year-old child continue to make her an unreasonable risk of danger today violates constitutional due process, and state statutory and decisional law. (U.S. Const., 5th & 14th Amends.; Cal. Const., art. 1, §§ 7, subd, (a), 15; *Graham v. Florida, supra,* 560 U.S. 48; *People v. Caballero, supra,* 55 Cal.4th 262.) Review is necessary to establish that the Governor's decision violates the controlling legal standard.

C. The Governor Violated Due Process by Relying on the Gravity of the Commitment Offense as the Sole Basis for Reversing Ms. Van Houten's Grant of Parole, Where He Failed to Connect Any Aggravating Facts of the Commitment Offense to the Issue of Ms. Van Houten's Current Dangerousness.

Under the "Governing Law" part of the Governor's written decision, he cites this Court's decision in *In re Lawrence* for the proposition 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." (Petition,

Exh. A, at p. 2, citing *In re Lawrence, supra,* 44 Cal.4th 1181, 1211, 1214.) Relying on this misinterpretation of *Lawrence*, the Governor concludes, "As our Supreme Court has acknowledged, in rare cases, the circumstances of a crime can provide a basis for denying parole. This is exactly such a case." (Petition, Exh. A, at p. 4.)

Two things are evident from these statements. First, the Governor believes that *Lawrence* supports the legal proposition that the gravity of a commitment offense, without more, supports the permanent denial of parole. Second, the Governor reversed Ms. Van Houten's grant of parole based on the gravity of the commitment offense alone, though he cited other contributing factors. Review is required to establish that the Governor's interpretation of *Lawrence* is incorrect.

In *Lawrence,* Ms. Lawrence shot her lover's wife four times then stabbed the wife to death with a potato peeler after becoming enraged when the husband ended his extra martial affair with the defendant. After committing the murder the defendant told her family the murder was a birthday present to herself then fled the state for eleven years. (*In re Lawrence, supra,* 44 Cal.4th at p. 1193.)

In 1983, she was convicted of first degree murder and sentenced to an indeterminate life sentence. (*Id.,* at p. 1190.) Early in her prison term, Ms. Lawrence's psychological evaluations characterized her as "moderately psychopathic." (*Id.,* at p. 1195.) Ten years later in 1993, her psychological evaluations showed she no longer posed a danger to society. (*Id.*) She had remained free of serious discipline violations throughout her 23-years in prison, and contributed to the prison community in a variety of ways. She participated in educational groups and earned a bachelor's and master's degree in prison. (*Id.,* at p. 1194.)

In 2005, the Governor reversed the BPH's grant of parole on the finding that "the gravity alone of this murder is a sufficient basis on which to conclude presently that Ms. Lawrence's release from prison would pose an unreasonable public-safety risk." (*Id.,* at p. 1200.) The Governor noted contributing factors, such as Ms. Lawrence's initial lack of remorse for the crime, early negative psychological evaluations, and eight counseling "chronos" for minor prison violations. (*Id.,* at p. 1199.)

This Court reversed the Governor's decision. In doing so, it established that the gravity of the commitment offense alone, is not enough to deny parole. The Court explained, "[T]he statutory and regulatory mandate to normally grant parole to life prisoners who have committed murder means that, particularly after these prisoners have served their suggested base terms, 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." (*In re Lawrence, supra,* 44 Cal.4th at p. 1211.) The Court clarified,

> [T]he Board or the Governor may base a denial-of-parole decision upon the circumstances of the offense, or upon other immutable facts such as an inmate's criminal history, but some evidence will support such reliance only if those facts support the ultimate conclusion that an inmate continues to pose an unreasonable risk to public safety. Accordingly, the relevant inquiry for a reviewing court is not merely whether an inmate's crime was especially callous, or shockingly vicious or lethal, but whether the identified facts are probative to the central issue of current dangerousness when considered in light of the full record before the Board or the Governor.

(*In re Lawrence, supra,* 44 Cal.4th at p. 1221.)

Thus, the relevant inquiry under *Lawrence* is, "whether the circumstances of the commitment offense, when considered in light of other facts in the record, are such that they continue to be predictive of current dangerousness many years after the commission of the offense." (*Id.,* at p. 1235.) This inquiry is an "individualized one, and cannot be undertaken simply by examining the circumstances of the crime in isolation, without consideration of the passage of time" or other mitigating factors. (*Ibid*.) In order for the gravity of the commitment offense to support the denial of parole, there must be aspects of the commitment offense establishing a nexus between the crime and the inmate's current risk of danger. (*Id.,* at p.

1227.)

Applied here, the Governor was required to cite specific factors from Ms. Van Houten's commitment offense that remain present today and have not been mitigated by her 50 years in prison, extensive psychological treatment, advanced college degrees, and positive programming. His failure to do so requires reversal.

Review is required to establish that the Governor's sole reliance on the gravity of the commitment offense violated due process. It also violated the legal standard established by this Court in *Lawrence*. (U.S. Const., 5th & 14th Amends.; Cal. Const., art. 1, §§ 7, subd, (a), 15; *Superintendent v. Hill* (1985) 472 U.S. 445, 455 [105 S.Ct. 2768, 86 L.Ed.2d 356]; *In re Lawrence, supra,* 44 Cal.4th 1181.)

CONCLUSION

The standard for parole suitability is not that Ms. Van Houten poses no risk at all, but that she does not currently pose an *unreasonable* risk of danger to public safety. This Court has repeatedly held,

> [I]n light of the constitutional liberty interest at stake, judicial review must be sufficiently robust to reveal and remedy any evident deprivation of constitutional rights. If simply pointing to the existence of an unsuitability factor and then acknowledging the existence of suitability factors were sufficient to establish that a parole decision was not arbitrary, and that it was supported by "some evidence," a reviewing court would be forced to affirm any denial-of-parole decision linked to the mere existence of certain facts in the record, even if those facts have no bearing on the paramount statutory inquiry. Such a standard, because it would leave potentially arbitrary decisions of the Board or the Governor intact, would be incompatible with our recognition that an inmate's right to due process "cannot exist in any practical sense without a remedy against its abrogation.

(*In re Lawrence, supra,* 44 Cal.4th at p. 2011; *In re Rosenkrantz, supra*, 29 Cal.4th at p. 664.)

The only modicum of evidence found by the majority opinion to support the Governor's reversal was that Ms. Van Houten, under oath, testified truthfully to the questions the BPH asked her about Manson's conduct and control of the cult. That testimony coincides with the People's version of the crime and has never been questioned. Truthful testimony at parole suitability hearings is not an unreasonable risk to public safety, and should be encouraged.

Review is required to establish that the Governor's denial was not based on identifiable factors in the record providing a nexus with the central issue of whether Ms. Van Houten, today, poses an unreasonable risk of danger to the safety of the public. Ms. Van Houten respectfully requests that the Court accept review of this case.

Dated: October 14, 2019

Respectfully submitted,

_____
Rich Pfeiffer
Nancy L. Tetreault
Attorneys for Petitioner, Leslie Van Houten

CERTIFICATE OF WORD COUNT
(Cal. Rules of Court, rule 8.504(d)(1))

The text of this brief consists of 6,668 words as counted by the Corel8 WordPerfect version 10 word processing program used to generate this brief.

Dated: October 14, 2019

By _____
Rich Pfeiffer
Nancy L. Tetreault, Attorneys for Petitioner, Leslie Van Houten

EXHIBIT A
COURT OF APPEAL OPINION

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re LESLIE VAN HOUTEN on Habeas Corpus.	B291024 (Los Angeles County Super. Ct. Nos. BH011585, A253156)

ORIGINAL PROCEEDING; petition for writ of habeas corpus, William C. Ryan, Judge. Petition denied.

Rich Pfeiffer and Nancy L. Tetreault for Petitioner.

Xavier Becerra, Attorney General, Phillip J. Lindsay, Assistant Attorney General, Julie A. Malone and Jill Vander Borght, Deputy Attorneys General, for Respondent.

Leslie Van Houten petitions for a writ of habeas corpus challenging Governor Edmund G. Brown's reversal of her 2017 grant of parole. Van Houten is serving concurrent sentences of seven years to life for the 1969 murders of Rosemary and Leno La Bianca, which she committed with other members of a cult led by Charles Manson. The Governor interpreted statements Van Houten made during her parole hearing as shifting blame for her crimes to Manson and his control over her, thus demonstrating lack of insight into her responsibility for the La Bianca murders. The Governor also concluded that Van Houten's crimes were sufficiently egregious to support a finding that she was not suitable for parole.

We conclude that the deferential standard governing our review of Van Houten's petition is dispositive: The Governor's determination that Van Houten has not taken full responsibility for her role in the crimes, and continues to pose a risk to the public, is supported by some evidence in the record. Accordingly, we deny the petition. We do not reach the Governor's alternative conclusion that Van Houten's commitment offenses alone provide sufficient basis to deny parole.

As detailed below, we recognize that the record of Van Houten's parole proceedings may be susceptible to competing inferences. We acknowledge, as did the Governor, that the record exhibits numerous factors suggesting that Van Houten is suitable for parole. Under the applicable standard of review, however, we accept all inferences in favor of the Governor's decision and do not reweigh the evidence.

Adhering to the applicable standards of review is not mere procedural formalism. Standards of review define the role of courts in our trifurcated democratic form of government. The

standard of review governing this petition is among the most deferential and comports with the primacy given to the executive branch in parole decisions.[1]

FACTUAL AND PROCEDURAL BACKGROUND

A. Van Houten's Background and Commitment Offenses

Van Houten grew up in Southern California. Her parents divorced when she was 14. She lived with her mother until she graduated high school, then lived with her father and stepmother for a year while she attended Sawyer College and earned a legal secretary certificate. (*In re Van Houten* (2004) 116 Cal.App.4th 339, 343 (*Van Houten*).)

Van Houten began using drugs at age 14, including marijuana, methedrine, mescaline, benzedrine, and LSD. At 17 she became pregnant and had an abortion.[2] (*Van Houten*, *supra*, 116 Cal.App.4th at p. 343.)

In 1968, after receiving her legal secretary certificate, Van Houten traveled up and down the California coast with a boyfriend for several months. She heard about a commune at the Spahn Ranch in Chatsworth, California established by Charles Manson and began living there. (*Van Houten*, *supra*, 116 Cal.App.4th at p. 343.)

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[1] On January 30, 2019, while the instant writ proceedings were pending, the Board of Parole Hearings again granted Van Houten parole. Governor Gavin Newsom reversed the grant of parole on June 3, 2019.

[2] *Van Houten* stated Van Houten "either miscarried or had an abortion." (*Van Houten*, *supra*, 116 Cal.App.4th at p. 343.) The record from Van Houten's 2017 parole hearing makes clear she had an abortion.

Although at first Van Houten found the commune "idyllic," there soon emerged a "sinister side" of what was called the Manson "Family." (*Van Houten*, *supra*, 116 Cal.App.4th at p. 344.) "Manson dominated and manipulated the members of the Family. [Citation.] Within the context of isolation, dependence, fear, drugs, sex, and indoctrination of the Family experience, the members became convinced of Manson's peculiar apocalyptic fantasies and goals." (*Ibid.*) Manson believed in "an impending bloody, civilization-ending, worldwide race war between Blacks and Whites," in which "the Blacks would succeed" but "the Family would emerge . . . to take control and restore order. Manson came to believe that he would have to precipitate the race war by murdering Whites . . . in such a way that Blacks would be blamed for the murders." (*Id.* at p. 344, fn. 1.)

During the evening of August 8 or the early morning of August 9, 1969, members of the Manson Family, but not Van Houten, entered the residence of Sharon Tate Polanski and murdered Polanski, Voitcek Frykowski, Abigail Folger, Jay Sebring, and Steven Parent. (*Van Houten*, *supra*, 116 Cal.App.4th at p. 344.)

