Court of Appeal, Second Appellate District
Eva McClintock
Electronically RECEIVED on 1/30/2023 at 2:47:46 PM

Court of Appeal, Second Appellate District
Eva McClintock
Electronically FILED on 1/30/2023 by Angelica Lopez, Deputy Clerk

ROB BONTA
Attorney General

State of California
DEPARTMENT OF JUSTICE

300 SOUTH SPRING STREET, SUITE 1702
LOS ANGELES, CA 90013-1230

Public: (213) 269-6000
Telephone: (213) 269-6027
Facsimile: (916) 731-2147
E-Mail: Jennifer.Heinisch@doj.ca.gov

January 30, 2023

Second Appellate District, Division One
Court of Appeal of the State of California
300 South Spring Street
2nd Floor, North Tower
Los Angeles, CA 90013

RE: Supplemental Return
In re Leslie Van Houten
Case No. B320098

Dear Justices:

Respondent files this supplemental return to the Court's order to show cause to address Van Houten's claim that her continued incarceration amounts to cruel and unusual punishment in violation of the Eighth Amendment and California Constitution. This claim is meritless. Van Houten's continued incarceration is due to the life sentence she received for the La Bianca murders; the Governor's November 2020 decision did not alter that sentence or render it grossly disproportionate to her crimes. Van Houten's life maximum sentence was constitutional when imposed and remains so.

Only when a sentence is "out of all proportion to the offense," should the judiciary interfere. This is not such a case. "Under our tripartite system of government it is the function of the Legislature to define crimes and prescribe punishments and such questions are in the first instance for the judgment of the Legislature alone." (*People v. Karsai* (1982) 131 Cal.App.3d 224, 241, citing *In re Lynch* (1972) 8 Cal.3d 410, 414, and disapproved on another ground in *People v. Jones* (1988) 46 Cal.3d 585, 600, fn. 8.) Given the separation of powers, judicial intervention that alters a statutory punishment is restricted to "'exquisitely rare' cases." (*People v. Perez* (2013) 214 Cal.App.4th 49, 60; see also *In re Nunez* (2009) 173 Cal.App.4th 709, 725 [reversal for the "rarest of the rare" cases, in which a 14-year-old was given a full life without parole (LWOP) for a non-homicide crime].) As such, a defendant who raises a claim of excessive punishment must overcome a "'considerable burden,'" and courts should give "'the broadest discretion possible'" to the legislative judgment respecting appropriate punishment. (*In re Palmer* (2021) 10 Cal.5th 959, 972, quoting *People v. Wingo* (1975) 14 Cal.3d 169, 174, and *Lynch*, *supra*, 8 Cal.3d at p. 414; accord *Nunez, supra,* 173 Cal.App.4th 709.) Specifically, "the judiciary should not interfere" unless a punishment is "out of all proportion to the offense." (*People v. Baker* (2018) 20 Cal.App.5th 711, 723, quoting *Lynch*, *supra*, 8 Cal.3d at pp. 414-

CieloDrive.com ARCHIVES

415.) To surmount her "considerable burden," Van Houten must "'clearly, positively and unmistakably'" show the unconstitutionality of her punishment. (*Palmer*, at p. 972, quoting *Lynch*, at p. 415; *Karsai*, *supra*, 131 Cal.App.3d at p. 241.) She fails.

As the California Supreme Court clarified in *Palmer*, whether an inmate challenges a sentence when first imposed or after repeated parole denials, "the court's inquiry properly focuses on whether the punishment is 'grossly disproportionate' to the offense and the offender or whether the punishment is so excessive that it '"shocks the conscience and offends fundamental notions of human dignity. [Citations.]"'" (*Palmer*, *supra*, 10 Cal.5th at p. 972, quoting *Lynch*, *supra*, 8 Cal.3d at p. 424, and citing *In re Butler* (2018) 4 Cal.5th 728, 744 ["an inmate sentenced to an indeterminate term cannot be held for a period grossly disproportionate to his or her individual culpability"]; see also *Butler*, at p. 746, ["A sentence violates the prohibition against unconstitutionally disproportionate sentences only if it is so disproportionate that it 'shocks the conscience'"].) A petitioner attacking a punishment as cruel or unusual must demonstrate the punishment is grossly disproportionate in light of the three factors identified in *Lynch*: (1) the nature of the offense and the offender, with particular attention to the degree of danger both pose to society, (2) the punishment California imposes for more serious offenses, or (3) punishment for the same offenses in other jurisdictions. (*Palmer*, at p. 973, citing *In re Foss* (1974) 10 Cal.3d 910, 919-920, and *Lynch*, at pp. 425-428.)