On August 9 or 10, 1969, Manson, Van Houten, and other members of the Family, including Charles Tex Watson and Patricia Krenwinkel, drove around Los Angeles "following Manson's apparently random directions for about four hours selecting and discarding possible victims." They stopped near the home of Leno and Rosemary La Bianca. Manson and Watson went inside and surprised and tied up the La Biancas. Manson then returned to the car and told Van Houten and Krenwinkel "to go into the house and do what Watson told them to." (*Van Houten*, *supra*, 116 Cal.App.4th at p. 345.)

Inside the home, Watson told Van Houten and Krenwinkel to take Mrs. La Bianca into the bedroom and kill her. Van Houten placed a pillowcase over Mrs. La Bianca's head and secured it with a lamp cord wrapped around Mrs. La Bianca's neck. Mrs. La Bianca heard Watson stabbing her husband and struggled with Van Houten, who wrestled her onto the bed and pinned her down. Krenwinkel stabbed Mrs. La Bianca with a knife she had taken from the kitchen. (*Van Houten*, *supra*, 116 Cal.App.4th at p. 346.)

Van Houten called for Watson, who came into the bedroom and stabbed Mrs. La Bianca eight times with a bayonet. Watson then handed Van Houten a knife "and told her to do something." Van Houten suspected Mrs. La Bianca was dead at this point but " 'didn't know for sure.' " Van Houten stabbed Mrs. La Bianca between 14 and 16 times. (*Van Houten*, *supra*, 116 Cal.App.4th at p. 346.)

After the stabbing, Van Houten "wiped away the perpetrators' fingerprints while Krenwinkel wrote in blood on various surfaces in the residence." Thereafter, Van Houten hid for over two months at a "remote location" until she was arrested on November 25, 1969. (*Van Houten*, *supra*, 116 Cal.App.4th at p. 346.)

A jury convicted Van Houten in 1971 of two counts of first degree murder and one count of conspiracy to commit murder. The jury imposed a death sentence. The Court of Appeal reversed the judgment because Van Houten's attorney had disappeared during the trial. Van Houten was retried and the jury deadlocked. In a third trial, a jury again convicted Van Houten of two counts of first degree murder and one count of conspiracy to commit first degree murder. The trial court

imposed concurrent life sentences with the possibility of parole. (*Van Houten*, *supra*, 116 Cal.App.4th at p. 347.)

B. Prior Grant of Parole

The Board of Parole Hearings (the Board) first found Van Houten suitable for parole in 2016. The Governor reversed the Board's decision, finding that Van Houten "g[ave] the false impression that she was a victim who was forced into participating in the [Manson] Family without any way out," and that she "characterize[d] herself as less culpable for her actions because she was merely following orders from others during the LaBianca murders." The Governor stated, "It remains unclear" how Van Houten "transformed" into "a member of one of the most notorious cults in history and an eager participant in the cold-blooded and gory murder of innocent victims aiming to provoke an all-out race war. Both her role in these extraordinarily brutal crimes and her inability to explain her willing participation in such horrific violence cannot be overlooked and lead me to believe she remains an unreasonable risk to society if released."

C. 2017 Grant of Parole[3]

1. The parole hearing

Van Houten's next parole hearing, the hearing relevant to the instant writ petition, was September 6, 2017. The Board read from the Governor's reversal of Van Houten's prior grant of parole, noting the Governor's concern that it was unclear how Van Houten had transformed into a cult member and participant

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[3] We limit this summary to the information necessary to provide background and context for the issues before us.

in murder. The Board asked Van Houten to provide further explanation, which she did at length, with the Board interjecting with further questions.

Van Houten described the impact of her father leaving her and her mother, after which Van Houten began using drugs and "look[ing] for permanency in a relationship with a young man." Van Houten became pregnant and had an abortion that left her "feeling . . . broken and brokenhearted." Van Houten described how she met members of the Manson commune while staying with friends in San Francisco and ended up going with them to Spahn Ranch. She described her indoctrination into the Manson cult, which among other things involved her "letting go" of her "morality" and "ethics." She described escalating violence from Manson towards female cult members who disagreed with him or displeased him. She stated that the female cult members "were basically used for sex, fixing dinner." She described it as "very misogynist."

Van Houten went on to describe Manson's shift towards preparing for the revolution he anticipated. While describing to the Board how Manson had her read to him from the book of Revelation, Van Houten began to cry. The Board asked what emotion she was feeling, and Van Houten said, "[T]o tell you the truth, the older I get, the harder it is to live with all of this, and, um, it's difficult to . . . [¶] . . . [¶] . . . know what I did."

Van Houten described further indoctrination with Manson humiliating cult members by having them stand naked in front of the others while Manson critiqued them. Van Houten said, "[I]nstead of reading the humiliation as—for God's sake, get out of here, I read it as—um, I have to let go of all of my ego. . . . [E]verything that could've indicated to me that I needed

to get out of there, I couldn't interpret it that way. I was interpreting it as self judgment." When asked why that was, Van Houten said, "Because I so desperately wanted to be what [Manson] envisioned us being," namely "[a]n empty vessel of . . . him." Van Houten joined in Manson's belief that he was Jesus Christ reincarnated.

Van Houten described Manson's rhetoric of an impending race war and his cult's role in it, which Van Houten did not question. She described cult members committing burglaries, including, at her suggestion, of her father's house.

Van Houten recalled speaking with a cult member the morning after the murders at the Polanski residence, who "said that helter skelter had started," meaning "[r]evolution and chaos." Van Houten said she was not shocked to hear of the murders. She said, "I knew that I wanted to go and commit to the cause, too. I believed in it, and I wanted to go."

Van Houten then described her participation in the La Bianca murders. She confirmed that when she entered the house, she understood the plan was to kill the people inside, and she wanted to participate in that. She said she stabbed Mrs. La Bianca "[b]ecause I had to do something," then clarified that she "wanted to" stab her "[t]o prove my dedication to the revolution and what I knew would need to be done to, um, have proved myself to Manson" and "the group."

The Board asked how Van Houten felt about her crimes today, and she replied, "I feel absolutely horrible about it, and I have spent most of my life trying to find ways to live with it."

The Board asked what in Van Houten's record demonstrated that she had remorse for her crimes. Van Houten identified her activity in the Victim Offender Education Group,

the curriculum of which was "designed to get really in touch with the damage done to, um, those that loved Rosemary and Leno LaBianca." Van Houten said, "[H]onestly, I dedicate my life in here to living amends. It's how . . . I figured out [how] I live with what I did." She also identified her participation in the Executive Body of the Inmate Activities Group Committee, doing "service work for the women on the yard," and tutoring at Chaffey College. Van Houten said the tutoring was "part of my remorse to create less victims by helping other women leave here . . . [¶] . . . [¶] . . . a little more healed."

Asked if guilt or shame was part of what motivated her service activities, Van Houten said, "Yeah. I think most of what I do is out of guilt for what I've done." She went on, "But I love doing it." She said, "[I]t's my purpose . . . [¶] . . . [¶] . . . to be able to do all that."

The Board asked Van Houten what she took responsibility for. She stated, "I take responsibility for the entire crime. I take responsibility going back to Manson being able to do what he did to all of us. I allowed it. [¶] . . . [¶] I take responsibility for Mrs. LaBianca, Mr. LaBianca."

Asked what she had learned about her character defects and coping mechanisms to ensure she would not ever be involved in similar events, Van Houten stated, "I learned that I was weak in character. I was easy to give over my belief system to someone else. That I sought peer attention and acceptance more than I did my own foundation. That I looked to men for my value, and I didn't speak up. I avoided any kind of conflicts."

Van Houten stated she lacked self-esteem and described her therapy in prison as aimed to understand "what was going on with me at the time that I became so complacent to Manson."

She made a commitment to "recreate a life for myself where I would not harm others deliberately." She said she could "feel good about who I am because of the service work" but "[f]or a long time, it was hard to have good self esteem knowing what I had done."

Van Houten said she started feeling remorse for her crimes "[a]bout two or three years away from Manson," in 1973 or 1974. Asked when she started making amends, she said she "t[ook] on a more serious role of service work" in the mid-1980's.

The Board reviewed Van Houten's accomplishments and activities in prison. She had earned bachelor's and master's degrees and a tutor certification, participated in the Victim Offender Education Group, Actors Gang Prison Project, a reentry program, Victim Awareness, Lifers Group, White Bison, Alcoholics Anonymous, and personal counseling, and worked as a tutor. Van Houten described how she would locate a personal sponsor and friends who are sober to assist her if ever she felt an urge to use drugs.

The Board asked Van Houten to "look back at . . . all these various choices that you made that resulted in what happened on the . . . night of August 10th." The Board asked Van Houten, if she "could make one choice different, but only one, what would that choice be?" Van Houten said, "Easy. I would go back to Manhattan Beach, I would get a job at TRW, and I would live under my father's house, his condo." She said leaving her father's house was "[t]he beginning. Actually, using the drugs in June—I mean, January, but I could've—if I'd have stayed there, I could've gotten intervention, so I—I think. Yeah."

The Board then asked, "If you were told you could go back and change one thing, and one thing only that someone else did,

what would that be?" Van Houten answered, "That my dad stay in the house. That he not leave."

Van Houten stated that if released, she initially would live in housing organized by a parole agent Van Houten had worked under, and then with a friend as a roommate. She anticipated that "as a senior leaving prison with no work history, I'm going to be living humbly." She stated she planned to work as a grant writer for programs that contribute to rehabilitation in the prison system.

The Board noted over 100 letters in support of Van Houten's release, with a "recurrent theme . . . talking about the change that they've witnessed in you over the years and how helpful that you are now." The Board had also received more than 40,000 letters opposing her release. Asked how she dealt with knowing many people wished her to remain in prison, Van Houten said, "I focus on the people that love me and know that I can't change other people and that there will always be people that have a set idea of who I am. And, um, they haven't gotten to know me."

The Board reviewed Van Houten's psychological assessments dating back to 2006, all of which concluded she was a low risk for future violence. Her most recent risk assessment observed Van Houten exhibited prosocial behaviors throughout most of her imprisonment, and stated she scored "well below the cutoff threshold commonly used to identify dissocial or pathologic personalities." The assessment found Van Houten's advanced age, maturity, and positive programming mitigated the risk of violent recidivism, and concluded that Van Houten was "overall a low risk for future violence."

The Board addressed a portion of Van Houten's risk assessment that "the Governor had issues with" in his prior reversal, "the section that says you cited a lack of real consequences for your misbehavior growing up. Feelings of abandonment and your father. We talked about that following your parents' divorce. Your resentment and anger toward your mother, . . . trauma of your abortion, . . . [and] drug addiction. You believed that these made you . . . vulnerable to the cult led by Manson. This—this lack of real consequences is quoted by the Governor as a concern." Van Houten explained that during the risk assessment, she had been describing her mother's child rearing style. She said that "other kids had . . . curfews, and they had consequences." If they stayed out late, they would "be grounded for 3 weeks," but her mother "would say—I don't have to do that because you will never let me down. And so I felt that I always had to anticipate what her expectation was of me. . . . I didn't have a measured set of rules that my other friends did."

Asked by the Board why she had been gullible and "easily swayed," Van Houten said the loss of her baby to an abortion at age 17 was devastating, and she "just gave up" and first turned to the Self Realization Fellowship, then to drugs, and then to the Manson cult.

A deputy district attorney attending the hearing asked the Board to inquire whether Van Houten's previous statements that she believed Mrs. La Bianca was already dead when Van Houten stabbed her made Van Houten less responsible for the murder. Van Houten responded that when she was younger she believed she was less responsible, but no longer felt that way. The Board asked when Van Houten's feelings about that had changed, and Van Houten estimated 20 years earlier.

The deputy district attorney prompted the Board to ask Van Houten what she meant by her statement at a prior parole hearing that Manson "conducted what we did, but we did it . . . . I hope you're not understanding that I know it's my responsibility that I allowed this to happen to me." Van Houten responded, "That it's difficult to say that things were being conducted by Manson and that I . . . accept responsibility that I allowed him to conduct my life in that way." The deputy district attorney asked for clarification whether Van Houten was "t[aking] responsibility for the action or does she take responsibility for allowing Manson to help her conduct her life in that way?" Van Houten elaborated: "I take responsibility that I allowed myself to follow him, and in that, I take responsibility for the actions that I did by allowing him to influence me in the manner that he did [¶] . . . [¶] without minimizing my . . . involvement."

During her closing statement, Van Houten said, "I also want to apologize to all of those in the room and those that are not for the damage that I did and the stealing of their loved ones' life in a senseless manner. I apologize very deeply for that. And, um, I just hope that I was able to convey the truth of who I am today to you."

2. The Board grants Van Houten parole

The Board granted Van Houten parole, finding that the circumstances favoring parole outweighed the circumstances against it. The Board gave "great weight" to Van Houten's age at the time she committed her crimes, noting the "diminished culpability of juveniles compared to adults" and their "susceptib[ility] to negative influences" and "outside pressures." The Board felt Van Houten was not able to "really extricate [her]self [from the Manson cult] as a youthful offender." The

Board found that in prison Van Houten "showed growth and maturity," including "developing the skill sets and coping mechanisms that you would need to abate . . . the key issues that were . . . at the core of why you became the person you were." The Board noted that Van Houten had no significant history of violent crime apart from her commitment offenses and had a "stable social history now."

The Board stated it believed Van Houten felt "sincere" remorse and took responsibility for her actions without minimizing them. The Board noted that Van Houten's age reduced the probability of recidivism. The Board felt Van Houten had "engaged in suitable activities that indicate an enhanced ability to function within the law upon release, . . . and you lack any serious rules violations while in prison." The Board recounted the positive activities with which Van Houten had been involved. The Board found that Van Houten had "made realistic plans for release." The Board noted that Van Houten's risk assessments over the past decade had all concluded she was a low risk for future violence. The Board found that "despite how bad, horrible the crimes were, there's no nexus for current dangerousness."

D. Governor's Reversal

On January 19, 2018, the Governor issued a decision reversing the Board's grant of parole. The decision began with a description of the murders at the Polanski and La Bianca residences. The Governor then summarized the Board's decision finding Van Houten suitable for parole. He noted that she was 19 years old when she committed her crimes and now, at age 68, had been incarcerated for 48 years. He noted her "laudable strides in self-improvement in prison," listing her positive

psychological report, her lack of serious misconduct in prison, her educational achievements, her positive work reports and commendations from staff, and her participation in and facilitation of self-help programs. The Governor stated he "gave great weight to all the factors relevant to her diminished culpability as a juvenile," "to her subsequent growth in prison," and to "evidence that she had been the victim of intimate partner battering at the hands of Manson." "However," the Governor stated, "these factors are outweighed by negative factors that demonstrate she remains unsuitable for parole."

The Governor referred again to the murders, stating that Van Houten "played a vital part" in the Manson Family's "atrocious, high-profile murders to incite retaliatory violence." The Governor found that Van Houten "has long downplayed her role in these murders and in the Manson Family, and her minimization of her role continues today. At her 2017 parole hearing, Van Houten claimed full responsibility for her crimes. However, she still shifted blame for her own actions onto Manson to some extent, saying, 'I take responsibility for the entire crime. I take responsibility going back to Manson being able to do what he did to all of us. I allowed it.' She later stated, 'I accept responsibility that I allowed [Manson] to conduct my life in that way.' "

The Governor continued: "Van Houten's statements show that she still has not come to terms with her central role in these murders and in the Manson Family. Van Houten told the 2016 psychologist that when asked to join Charles Manson's 'utopia' at the Spahn Ranch, she 'bit into it, hook, line and sinker.' By her own account, she idolized Manson and wanted to please him. At her 2017 hearing, Van Houten explained that she 'desperately

wanted to be what [Manson] envisioned us being.' She admitted that following the Tate murders, she wanted to participate in the LaBianca murders because she 'wanted to go and commit to the cause, too.' Van Houten told the Board she committed the crimes in order to 'prove my dedication to the revolution and what I knew would need to be done to, um, have proved myself to Manson.' "

The Governor then quoted a prior superior court ruling: "As the Los Angeles Superior Court found last year, Van Houten's recent statements, 'specifically her inability to discuss her role in the Manson Family and LaBianca murders without imputing some responsibility to her drug use and her danger of falling prey to the influence of other people because of her dependent personality,' have demonstrated a lack of insight into her crimes. '[She] was not violent before she met Manson, but upon meeting such a manipulative individual she chose to participate in the cold-blooded murder of multiple innocent victims.' The court continued, 'While it is unlikely [Van Houten] could ever find another Manson-like figure if released, her susceptibility to dependence and her inability to fully recognize why she willingly participated in her life crime provides a nexus between the commitment offense and her current mental state, demonstrating she poses a danger to society if released on parole.' "

The Governor concluded that "Van Houten has made admirable efforts at self-improvement while incarcerated and appears more willing today to accept responsibility for the part she played in these crimes." Nonetheless, the Governor found that "even today, almost five decades later, Van Houten has not

wholly accepted responsibility for her role in the violent and brutal deaths of Mr. and Mrs. LaBianca."

The Governor further concluded, "These crimes stand apart from others by their heinous nature and shocking motive. By her own behavior, Van Houten has shown she is capable of extraordinary violence. There is no question that Van Houten was both fully committed to the radical beliefs of the Manson Family and that she actively contributed to a bloody horror that terrorized the nation. As our Supreme Court has acknowledged, in rare cases, the circumstances of a crime can provide a basis for denying parole. This is exactly such a case."

E. Denial of Petition for Writ of Habeas Corpus by Superior Court

In 2018, Van Houten filed a petition for a writ of habeas corpus in the superior court challenging the Governor's reversal. The superior court denied the petition. The superior court found that "the facts of [Van Houten's] commitment offense *alone* provide some evidence supporting the Governor's decision to reverse the Board's grant of parole. If ever a murder case continued to be predictive of current dangerousness, even many years after the offense, it must surely be the instant case."

As for the Governor's conclusion that Van Houten continued to minimize her role in the crimes, the superior court stated, "[Van Houten] does appear unable to discuss the commitment offense without imputing some responsibility on Manson, although it is unclear to what degree [Van Houten] is minimizing her role in the commitment offense and to what degree she is simply recounting the events as she perceives them. Nonetheless, the evidence relied upon by the Governor, although less persuasive than the facts of the commitment offense, would

constitute a bare minimum of evidence to support the Governor's reversal."

Van Houten then filed her petition with this court.[4]

DISCUSSION

I. Suitability For Parole

The governing regulations provide that "a life prisoner shall be found unsuitable for and denied parole if in the judgment of the [Board] the prisoner will pose an unreasonable risk of danger to society if released from prison." (Cal. Code Regs., tit. 15, § 2402, subd. (a).)[5] "[T]he fundamental consideration in parole decisions is public safety," which requires "an assessment of an inmate's *current* dangerousness." (*In re Lawrence* (2008) 44 Cal.4th 1181, 1205 (*Lawrence*).

The regulations specify the factors indicating both an inmate's suitability and his or her unsuitability for parole. Factors indicating unsuitability include that the prisoner has (1) "committed the offense in an especially heinous, atrocious or cruel manner"; (2) "on previous occasions inflicted or attempted to inflict serious injury on a victim, particularly if the prisoner demonstrated serious assaultive behavior at an early age"; (3) "a

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[4] Van Houten also objects that the superior court did not order the district attorney to produce audio tapes containing an account of the Manson cult and its crimes by her coconspirator Charles Tex Watson. Van Houten previously raised the issues concerning the audio tapes in a separate writ petition (case No. B286023), which we denied on July 24, 2019. We thus do not address those issues here.

[5] Further regulatory citations are to title 15 of the California Code of Regulations.

history of unstable or tumultuous relationships with others;" (4) "previously sexually assaulted another in a manner calculated to inflict unusual pain or fear upon the victim"; (5) "a lengthy history of severe mental problems related to the offense"; and (6) "engaged in serious misconduct in prison or jail." (Regs., § 2402, subd. (c).)

Circumstances tending to show that the prisoner is suitable for release include that the prisoner (1) "does not have a record of assaulting others as a juvenile or committing crimes with a potential of personal harm to victims"; (2) "has experienced reasonably stable relationships with others"; (3) "performed acts which tend to indicate the presence of remorse, such as attempting to repair the damage, seeking help for or relieving suffering of the victim, or indicating that he understands the nature and magnitude of the offense"; (4) "committed his crime as the result of significant stress in his life, especially if the stress has built over a long period of time"; (5) at "the time of the commission of the crime, the prisoner suffered from Battered Woman Syndrome, . . . and it appears the criminal behavior was the result of that victimization"; (6) "lacks any significant history of violent crime"; (7) "present age reduces the probability of recidivism"; (8) "has made realistic plans for release or has developed marketable skills that can be put to use upon release"; and (9) has engaged in "[i]nstitutional activities [that] indicate an enhanced ability to function within the law upon release." (Regs., § 2402, subd. (d).)

Importantly, "the mere presence of a statutory unsuitability factor" is not "the focus of the parole decision"; rather, there must be "reasoning establishing a rational nexus between those factors and the necessary basis for the ultimate

decision—the determination of current dangerousness." (*Lawrence*, *supra*, 44 Cal.4th at p. 1210.)

II. Governor's Review

After the Board finds an inmate suitable for release on parole, the Governor may conduct an independent de novo review of the entire record to determine whether the inmate currently poses a threat to public safety. (Cal. Const., art. V, § 8, subd. (b); *In re Shaputis* (2011) 53 Cal.4th 192, 215, 220–221 (*Shaputis*).) " ' "[T]he Governor's decision must be based upon the same factors that restrict the Board in rendering its parole decision," ' " but the Governor may be " ' "more stringent or cautious" ' " than the Board in deciding whether the inmate poses an unreasonable risk to the public. (*In re Prather* (2010) 50 Cal.4th 238, 257, fn. 12.)

We review the Governor's decision under the "some evidence" standard, a standard our Supreme Court has called "extremely deferential." (*In re Rosenkrantz* (2002) 29 Cal.4th 616, 665.) Under that standard, a simple modicum of evidence is all that is required to uphold the Governor's decision. (*Shaputis*, *supra*, 53 Cal.4th at p. 210.) "Only when the evidence reflecting the inmate's present risk to public safety leads to but one conclusion may a court overturn a contrary decision by . . . the Governor." (*Id.* at p. 211.)

In applying the "some evidence" standard, "[t]he court is not empowered to reweigh the evidence." (*Shaputis*, *supra*, 53 Cal.4th at p. 221.) " 'Resolution of any conflicts in the evidence and the weight to be given the evidence are matters within the authority of . . . the Governor," and it is left to the Governor's discretion how " 'the specified factors relevant to parole suitability are considered and balanced.' " (*Id.* at p. 210.)

" '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 . . . 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 . . . decision.' " (*Ibid.*)

In reviewing an order reversing a grant of parole, we may look to the entire record for evidence supporting the reversal, and are not limited to the evidence specified in the Governor's written decision. (*Shaputis*, *supra*, 53 Cal.4th at pp. 214–215, fn. 11.)

III. The Governor's Decision Is Supported By Some Evidence

The Governor stated two bases for reversing the Board's grant of parole. First, he found that Van Houten's comments at the parole hearing, consistent with past comments, minimized her role in the murder of the La Biancas, thus indicating a lack of insight into her crimes. Second, he found that Van Houten's crimes presented a rare case where the egregiousness of the commitment offenses alone justified denying her parole. Because we hold that some evidence in the record supports the Governor's first conclusion, we deny Van Houten's writ petition. We do not address the Governor's second conclusion.

The Governor's decision stated that Van Houten "has long downplayed her role in these murders and in the Manson Family, and her minimization of her role continues today." The Governor quoted approvingly an earlier decision from the superior court finding that Van Houten's " 'inability to discuss' " her role in the crimes " 'without imputing some responsibility to her drug use

and her danger of falling prey to the influence of other people because of her dependent personality,' have demonstrated a lack of insight into her crimes." The Governor concluded that "even today, almost five decades later, Van Houten has not wholly accepted responsibility for her role in the violent and brutal deaths of Mr. and Mrs. LaBianca."

Our Supreme Court has "expressly recognized that the presence or absence of insight" into an inmate's past criminal behavior "is a significant factor in determining whether there is a 'rational nexus' between the inmate's dangerous past behavior and the threat the inmate currently poses to public safety." (*Shaputis*, *supra*, 53 Cal.4th at p. 218.)

"[L]ack of insight pertains to the inmate's current state of mind," and thus "bears more immediately on the ultimate question of the present risk to public safety posed by the inmate's release" compared to factors more remote in time like the circumstances of the inmate's commitment offense. (*Shaputis*, *supra*, 53 Cal.4th at p. 219.) The parole regulations "do not use the term 'insight,' but they direct the Board to consider the inmate's 'past and present attitude toward the crime (Regs., § 2402, subd. (b)) and 'the presence of remorse,' expressly including indications that the inmate 'understands the nature and magnitude of the offense' (Regs., § 2402, subd. (d)(3)). These factors fit comfortably within the descriptive category of 'insight.' " (*Shaputis*, at p. 218.)

We hold that the Governor's conclusion that Van Houten lacks insight into her commitment offenses, and thus remains a threat to public safety, is supported by some evidence in the record. As the Governor noted in his reversal, the record has several instances in which Van Houten appears to qualify the

responsibility she feels for the crimes by emphasizing Manson's role. When the Board asked what Van Houten took responsibility for, she answered, "I take responsibility for the entire crime. I take responsibility going back to Manson being able to do what he did to all of us. I allowed it." Then, "I take responsibility for Mrs. LaBianca, Mr. LaBianca."

Significantly, when the district attorney later requested clarification whether Van Houten was taking responsibility for her actions, or only for allowing Manson to influence how she conducted her life, Van Houten replied, "I take responsibility that I allowed myself to follow him, and in that, I take responsibility for the actions that I did by allowing him to influence me in the manner that he did . . . [¶] . . . [¶] . . . without minimizing my—my, uh, involvement."

As the Governor recognized, Van Houten has shown some willingness to accept responsibility. Her inability, however, to discuss that responsibility except through the lens of Manson's influence reasonably could suggest to the Governor that Van Houten has not accepted full moral culpability for her actions, that is, that she considers herself less blameworthy because she committed her crimes at Manson's behest. This in turn creates concern that Van Houten presents a current danger, because in emphasizing Manson's influence, she minimizes the fact that she chose, indeed enthusiastically, to murder the La Biancas. Without fully understanding her pivotal role in these crimes, the Governor could fairly conclude that she still presented a danger if she rejoined society. (See *Lawrence*, *supra*, 44 Cal.4th at p. 1228 ["In some cases, such as those in which the inmate . . . has shown a lack of insight or remorse, the aggravated circumstances of the commitment offense may well

continue to provide 'some evidence' of current dangerousness even decades after commission of the offense"].)

In concluding that the Governor's reversal was based on some evidence, we find support not only in the evidence cited by the Governor but also in evidence indicating Van Houten failed to recognize the impact on her victims when asked to consider the choices she had made in her life. The Board asked Van Houten to "look back at . . . all these various choices that you made that resulted in what happened on the . . . night of August 10th." The Board asked Van Houten, if she "could make one choice different, but only one, what would that choice be?" Van Houten replied that she would have stayed at her father's house and sought a job, the implication being that had she done so, she would not have become involved with Manson. Asked what one act by someone else she would change if she could, she said she would have her father not leave her and her mother.

Van Houten, asked hypothetically to rewrite the past, focused on where things went wrong for her personally rather than on the horrific acts that followed. It was only in her closing statement that she acknowledged the harm she caused the La Biancas when she said, "I also want to apologize to all of those in the room and those that are not for the damage that I did and the stealing of their loved ones' life in a senseless manner. I apologize very deeply for that." The Governor was within his discretion to conclude Van Houten's other statements in the record outweighed the impact of her somewhat belated apology.

We do not dispute that the record contains evidence from which a decisionmaker reasonably could conclude that Van Houten was suitable for parole. Again, however, under the applicable standard of review, " '[i]t 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.' " (*Shaputis*, *supra*, 53 Cal.4th at p. 210.) As for the contention that we or the Governor have taken Van Houten's statements out of context or placed her in a Catch–22 (dis. opn. *post*, at pp. 9–11), we have reviewed the record in full, and while arguably more than one inference may be drawn from Van Houten's statements and the context in which they were made, we respectfully disagree that the inferences drawn by the Governor were unreasonable.

Van Houten argues that the Governor's reversal relied on "isolated negative factors" rather than an "individualized assessment of [Van Houten's] entire record," and failed to consider Van Houten's "record of reform and rehabilitative programming" and "testimony regarding the social factors surrounding her alienation from her biological family and the hallmarks of youth making her vulnerable to the Ma[n]son cult." Van Houten claims the Governor "tether[ed]" her to the crimes of her fellow cult members rather than evaluating her on her own, and relied on an earlier superior court ruling regarding an earlier parole decision rather than conducting a fresh analysis based on Van Houten's current parole hearing.

Contrary to Van Houten's contention, the Governor's reversal refers not only to evidence supporting denial of parole, but also evidence of Van Houten's rehabilitation, increased maturity, diminished culpability as a youthful offender, and other factors favoring parole. To the extent the Governor chose to afford greater weight to certain factors over others, this was within his discretion.

Moreover, the evidence we have identified in support of the Governor's decision came from Van Houten's own statements, and does not rely upon any improper "tether[ing]" to the words or actions of Van Houten's confederates. As for the Governor's citation to the earlier superior court opinion, this simply reflected the Governor's agreement with the concerns voiced by the superior court, concerns the Governor concluded Van Houten had not resolved in her subsequent parole hearing. None of this suggests the Governor failed to conduct an individualized assessment. While Van Houten argues that "the quoted conclusions of the superior court have no support in the current record," the Governor was entitled to find otherwise, and as we have explained, his findings are supported by some evidence.

Van Houten contends that, although her previous 2016 parole hearing addressed her minimizing her role by blaming Manson, the Governor in reversing Van Houten's parole in 2016 did not cite that as a reason to deny her parole. Van Houten argues the Governor thereby forfeited the right to assert that basis now, because it is unfair to deny her parole on a basis of which she was unaware and therefore had no opportunity to address. Van Houten cites no authority applying the doctrine of forfeiture or estoppel in this context, and we know of none.

We similarly reject Van Houten's contention that the Governor's 2016 and 2018 reversals contradict one another, with one faulting her for emphasizing her association with Manson and the other claiming she underemphasized her association. As we have discussed, both of the Governor's decisions expressed concern that Van Houten minimized her own culpability by shifting responsibility to Manson and the cult. We fail to see any contradiction between the two decisions.

Van Houten claims the Governor failed to comply with Penal Code section 3055, subdivision (c)[6] by not giving " 'great weight' " to her "elderly parole status." Section 3055 establishes an "Elderly Parole Program . . . for purposes of reviewing the parole suitability of any inmate who is 60 years of age or older and has served a minimum of 25 years of continuous incarceration on his or her current sentence." (§ 3055, subd. (a).) Section 3055, subdivision (c) directs the Board to "give special consideration to whether age, time served, and diminished physical condition, if any, have reduced the elderly inmate's risk for future violence."

Although the Governor's decision did not refer expressly to the Elderly Parole Program, it did note both Van Houten's age and time served when discussing factors in favor of parole. Van Houten does not identify any evidence of "diminished physical condition" the Governor failed to consider. (§ 3055, subd. (c).) Thus, the Governor's decision accounted for the factors identified in section 3055, subdivision (c).

As to whether the Governor afforded those factors "special consideration" (§ 3055, subd. (c)), current law, as articulated by the Supreme Court, is clear that the Governor may weigh the factors suggesting parole suitability or unsuitability as he sees fit. (*Shaputis*, *supra*, 53 Cal.4th at p. 210 & fn. 7.) We therefore decline to conclude that the mandate to afford certain factors "special consideration" affects our standard of review. For the same reason, we reject Van Houten's suggestion that our standard of review is affected by the Legislature's mandate that

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[6] Further unspecified statutory citations are to the Penal Code.

the Board "shall give great weight" to evidence of intimate partner battering or the inmate's diminished culpability as a youthful offender (§ 4801, subds. (b)(1), (c)).[6] We note the Governor expressly stated he gave great weight to those factors.

DISPOSITION

The petition for a writ of habeas corpus is denied.
NOT TO BE PUBLISHED.

BENDIX, J.

I concur:

ROTHSCHILD, P. J.

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[7] Our Supreme Court has granted review in a case holding that the statutory mandate that the Board afford "great weight" to youth offender factors under section 4801, subdivision (c) altered the "some evidence" standard for review of parole denials and reversals. (See *In re Palmer* (Sept. 13, 1998) A147177, review granted and opinion ordered nonpub. Jan. 16, 2019, S252145 (*Palmer*).) Thus, further guidance may be forthcoming. Van Houten filed a supplemental writ petition based on *Palmer*. Because the Supreme Court, upon granting review, ordered *Palmer* depublished, we do not address *Palmer* or Van Houten's supplemental petition.

CHANEY, J.

I respectfully dissent.

Without question, judicial review of parole decisions is deferential. Reversing the Board's 2017 decision to grant Van Houten parole, however, departs from legislative dictates regarding parole decisions, particularly given recent legislative enactments regarding offenders who committed their offenses prior to reaching age 26, and offenders who have served lengthy terms and are of advanced age.

As a starting point, our Legislature has mandated that the Board and the Governor "*shall* grant parole to an inmate unless it determines that the gravity of the current convicted offense or offenses, or the timing and gravity of current or past convicted offense or offenses, is such that consideration of the public safety requires a more lengthy period of incarceration for this individual." (Pen. Code, § 3041, subd. (b), italics added.)[1] Because "due process of law requires that a decision considering such factors be supported by some evidence in the record, the Governor's [and the Board's] decision is subject to judicial review to ensure compliance with this constitutional mandate. [Citation.] Thus, a petitioner is entitled to a constitutionally adequate and meaningful review of a parole decision, because an inmate's due process right 'cannot exist in any practical sense without a remedy against its abrogation.' " (*In re Prather* (2010) 50 Cal.4th 238, 251, quoting *In re Rosenkrantz* (2002) 29 Cal.4th 616, 664 (*Rosenkrantz*).)

The Board's decision finding Van Houten suitable for parole rested on a number of factors, including her earning a bachelor's

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[1] Further statutory references are to the Penal Code unless otherwise indicated.

and a master's degree in prison, her successful participation in programming and counseling, their belief that she felt remorse and took responsibility for her actions, her lack of history of violent crime apart from the commitment offense, multiple psychological assessments dating back to 2006 that uniformly concluded she presents a low risk for future violence, and assigning great weight to Van Houten's young age at the time of the life crime. The Governor based his reversal of that decision on his contrary view of two suitability factors: his conclusion that Van Houten did not wholly accept responsibility for her crimes, and his assertion that the circumstances of the crime alone support a finding of unsuitability.

Viewed in the context of the Legislature's recent statutory enactments regarding parole, particularly with respect to youth offenders, and taking into account the deferential standard of review accorded to the Board and Governor regarding findings of suitability for parole, there is not a modicum of evidence to support the conclusion that, if released, Van Houten would pose an unreasonable risk of danger to society. (*Rosenkrantz*, *supra*, 29 Cal.4th at p. 677.) Nor is there a rational nexus between the handful of statements the Governor's decision cites, excerpted from the 310-page parole hearing transcript and isolated from their context, and any current danger Van Houten poses to society. To the contrary, the evidence supports the Board's conclusion that Van Houten is remorseful, understands her crimes and what led her to commit them, and is no longer dangerous. Because the record contains no evidence that rationally supports the Governor's decision reversing the Board's grant of parole, I would hold that the reversal violated

Van Houten's due process rights and would grant her petition and reinstate the Board's September 6, 2017 grant of parole.

A. No evidence supports the Governor's decision.

There are three separate parole hearing colloquies cited as "some evidence" supporting the Governor's reversal. None of them demonstrates that Van Houten is currently dangerous. Rather, the select colloquies are isolated from the parole hearing transcript to support a proposition that, in context, they do not support.

When the Board asked Van Houten what she took responsibility for, she answered, "I take responsibility for the entire crime. I take responsibility going back to Manson being able to do what he did to all of us. I allowed it. [¶] . . . [¶] I take responsibility for Mrs. LaBianca, Mr. LaBianca." None of these statements demonstrate that Van Houten is currently dangerous.

Van Houten's response can only be read as four distinct statements. The Governor focuses on the middle two statements but, fairly read, these statements show Van Houten has taken responsibility for allowing herself to become indoctrinated into the Manson cult. In the parole hearing setting, this was an essential insight Van Houten had to achieve: that she understood and had addressed the root causes of her criminality.

Tellingly, the Board next asked Van Houten to explain what she has learned about herself and what tools she has developed "to make sure that you're never going to be involved in something like this again?" Van Houten responded, "Well, I learned that I was weak in character. I was easy to give over my belief system to someone else. That I sought peer attention and acceptance more than I did my own foundation. That I looked to men for my value, and I didn't speak up. I avoided any kind of

conflicts." Van Houten then explained that her self-esteem had been "very, very, very low" and described the steps, including therapy and education, she has undertaken to address that character defect.

If Van Houten had limited herself to a bald statement that she took responsibility for the entire crime, the Board and the Governor reasonably could have concluded that Van Houten did not yet understand the complex of causes that led to her criminality, and *that* would have been "some evidence" to support a conclusion that she is currently dangerous. Indeed, if Van Houten failed to understand what led her to join the Manson cult she could remain susceptible to indoctrination and thus could pose a danger to society.

The second colloquy cited as "some evidence" is "when the district attorney later requested clarification whether Van Houten was taking responsibility for her actions, or only for allowing Manson to influence how she conducted her life, Van Houten replied, 'I take responsibility that I allowed myself to follow him, and in that, I take responsibility for the actions that I did by allowing him to influence me in the manner that he did . . . [¶] . . . [¶] . . . without minimizing my—my, uh, involvement.' " (Maj. opn., *ante*, at p. 23.)

Critical to understanding this statement is the *context* in which it was made and the questioning that elicited it. Initially, the district attorney requested the Board ask Van Houten to clarify a statement she made at the 2016 hearing, which the district attorney quoted: " 'I hope you're not understanding that I know it's my responsibility that I allowed this to happen to me.' " Before Van Houten could respond, the Board asked the district attorney to supply the context. The district attorney explained

that at the 2016 parole hearing Van Houten talked about "playing creepy-crawly games" and "karate lessons and trying to figure out how they were going to survive. Commissioner – Deputy Commissioner Lam – whose idea was that? Answer – Manson. He conducted what we did, but we did it, you know? You know? I'm not – I hope you're not understanding that I know it's my responsibility that I allowed this to happen to me."[2] With this context, the presiding commissioner asked Van Houten, "What did you mean by that?" Van Houten responded, "That it's difficult to say that things were being conducted by Manson and that I – I accept responsibility that I allowed him to conduct my life in that way." The district attorney expressed confusion, and stated, "I'm asking does she take responsibility for the action or does she take responsibility for allowing Manson to help her conduct her life in this way?" Notably, Van Houten first responded: "I – I think I know – *I take responsibility for the action* and for him saying it." (Italics added.) Then Van Houten made the statement cited as "some evidence" to support the Governor's decision: "Do you – I take responsibility that I allowed myself to follow him, and in that, I take responsibility for the actions that I did by allowing him to influence me in the manner that he did [¶] . . . [¶] without minimizing my—my, uh, involvement." Just as she did in the first colloquy the Governor

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[2] The district attorney accurately quoted Van Houten's latter statement, but her summary of the context is incomplete. Van Houten had stated: "When we – when I wasn't high, I was busy doing tasks and chores, and we kept the idea of what we were doing with each other – we would do these games of trying to creep up on each other so everything was always preparing for this war. We were getting karate lessons and trying to figure out how to can food that would last for years and finding a place –."

relied upon, Van Houten first took responsibility for her crimes, and then took responsibility for allowing Manson to conduct her life.

Viewed in context, and considering Van Houten's *entire* statement, she took responsibility both for her crimes and for allowing herself to follow Manson. Moreover, the context of the parole hearings shows that the topic of inquiry was not the La Bianca murders in isolation. Instead, the question posed at the 2016 parole hearing focused on the preparations at Spahn Ranch for the race war that Manson told his followers was coming, and the district attorney asked Van Houten to explain what she meant. Van Houten could not honestly have said she alone was responsible for the broad array of preparations that Manson directed, and she and the other cult members carried out.

The third colloquy cited as "some evidence" supporting the Governor's reversal is a thought experiment the Board posed to Van Houten. The Board asked Van Houten, "If someone said to you – I built a time machine, and I could go back and you could make one choice different, but only one, what would that choice be?" Van Houten responded, "Easy. I would go back to Manhattan Beach, I would get a job at TRW, and I would live under my father's house, his condo." A more important revision to history would be to stop the Manson murders, but that ignores the question the Board asked. With the constraint that she could time travel to one point in her life, Van Houten reasonably identified the point in time when she could have taken the right path. It is unreasonable to expect Van Houten to have chosen a scenario in which she time travels to August 10, 1969 to stop the

La Bianca murders, but only after she had joined the cult, taken 150 LSD trips, been raped and beaten by Manson, and so forth.

Notably, Van Houten has acknowledged she could have prevented the La Bianca murders and accepted her moral culpability for failing to do so. At her 2016 parole hearing, the Board asked Van Houten what crimes she thought she was responsible for. Van Houten began chronologically, with robbing her father's house, and then stated: "I feel that I am responsible for not ever speaking up or saying anything, so basically I feel responsible morally for the entire crime, the first, second – I feel responsible for all of it. Even if legally I'm not charged, I never said no. When Pat told me what happened, I did not go to the Malibu Police Department. I made no effort. I made no effort, so certainly morally I'm bound to that."

B. The Governor failed to articulate any rational nexus to current dangerousness.

Even if Van Houten attributed to Manson some blame for the La Bianca murders, this does not support the Governor's decision because there is no rational nexus to *current* dangerousness. Our high court has stated the standard of review is "unquestionably deferential, but certainly is not toothless, and 'due consideration' of the specified [parole] factors requires more than rote recitation of the relevant factors with no reasoning establishing a rational nexus between those factors and the necessary basis for the ultimate decision—the determination of current dangerousness." (*In re Lawrence* (2008) 44 Cal.4th 1181, 1210 (*Lawrence*).) *Lawrence* also emphasized that "in light of the constitutional liberty interest at stake, judicial review must be sufficiently robust to reveal and remedy any evident deprivation of constitutional rights." (*Id.* at p. 1211.) Thus, *Lawrence*

continued, "if we are to give meaning to the statute's directive that the Board *shall normally* set a parole release date [citation], a reviewing court's inquiry must extend beyond searching the record for some evidence that the commitment offense was particularly egregious and for a mere *acknowledgement* by the Board or the Governor that evidence favoring suitability exists. Instead, under the statute and the governing regulations, the circumstances of the commitment offense (or any of the other factors related to unsuitability) establish unsuitability if, and only if, those circumstances are probative of the determination that a prisoner remains a danger to the public. 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. [¶] Accordingly, 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." (*Id.* at p. 1212.)

Here, the Governor cited Van Houten's "minimization of her role" in the murders, asserting that she "still shifted blame for her own actions onto Manson to some extent, saying, 'I take responsibility for the entire crime. I take responsibility going back to Manson being able to do what he did to all of us. I allowed it.' She later stated, 'I accept responsibility that I allowed [Manson] to conduct my life in that way.' " The Governor found these "statements show that she still has not come to terms

with her central role in these murders and in the Manson Family."

Van Houten's contention that the Governor's decision has placed her in a Catch-22 has merit. Van Houten explains that if she "fails to recognize the true facts [of] 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."

I agree. If Van Houten's commitment crime had been a murder for the benefit of a street gang, the Board and the Governor would expect her to have gained insight into the influence of gang culture, what led her to join a gang and how she would avoid such malign influences in the future. If Van Houten had been intoxicated when she committed the murders, the Board and the Governor would expect her to have gained insight into the contributing role that substance abuse played in her crimes and how she would avoid drugs and alcohol in the future. A lack of such insight would be grounds to deny parole because unless and until an inmate understands how these influences contributed to his or her crimes and how to avoid them, they remain susceptible to committing similar crimes in similar circumstances upon release. Understanding and avoiding the influence of a cult figure like Manson is no different. Thus, it was essential for Van Houten to identify the weaknesses in her character as a 19-year-old and determine how she would resist being unduly influenced in the future. That required Van Houten to examine and discuss Manson's influence on her and the role that influence played in her decision to murder the La Biancas.

Nor does the record support the Governor's conclusion that Van Houten's statements "show that she still has not come to terms with her central role in these murders and in the Manson Family." To the contrary, the record shows that Van Houten described her role in the La Bianca murders in great detail. Van Houten testified that she entered the La Biancas' home planning to kill the people inside and that she "wanted" to participate in the murders. Van Houten testified that she collected butcher knives from the La Biancas' kitchen and secured a pillowcase over Mrs. La Bianca's head with a lamp cord so she could not remove it. She testified that Mrs. La Bianca struggled upon hearing the "guttural sound" of her husband dying in the next room, at which Van Houten held Mrs. La Bianca down while Patricia Krenwinkel stabbed her repeatedly, but the knife hit Mrs. La Bianca's collarbone and bent. Van Houten testified that she ran to the doorway to call to Tex Watson that "we can't kill her," and Tex Watson came and repeatedly stabbed Mrs. La Bianca with a bayonet. Watson handed Van Houten a knife and said, "Do something," upon which Van Houten stabbed Mrs. La Bianca between 14 and 16 times. These statements unequivocally show that Van Houten has come to terms with her central role in these terrible crimes.

The Governor's analysis would require Van Houten to scrub from her statements any mention of Manson's role. Van Houten could not honestly do so because her explanation of Manson's influence is essential to her understanding her motive at the time. The Governor recognizes that Manson was a major participant in the La Bianca murders for which he was convicted. Indeed, the Governor describes Manson's plan for his followers to commit the murders to incite a race war, his selection of the

La Biancas as victims, Manson's instruction that "he would show them how it should be done," and Manson tying up the La Biancas in preparation for the murders. Van Houten contends that if she failed to recognize Manson's control over her and others, "she would lack the insight into the causative factors that led to the crime and it could happen again[, which] would be a legitimate reason to deny parole." Again, I agree.

A lack of insight reflects the inmate's current state of mind and thus can bear on the inmate's present risk to public safety. But "[e]vidence of lack of insight is indicative of a current dangerousness only if it shows a *material* deficiency in an inmate's understanding and acceptance of responsibility for the crime. To put it another way, the finding that an inmate lacks insight must be based on a factually identifiable deficiency in perception and understanding, a deficiency that involves an aspect of the criminal conduct or its causes that are significant, and the deficiency by itself or together with the commitment offense has some rational tendency to show that the inmate currently poses an unreasonable risk of danger." (*In re Ryner* (2011) 196 Cal.App.4th 533, 548–549, fn. omitted (*Ryner*).)

The nearest the Governor comes to identifying a rational nexus between Van Houten's purported lack of insight and her current dangerousness appears in his quote of an order of the superior court denying a prior petition Van Houten filed challenging his 2016 reversal of the Board's first grant of parole. The Governor adopts the following reasoning: "Van Houten's recent statements, 'specifically her inability to discuss her role in the Manson Family and LaBianca murders without imputing some responsibility to her drug use and her danger of falling prey to the influence of other people because of her dependent

personality,' have demonstrated a lack of insight into her crimes. '[She] was not violent before she met Manson, but upon meeting such a manipulative individual she chose to participate in the cold-blooded murder of multiple innocent victims.' The court continued, 'While it is unlikely [Van Houten] could ever find another Manson-like figure if released, her susceptibility to dependence and her inability to fully recognize why she willingly participated in her life crime provides a nexus between the commitment offense and her current mental state, demonstrating she poses a danger to society if released on parole.' "

Relying on the superior court's 2016 order, the Governor fails to credit Van Houten's detailed description of her path to the Manson cult and the La Bianca murders. Understandably, the Governor may have been mystified by Van Houten's explanations, but the evidence he cited shows that Van Houten *has* recognized and articulated *why* she willingly participated in her life crime: "Van Houten told the 2016 psychologist that when asked to join Charles Manson's 'utopia' at the Spahn Ranch, she 'bit into it, hook, line and sinker.' By her own account, she idolized Manson and wanted to please him. At her 2017 hearing, Van Houten explained that she 'desperately wanted to be what [Manson] envisioned us being.' She admitted that following the Tate murders, she wanted to participate in the LaBianca murders because she 'wanted to go and commit to the cause, too.' Van Houten told the Board she committed the crimes in order to 'prove my dedication to the revolution and what I knew would need to be done to, um, have proved myself to Manson.' "

The fact that this explanation falls far outside the range of common experience does not make it untrue. As the California Supreme Court has cautioned, "expressions of insight and

remorse will vary from prisoner to prisoner and . . . there is no special formula for a prisoner to articulate in order to communicate that he or she has gained insight into, and formed a commitment to ending, a previous pattern of violent behavior." (*In re Shaputis* (2008) 44 Cal.4th 1241, 1260, fn. 18 (*Shaputis I*).) Indeed, "one always remains vulnerable to a charge that he or she lacks sufficient insight into some aspect of past misconduct even after meaningful self-reflection and expressions of remorse." (*Ryner, supra,* 196 Cal.App.4th at p. 548.) "Where, as here, undisputed evidence shows that the inmate has acknowledged the material aspects of his or her conduct and offense, shown an understanding of its causes, and demonstrated remorse, the Governor's mere refusal to accept such evidence is not itself a rational or sufficient basis upon which to conclude that the inmate lacks insight, let alone that he or she remains currently dangerous." (*Id.* at p. 549.)

A review of the record shows that Van Houten has demonstrated a solid understanding of how she went from being a privileged teen to joining the Manson cult and committing the La Bianca murders. She stated that after her abortion she was "brokenhearted" and at age 17 she and her boyfriend Bobby Mackie joined the Self-Realization Fellowship with the goal to become yoga renunciates. Van Houten found it challenging to meditate three hours a day and realized that she was losing Bobby, who wanted to remain in the Fellowship and become a monk. She reconnected with friends who used drugs, and began smoking marijuana daily and using LSD on weekends. In the summer of 1968, she traveled to San Francisco where she met Catherine Share and Robert Beausoleil. They invited her to join them and "drop out of society," and she agreed. Share told

Van Houten about a commune run by Charles Manson, who Share described as "wonderful" and "Christlike." They traveled the California coast and ended up at Spahn Ranch.

Van Houten described life at Spahn Ranch as designed to strip each person of his or her identity. Each person was given a new name, so Van Houten became "Lulu," Catherine Share became "Gypsy," and so forth. They gave up all their belongings, including their clothes, which became communal. Every week or 10 days the group would take LSD to "cleanse," with the goal of becoming "one mind" and shedding their egos. Van Houten testified that members of the Family were taught to relinquish the morality and ethics they had been taught by their parents and other "primary institutions."

Manson also used physical abuse to enforce obedience. Van Houten testified the general rule was that "If you didn't do what [Manson] wanted, you got beat up," and "Mary Brunner got beat up a lot" for disagreeing with Manson. Van Houten described how during an LSD session Manson instructed that no one was to move, and when a woman nicknamed "Bo" stood up, Manson broke a chair over her head. Van Houten testified that "usually somebody in just about every . . . acid trip would do something[] [¶] . . . [¶] [t]hat would displease [Manson], and he'd slap" them. Manson was the sole perpetrator of abuse as "he conducted everything that happened." Van Houten described how once Manson "said to us – baa like sheep, and we all did." Van Houten had the impression "that was pretty important to him" because it showed his "[t]otal control" over them.
Van Houten testified that there was "a line on who was able to go [from Spahn Ranch] and who wasn't." Those whose resources had been "used up," "weren't going to attract men," and "people

that weren't so compliant" were "free to leave." Van Houten testified that "[t]he women at the ranch were basically used for sex, fixing dinner."

In January 1969, upon returning from a trip to Los Angeles, Manson began to talk about how "there will be a revolution." Van Houten testified that Manson began talking about how "blacks had been suppressed and mistreated by the white and that karma was changing, and the blacks . . . were going to rise up and that we needed to prepare for a revolution." To prepare, the members of the Family "listen[ed] to the Beatles White album constantly." Manson would have Van Houten read to him from the Book of Revelations frequently and he would try "to figure out the symbolisms." Van Houten testified that Manson would "reenact his crucifixion" because "he was Christ – come back." Van Houten testified Manson "said because that happened last time, now that he was back, it was going to go differently. [¶] . . . [¶] He wasn't going to be so, um, forgiving. [¶] . . . [¶] . . . and I believed it."

Van Houten testified that about two or three weeks before the murders, Manson "began to say that it looked like the blacks weren't going to start the revolution, that we would have to. And that's when he began seriously talking about us killing people." His idea, which Van Houten said she did not know at the time, "was to make it look like the blacks had done it, so then the whites would retaliate against the blacks and the blacks would begin to defend themselves, and then there would be the war." The "blacks would win. And that's where we were going to go and hide for 150 years, and our job during the revolution was to go into the cities on the dune buggies we were working on and gather up . . . white children – and take them into the hole so

that when the karma changed, we would be there and come out." Van Houten said the details had not been worked out, and they "were busy trying to get ropes and looking for the hole in the middle of the earth." Van Houten testified that her state of mind was that "if it didn't make sense, then I needed to let go of that part of me that was trying to make sense of it." Asked why she would take Manson "at face value" at that time, Van Houten stated, "Because when I first got there, I really needed someone to have the answers, and at that time, . . . [¶] . . . [¶] . . . I was told he had the answers, and I was lost . . . ."

On the night of the Tate murders, Van Houten and Patricia Krenwinkel were in a trailer "taking care of the children, and Manson came and opened the door and told [Krenwinkel] to come with him." The next morning, Van Houten "saw Pat outside of a trailer, and she said that helter skelter had started." To Van Houten, Krenwinkel's statement meant that "people had been murdered." She explained that to the cult members, "helter skelter" meant "[r]evolution and chaos." Van Houten testified that Krenwinkel "said that it didn't seem right, that the people were young, that one of the women were pregnant, and . . . when she told me, I knew that she had crossed over and fully committed to the cause." Van Houten testified that it "bothered" her at the time that young people and a pregnant woman had been killed, but she "never questioned why they were selected or why it happened. But I knew that because Pat had committed herself and early on in my time at the ranch, Manson had told me to stay very close to Pat, I knew that I wanted to go and commit to the cause, too. I believed in it, and I wanted to go." That night, Manson asked Van Houten, "are you crazy enough to

believe in me? And I said yes, I am. And so I was told to go get a change of clothes."

Manson, Tex Watson, Linda Kasabian, Patricia Krenwinkel, Steve Grogan, Susan Atkins and Van Houten squeezed into a car and left the ranch. After driving around Los Angeles for three hours looking for victims, they settled on the La Bianca residence. "Manson and Tex went in, and we stayed in the car. And then Manson came back and pulled out Pat and I. And . . . he told us to do everything that . . . Tex said to do. And, um, we went into the house."

Van Houten's testimony lays bare her journey, describing the causes of her susceptibility to induction into the Manson cult, Manson's use of LSD and dominance to strip her of her identity and values, her indoctrination into Manson's apocalyptic philosophy in which he was Christ incarnate, and her eager and dutiful participation in the La Bianca murders. The Governor did not identify any aspect of Van Houten's account that he found not to be credible. Even if he had, "the Governor's mere refusal to accept such evidence is not itself a rational or sufficient basis upon which to conclude that the inmate lacks insight, let alone that he or she remains currently dangerous." (*Ryner, supra,* 196 Cal.App.4th at p. 549.)

Remorse is an important suitability factor and is embedded in what the courts have termed "insight."[3] "In evaluating whether an inmate evidences insight into the crime, the *Shaputis II* Court discussed the interplay between the regulations, which

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[3] The Governor's decision does not specifically discuss or even mention lack of remorse. Nevertheless, lack of remorse has been presented as "some evidence" to support the Governor's decision, so I address it.

do not explicitly discuss insight but instead 'direct the Board to consider the inmate's "past and present attitude toward the crime" (tit. 15, § 2402, subd. (b)) and "the presence of remorse," expressly including indications that the inmate "understands the nature and magnitude of the offense" (§ 2402, subd. (d)(3)). These factors fit comfortably within the descriptive category of "insight." ' " (*In re Swanigan* (2015) 240 Cal.App.4th 1, 17, quoting *In re Shaputis* (2011) 53 Cal.4th 192, 218 (*Shaputis II*).)

Asked how she feels about her crimes today, Van Houten stated, "I feel absolutely horrible about it, and I have spent most of my life trying to find ways to live with it." She described her work as a facilitator in the Victim Offender Education Group, stating that being a part of that group is "designed to get really in touch with the damages done to . . . those that loved Rosemary and Leno LaBianca." The presiding commissioner paraphrased Van Houten's comprehensive risk assessment, stating that "the doctor felt you . . . accepted responsibility for your life term offense, you expressed remorse for your misconduct, and your remorse seemed sincere." The Board similarly concluded: "Our sense was you have great remorse. . . . it's sincere. It's heartfelt. And you feel horrific about what happened . . . beyond just the . . . two murders you were directly involved in, but all of that."

Those who sat across from Van Houten and heard her apologies, including a psychologist, believed them to be sincere. This is consistent with every mental health professional who has evaluated Van Houten over the past two decades.[4] As *Ryner*

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[4] At the 2017 parole hearing, Van Houten's counsel argued that from "1980 until today, 17 doctors have said she's a low or an extremely low risk. They all can't be wrong." Not all of the comprehensive risk assessments are available in the records of

Van Houten's recent petitions, but the many that are support Van Houten's contention that the medical professionals who examined her over the past 20 years have consistently opined she is remorseful and a low to very low risk for violence. In May 2000, staff psychiatrist Robert D. McDaniel, M.D. stated in his report, "I do not believe the inmate would be dangerous if released to the community . . . based upon her internalization of societal norms and her feelings of her shame, guilt, and remorse of her past behavior." In his May 2002 report, Dr. McDaniel stated, "I do not see anything currently that would indicate that she would represent a danger if released to the community." In June 2004, staff psychiatrist Peter Hu, M.D., opined "that the inmate would not be dangerous if she were released to the community . . . based upon her ability to internalize the societal norms and her demonstration of her responsibility, remorse and regret of her past criminal behavior." In April 2006, staff psychologist Robert Smith, Ph.D., stated, "At the current interview, formal risk assessment indicated that the risk of violent recidivism falls into the 'Low to Very Low' range" conditioned on Van Houten's continued abstinence and self-help, and "avoiding co-dependent primary relationships." In December 2006, Dr. Smith stated, "I remain in full agreement with the prior mental health examiners who have evaluated this woman over a period of more than 30 years in concluding that there is a low to very low risk of violence or general recidivism, should she be released from custody." In March 2007, forensic psychologist Katherine Kropf, Ph.D., stated, "the results of Ms. Van Houten's evaluation by this examiner indicate that she represents a low risk for future violence." In March 2010, forensic psychologist C. Carrera, Psy.D., "opined that Ms. Van Houten presents a ***LOW RISK*** for violence in the free community." (Original emphases.) In 2013, forensic psychologist J. Larmer, Psy.D., opined that Van Houten presented "with a self help orientation, maturity, good insight, good impulse control and with a record of compliance within the institution[and] is clearly committed to

cautioned, one must "question whether anyone can ever adequately articulate the complexity and consequences of past misconduct and atone for it to the satisfaction of everyone." (*Ryner, supra,* 196 Cal.App.4th at p. 549.)

C. The Governor failed to give great weight to the youth offender factors.

The Governor's reversal described the youth offender factors but he does not appear to have given "great weight" to them as the California Legislature now requires. Following the United States Supreme Court's decision in *Miller v. Alabama* (2012) 567 U.S. 460 (*Miller*) and related cases, the California Legislature enacted statutes that require the Board, at parole suitability hearings for "youth offenders," to "give great weight to the diminished culpability of youth as compared to adults, the hallmark features of youth, and any subsequent growth and increased maturity of the prisoner in accordance with relevant case law." (§§ 4801, subd. (c), 3051, subds. (d), (e).) These statutes apply to offenders who, like Van Houten, were 25 years of age or younger at the time of the controlling offense. (§§ 3051, subd. (a)(1), 4801, subd. (c).) The legislative history of the youth

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sobriety and is taking the necessary steps to ensure sobriety in the community. . . . She appears to have maintained the gains she has made." At Van Houten's 2017 parole hearing the presiding commissioner described Dr. Larmer's subsequent risk assessment as concluding Van Houten is "still a low risk." The presiding commissioner described Van Houten's 2016 risk assessment as concluding she was "overall a low risk for future violence," and commented, "this is not news."

offender statutes shows they are based on scientific evidence that significant brain development continues beyond age 18.[5]

In *People v. Franklin* (2016) 63 Cal.4th 261 (*Franklin*), the California Supreme Court quoted from *Miller* to describe how youthful offenders "are 'constitutionally different . . . for purposes of sentencing' for several reasons based 'not only on common sense—on what "any parent knows"—but on science and social science as well.' [Citation.] 'First, children have a " 'lack of maturity and an underdeveloped sense of responsibility,' " leading to recklessness, impulsivity, and heedless risk-taking. . . . Second, children "are more vulnerable . . . to negative influences and outside pressures," including from their family and peers; they have limited "contro[l] over their own environment" and lack the ability to extricate themselves from horrific, crime-producing settings. . . . And third, a child's character is not as "well formed" as an adult's; his [or her] traits are "less fixed" and his [or her]

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[5] The Assembly Committee on Public Safety's report quotes one of the bills' authors, stating: " 'Scientific evidence on adolescence and young adult development and neuroscience shows that certain areas of the brain, particularly those affecting judgement and decision-making, do not develop until the early-to-mid-20s. Research has shown that the prefrontal cortex doesn't have nearly the functional capacity at age 18 as it does at 25. The prefrontal cortex is responsible for a variety of important functions of the brain including: attention, complex planning, decision making, impulse control, logical thinking, organized thinking, personality development, risk management, and short-term memory. These functions are highly relevant to criminal behavior and culpability.' " (Assem. Com. on Pub. Safety, Analysis of Assem. Bill No. 1308 (2017-2018 Reg. Sess.) as amended Mar. 30, 2017.)

actions less likely to be "evidence of irretrievabl[e] deprav[ity]." ' " (*Id.* at p. 274.)

The Governor's review of parole decisions is required to be based "upon the same factors that the Board is required to consider." (*Rosenkrantz, supra*, 29 Cal.4th at pp. 625–626.) Here, the Governor (like the Board) found that all the youth offender factors applied to Van Houten. The Governor stated he "gave great weight to all the factors relevant to her diminished culpability as a juvenile: her immaturity and impetuosity, her failure to appreciate risks and consequences, her dysfunctional home environment, the peer pressures that affected her, and her other hallmark features of youth." The Governor stated he "also gave great weight to her subsequent growth in prison during [his] consideration of her suitability for parole, as well as evidence that she had been the victim of intimate partner battering at the hands of Manson."

But there is no discussion in the Governor's reversal of how the youth offender factors apply in this case. Nor did he appear to consider that they may, in some measure, explain why Van Houten, at age 19 and suffering from dangerous instability, was susceptible to Manson's influence but 50 years later no longer remains so. Nothing can excuse her crimes, but Van Houten is now 70 years old and by all accounts has for decades engaged wholeheartedly in the rehabilitative process with good results. The Governor described in some detail Van Houten's "laudable strides in self-improvement in prison." There is nothing in the decision, however, that suggests "great weight" was given to that growth and maturation.

There are presently no published cases that interpret what the Legislature intended by its command that the Board and

Governor must give "great weight" to the youth offender factors. The California Supreme Court recently granted review in the only case to have tackled this question, *In re Palmer* (2018) 27 Cal.App.5th 120, and ordered the Court of Appeal's opinion not to be published. (*Palmer* (Jan. 16, 2019, S252145).) Undoubtedly, giving "great weight" to the youth offender factors entails at least explaining why Van Houten is not entitled to a finding of suitability for release despite the presence of all the statutory factors. Otherwise, the decision's compliance with the Legislature's directive is immune from effective appellate scrutiny.[6]

D. The Governor failed to give special consideration to the elderly inmate factors.

The elderly parole statute adopted by the California Legislature in 2017 provides that when considering the release of an eligible inmate, the Board " 'shall give special consideration to whether age, time served, and diminished physical condition, if any, have reduced the elderly inmate's risk for future violence.' " (*People v. Contreras* (2018) 4 Cal.5th 349, 374 (*Contreras*).) The Board noted that Van Houten qualified as an elderly parole candidate on August 23, 2009, and stated it would consider her

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[6] See *People v. Martin* (1986) 42 Cal.3d 437, 449-450 ["a requirement of articulated reasons to support a given decision serves a number of interests: it is frequently essential to meaningful review; it acts as an inherent guard against careless decisions, insuring the judge [or Governor] analyzes the problem and recognizes the grounds for his decision; and it aids in preserving public confidence in the decision-making process by helping to persuade the parties and the public that the decision-making is careful, reasoned and equitable"].)

"advanced age, . . . length of confinement, and physical limitations and how they would either mitigate or aggravate [her] future risk for violence." The Board observed that statistically "people that reach th[e] fifth decade of life are less likely to become involved in recidivism, particularly . . . recidivism in a violent way." The Board considered the psychologist's assessment in the comprehensive risk assessment that Van Houten's "age, maturity, and active participation in self-help programs mitigate" her risk, and that her "advanced age and physical limitations which accompany . . . aging are noted and lower your risk for violent recidivism." The Board asked Van Houten about her mobility because she was using crutches, and she explained she fell and "broke [her] kneecap in half" but expected it to mend.

The Governor noted Van Houten's age and referred to her "maturity," but made no mention that she qualifies as an elderly inmate. Nor did the Governor state that he had given any consideration to the statutory factors for considering parole of elderly inmates, as he was required to do. This failure to follow the Legislature's command provides a further reason for this Court to vacate the Governor's decision.

E. The Governor appears to have improperly based his decision on Van Houten's crimes alone.

Because I would grant the petition, I also address the Governor's alternative ground for reversing the Board's grant of parole. In his recitation of the governing legal standards, the Governor cited to *Lawrence* for the proposition 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." Following his discussion of the facts, the Governor stated that, "As our Supreme Court has acknowledged, in rare cases, the circumstances of a crime can provide a basis for denying parole," and concluded, "This is exactly such a case." But *Lawrence* requires some evidence, apart from the immutable circumstances of the commitment crime, that indicates an inmate currently would pose an unreasonable risk to public safety if released on parole.

In *Lawrence*, our Supreme Court addressed the Governor's reversal of the Board's decision to grant parole to Sandra Lawrence, who killed her lover's wife because her lover had decided not to leave his wife and children to be with her. "Lawrence shot her lover's wife multiple times with a firearm and repeatedly stabbed her. After the crime, Lawrence fled. She surrendered to the police 11 years later, and was convicted of first degree murder. [Citation.] During 23 years of imprisonment, Lawrence had a few administrative violations, but she was free of serious discipline. [Citation.] Her psychological reports early on were troubling, but these reports improved over the years to the point that she was found to have no psychiatric or psychological disorder. [Citation.] After about a decade in prison, a psychological report found that she no longer posed a significant danger to public safety. Numerous psychological reports over the next decade made the same finding. [Citation.] During that same decade, the Board three times found Lawrence suitable for parole, but in each instance the Governor reversed. [Citation.] In 2005, the Board granted parole for the fourth time, and the Governor reversed again. His reason for reversing the Board's 2005 parole grant was that the commitment offense had been ' "carried out in an especially cruel manner and committed

for an incredibly petty reason." ' " (*In re Dannenberg* (2009) 173 Cal.App.4th 237, 248.)

The Court set aside the Governor's reversal, concluding that it violated Lawrence's due process rights. "[T]he statutory and regulatory mandate to normally grant parole to life prisoners who have committed murder means that, particularly after these prisoners have served their suggested base terms, 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." (*Lawrence, supra,* 44 Cal.4th at p. 1211.)

Lawrence explained that "the Board or the Governor may base a denial-of-parole decision upon the circumstances of the offense, or upon other immutable facts such as an inmate's criminal history, but some evidence will support such reliance *only* if those facts support the ultimate conclusion that an inmate *continues* to pose an unreasonable risk to public safety. [Citation.] Accordingly, the relevant inquiry for a reviewing court is not merely whether an inmate's crime was especially callous, or shockingly vicious or lethal, but whether the identified facts are *probative* to the central issue of current dangerousness when considered in light of the full record before the Board or the Governor." (*Lawrence, supra,* 44 Cal.4th at p. 1221.)

The Court applied this standard of review to the Governor's decision to deny Lawrence parole. "In light of petitioner's extraordinary rehabilitative efforts specifically tailored to address the circumstances that led to her criminality, her insight into her past criminal behavior, her expressions of remorse, her realistic parole plans, the support of her family, and numerous institutional reports justifying parole, as well as the favorable

discretionary decisions of the Board at successive hearings—decisions reversed by the Governor based solely upon the immutable circumstances of the offense—we conclude that the unchanging factor of the gravity of petitioner's commitment offense had no predictive value regarding her *current* threat to public safety, and thus provides no support for the Governor's conclusion that petitioner is unsuitable for parole at the present time." (*Lawrence*, *supra*, 44 Cal.4th at p. 1226.)

The Court explained, "Our deferential standard of review requires us to credit the Governor's findings if they are supported by a modicum of evidence. [Citation.] This does not mean, however, that evidence suggesting a commitment offense was 'especially heinous' or 'particularly egregious' will eternally provide adequate support for a decision that an inmate is unsuitable for parole. . . . When, as here, all of the information in a postconviction record supports the determination that the inmate is rehabilitated and no longer poses a danger to public safety, and the Governor has neither disputed the petitioner's rehabilitative gains nor, importantly, related the commitment offense to current circumstances or suggested that any further rehabilitation might change the ultimate decision that petitioner remains a danger, mere recitation of the circumstances of the commitment offense, absent articulation of a rational nexus between those facts and current dangerousness, fails to provide the required 'modicum of evidence' of unsuitability." (*Lawrence*, *supra*, 44 Cal.4th at pp. 1226–1227.) The Court concluded that in the absence of "any evidence supporting a finding that she continues to pose a threat to public safety—petitioner's due process and statutory rights were violated by the Governor's reliance upon the immutable and unchangeable circumstances of

her commitment offense in reversing the Board's decision to grant parole." (*Id.* at p. 1227.)

Like the Governor, the Attorney General contends that this case presents "one of the rare circumstances in which the crime alone justified a finding that Van Houten remains currently dangerous and unsuitable for parole." Based on *Lawrence*, however, there must also be some evidence establishing a nexus between Van Houten's crime and her purported current dangerousness. (*Lawrence, supra*, 44 Cal.4th at p. 1227.) The Attorney General relies on *In re Rozzo* (2009) 172 Cal.App.4th 40 (*Rozzo*), but in that case the Governor identified such a nexus. *Rozzo* applied *Lawrence* and *Shaputis I* to reject Joseph Rozzo's challenge to the Governor's reversal of his grant of parole. The Governor based his reversal on both Rozzo's commitment crime—an unprovoked, racially motivated kidnapping, torture and murder of a stranger who pled for his life—and Rozzo's lack of insight into the reasons for his offense. Specifically, Rozzo continued to deny the murder was racially motivated, despite evidence that he and his crime partners declared they were on a "hunt" for an African-American victim. Rozzo also continued to deny that he participated directly in the murder itself despite evidence that he "pushed his thumbs through the victim's Adam's apple, and laughed about the killing immediately after it occurred." (*Rozzo*, at p. 58.) Moreover, the court in *Rozzo* described its obligation to look beyond the circumstances of Rozzo's crime: "In addition to examining Rozzo's commitment offense, we must also consider whether Rozzo's criminal history, conduct in prison, or his mental state, indicates that circumstances of that offense remain probative in determining whether he is currently dangerous." (*Id.* at p. 60.)

Applying *Lawrence* and *Rozzo*, I disagree with the Attorney General's contention that the circumstances of Van Houten's crimes alone, indisputably heinous as they were, justify the Governor's reversal of the Board's parole grant. Rather, a decision to deny parole " 'solely upon the basis of the type of offense . . . deprives an inmate of due process of law.' " (*Lawrence, supra,* 44 Cal.4th at p. 1210.)

F. The Governor's serial reversals based on her commitment crime convert Van Houten's sentence into a de facto life without parole sentence.

In *Franklin*, the California Supreme Court described why life-without-parole sentences are unconstitutional for youthful offenders. The Court drew from *Miller* to explain that the " 'distinctive attributes of youth diminish the penological justifications for imposing the harshest sentences on juvenile offenders, even when they commit terrible crimes. Because " '[t]he heart of the retribution rationale' " relates to an offender's blameworthiness, " 'the case for retribution is not as strong with a minor as with an adult.' " . . . Nor can deterrence do the work in this context, because " 'the same characteristics that render juveniles less culpable than adults' "—their immaturity, recklessness, and impetuosity—make them less likely to consider potential punishment. . . . Similarly, incapacitation could not support the life-without-parole sentence in *Graham* [*v. Florida*]: Deciding that a "juvenile offender forever will be a danger to society" would require "mak[ing] a judgment that [he] is incorrigible"—but " 'incorrigibility is inconsistent with youth.' " . . . And for the same reason, rehabilitation could not justify that sentence. Life without parole "forswears altogether the rehabilitative ideal." . . . It reflects "an irrevocable judgment

about [an offender's] value and place in society," at odds with a child's capacity for change.' " (*Franklin*, *supra*, 63 Cal.4th at p. 274; see *Graham v. Florida* (2010) 560 U.S. 48, 79, as modified (July 6, 2010) ["Life in prison without the possibility of parole gives no chance for fulfillment outside prison walls, no chance for reconciliation with society, no hope. Maturity can lead to that considered reflection which is the foundation for remorse, renewal, and rehabilitation"].)

Around the time *Miller* was decided California embarked on a series of changes in its penal system to shift the emphasis from punishment to rehabilitation while maintaining public safety as the primary focus.[7] In his 2018 State of the State

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[7] In 2012, voters passed Proposition 36, which revised California's "Three Strikes" law to limit life sentences to new felony convictions that are "serious or violent," and authorized re-sentencing for offenders serving life sentences if their third strike conviction was not serious or violent and if the court determines that the re-sentence does not pose unreasonable risk to public safety. In 2014, Proposition 47 reclassified some drug and property felonies as misdemeanors and permitted re-sentencing for inmates whose risk assessment showed they do not pose a risk to the public. In 2016, voters approved Proposition 57, which increased parole opportunities for felons convicted of nonviolent crimes who demonstrate good behavior and educational or rehabilitative achievements. Starting in 2014, the Legislature enacted a series of bills establishing youth offender parole hearings for inmates who committed their commitment crimes at a young age. First, Senate Bill No. 260 set the threshold age at 18 years old or younger. Then in 2016, Senate Bill No. 261 extended youth offender parole consideration to inmates who were under age 23 at the time of their crime. And in 2018, Assembly Bill No. 1308 further extended youth offender parole to inmates who were age 25 or younger at the time of their crime.

Address, Governor Brown urged the Legislature "that instead of enacting new laws because of horrible crimes and lurid headlines, you consider the overall system and what it might need and what truly protects public safety." Citing the need for "more mental health and drug treatment programs and better training and education," the Governor stated, "Those we are getting, but more is needed, particularly hope. When a human being gets a 20-or 40-year sentence, as tens of thousands do, incentives to reform weaken and hopelessness and violence take over . . . . That is why recent measures are so vital which allow the possibility of earlier parole and milestone credits for those who turn their lives around." The Governor noted the important role of corrections officers to "foster a spirit of rehabilitation whenever possible," and emphasized that their work is "all out of sight, but profoundly important because most inmates will be returning to their communities and we want them to be as reformed and rehabilitated as possible."[8]

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[8] See <https://www.ca.gov/archive/gov39/2018/01/25/governor-brown-delivers-2018-state-of-the-state-address-california-is-setting-the-pace-for-america/index.html> [as of Sept. 13, 2019], archived at <https://perma.cc/4UVZ-593D>. Our current Governor likewise emphasized the goal of rehabilitation when he recently commuted the sentences of 21 inmates serving lengthy or life-without-parole prison terms for violent crimes, including murder, making each eligible for parole. Governor Newsom's press release described his commutation authority "as an important part of the criminal justice system that can incentivize accountability and rehabilitation, increase the safety of the people working and serving sentences in our jails and prisons, increase public safety by removing counterproductive barriers to successful reentry and correct unjust results in the legal system." (<https://www.gov.ca.gov/2019/09/13/governor-newsom-

Our Supreme Court similarly has emphasized the importance of providing incentives for youth offenders serving life terms to engage in rehabilitation. The Court stated, "in underscoring the capacity of juveniles to change, *Graham*[*v. Florida*] made clear that a juvenile offender's prospect of rehabilitation is not simply a matter of outgrowing the transient qualities of youth; it also depends on the incentives and opportunities available to the juvenile going forward. [Citation.] Importantly, *Graham* said '[a] young person who knows that he or she has no chance to leave prison before life's end has little incentive to become a responsible individual.' [Citation.] We believe the same is true here: A young person who knows he or she has no chance to leave prison for 50 years 'has little incentive to become a responsible individual.' " (*Contreras*, *supra*, 4 Cal.5th at pp. 368–369.)

Van Houten's crimes were indisputably heinous. Yet even heinous crimes are subject to the rules directing that parole shall be granted unless there is lawful reason to the contrary. (§ 3041, subd. (a); *Lawrence*, *supra*, 44 Cal.4th at p. 1212.) The Governor's repeated reversals of the Board based on facts and circumstances Van Houten cannot change have effectively converted Van Houten's seven-years-to-life sentence to life without parole. This violates due process. It also sends an unmistakable signal to other inmates serving life terms for terrible crimes that their efforts to reprogram and rehabilitate are exercises in futility. They have no reason to hope for a return to society. As the Governor recognized in his final State of the State Address, without such hope, there is little incentive for

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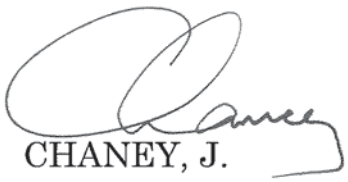
grants-executive-clemency-9-13-19/> [as of Sept. 17, 2019], archived at <https://perma.cc/K9Y5-SBJF>.

prisoners serving life terms to avoid gang entrenchment and violence in prison.

G. Conclusion

Even if one were to accept (I do not) that Van Houten has placed too much responsibility for the La Bianca murders on Manson's influence or inadequately explained why she committed to his nefarious cause over 50 years ago, this is not evidence that she is *currently* dangerous. If anything, this shows she has committed herself to remaining vigilant to identifying malign influences and has girded herself against them.

Our high court has " '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.' " (*Shaputis II*, *supra*, 53 Cal.4th at p. 209.) Accordingly, the question for this Court is not whether there is "some evidence" to support the Governor's finding that Van Houten is minimizing her role in the La Bianca murders or has failed to explain adequately what led her to commit them. Nor is it whether she has expressed remorse for her crimes a sufficient number of times. Rather, the question is whether "some evidence" in the record supports the Governor's ultimate conclusion that Van Houten's release would pose an unreasonable risk to public safety. Because I find no such evidence in the record, I dissent.



CHANEY, J.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re LESLIE VAN HOUTEN on Habeas Corpus.	B291024 (Los Angeles County Super. Ct. Nos. BH011585, A253156) ORDER MODIFYING DISSENTING OPINION [NO CHANGE IN JUDGMENT]

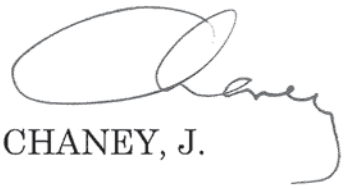
It is ordered that the dissenting opinion filed herein on September 20, 2019, be modified as follows:

On page 31 of the dissent on line 9, the ellipses will be deleted and the following language will be added: ", making prison gang influence all the more powerful." The full quote will now read as follows:

"Those we are getting, but more is needed, particularly hope. When a human being gets a 20-or 40-year sentence, as tens of thousands do, incentives to reform weaken and hopelessness and violence take over, making prison gang influence all the more powerful. That is why recent measures are so vital which allow

the possibility of earlier parole and milestone credits for those who turn their lives around."

There is no change in the judgment.



CHANEY, J.

prisoners serving life terms to avoid gang entrenchment and violence in prison.

G. Conclusion

Even if one were to accept (I do not) that Van Houten has placed too much responsibility for the La Bianca murders on Manson's influence or inadequately explained why she committed to his nefarious cause over 50 years ago, this is not evidence that she is *currently* dangerous. If anything, this shows she has committed herself to remaining vigilant to identifying malign influences and has girded herself against them.

Our high court has " '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.' " (*Shaputis II*, *supra*, 53 Cal.4th at p. 209.) Accordingly, the question for this Court is not whether there is "some evidence" to support the Governor's finding that Van Houten is minimizing her role in the La Bianca murders or has failed to explain adequately what led her to commit them. Nor is it whether she has expressed remorse for her crimes a sufficient number of times. Rather, the question is whether "some evidence" in the record supports the Governor's ultimate conclusion that Van Houten's release would pose an unreasonable risk to public safety. Because I find no such evidence in the record, I dissent.

CHANEY, J.

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On Habeas Corpus

Case No. B291024

DECLARATION OF SERVICE

I, the undersigned, declare: I am over the age of eighteen years and not a party to the cause; I am employed in the County of Orange, California, and my business address is P.O. Box 721, 14931 Anderson Way, Silverado, CA 92676, and my email address is highenergylaw@yahoo.com. I caused to be served the **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 October 14, 2019.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on October 14, 2019, at Silverado, California.

_____
RICH PFEIFFER

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