Van Houten does not attempt to demonstrate disproportionality under any of the three *Lynch* techniques. Instead, she vaguely claims that in light of her youth at the time of the La Bianca murders, the influence of Manson on her actions, and her subsequent programming efforts in custody, "her continued custody after five grants of parole and proven rehabilitation has become constitutionally excessive." (Petn., p. 118.) This unsupported allegation is insufficient to warrant serious consideration of her claim, particularly since she fails to engage in *any* analysis using *any* of the three *Lynch* techniques. Her entire argument focuses on the length of her confinement and ignores the crimes that justify her confinement. (Petn., pp. 117-121.) She fails to acknowledge the brutality of the La Bianca murders or their lasting impact despite the trial court's warning that her crimes "will burn in the public consciousness for a long period of time, not merely in the memories of the families that have been decimated by them, or in the memories of the people still alive and have been hurt, either closely or incidentally, by the destruction of all of the families that have been destroyed in this case." (Petn., Exh. 4 at pp. 153-154.)

Consideration of the *Lynch* techniques demonstrates her argument lacks merit. Under the first of the *Lynch* techniques, this Court examine[s] the "nature of the offense and the offender, with particular attention to the degree of danger both pose to society." (*Palmer*, *supra*, 10 Cal.5th at p. 973; citing *Foss*, *supra*, 10 Cal.3d at pp. 919-920, and *Lynch*, *supra*, 8 Cal.3d at pp. 425-428; see also *People v. Dillon* (1983) 34 Cal.3d 441.) In conducting this inquiry, a court must consider "not only the offense in the abstract . . . but also 'the facts of the crime in question' [citation], i.e., the totality of the circumstances surrounding the commission of the offense in the case at bar, including such factors as its motive, the way it was committed, the extent of the defendant's involvement, and the consequences of his acts." (*Dillon*, at p. 479,

CieloDrive.com ARCHIVES

quoting *Foss*, at p. 919.) As described in detail in the return, Van Houten, at 19, was "completely committed" to Manson and bringing about a civilization-ending race war, after which the Manson Family would emerge from their hiding place in the desert, "take control and restore order." (*In re Van Houten* (2004) 116 Cal.App.4th 339, 344, fn. 1; see also *People v. Van Houten* (1980) 113 Cal.App.3d 280, 284; *People v. Manson et al.*, (1976) 61 Cal.App.3d 102, 127-130.) (Ex. 3 at p. 12.) Van Houten felt "left out" when she did not participate in the murders at the Tate house and then actively participated in the La Bianca slayings. (*In re Van Houten*, *supra*, 116 Cal.App.4th at p. 345.) The brutality of the murders is unquestionable. After terrorizing and stabbing Ms. La Bianca at least 16 times, Van Houten wiped down surfaces in the house to eliminate her and her codefendants' fingerprints. She changed out of her clothes, donned fresh clothes belonging to Ms. La Bianca, and proceeded to drink the La Bianca's chocolate milk. Van Houten later bragged that the more times she stabbed Ms. La Bianca, "the more fun it was." (*In re Van Houten*, at p. 346.)

In addition to consideration of Van Houten's commitment offenses, the court "must also view the nature of the offender." (*Lynch, supra*, 8 Cal.3d at p. 437.) Consideration of Van Houten—the offender—is necessarily a part of the Governor's parole decision. (*In re Powell* (1988) 45 Cal.3d 894, 902 [parole consideration "involves the deliberate assessment of a wide variety of individualized factors on a case-by-case basis."]; *In re Rosenkrantz* (2002) 29 Cal.4th 616, 654 [same].) Yet even those individual considerations are "not determinative" in the disproportionality analysis. (*People v. Martinez* (1999) 76 Cal.App.4th 489, 497 [sentence of 30 years to life constitutional for 23-year-old defendant with no juvenile record and one adult conviction for driving without a license]; see also *People v. Alvarado* (2001) 87 Cal.App.4th 178, 200 [life term constitutional despite defendant's young age, lack of record, mental disorder, substance abuse, and sincere remorse]; *People v. Crooks* (1997) 55 Cal.App.4th 797, 806-807 [life term constitutional despite productive life as a husband and father and insignificant prior record consisting only of "DUI" offenses].) Simply put, given the brutal nature of Van Houten's crimes and her willing participation to bring about an apocalyptic race war, she cannot show that the sentence she has served thus far so shocks the conscience under the first of the *Lynch* techniques as to make it one of the "'exquisitely rare' cases which merit reversal" as constitutionally disproportionate. (*Perez*, *supra*, 214 Cal.App.4th at p. 60; see also *Nunez*, *supra*, 173 Cal.App.4th at p. 725 [reversal for the "rarest of the rare" cases, in which a 14-year-old was given a full LWOP for a non-homicide crime].) A lifetime in prison for her crimes does not "offend fundamental notions of human dignity." (See *Butler*, *supra*, 4 Cal.5th at p. 744.)

Also missing from Van Houten's analysis is any attempt at the comparisons necessary under the second or third *Lynch* techniques. She makes no attempt to compare her life sentence for multiple homicides to the punishments California imposes for more serious crimes, and does not compare her punishment to the punishment she would have received for multiple murders in other jurisdictions. Her failure to attempt such comparisons is not surprising because there would be no benefit to her in doing so.[1] Van Houten's "sentence is not the product of an isolated

[1] California currently sets the sentence for murder in the first degree at death, life without the possibility of parole or an indeterminate term of 25 years to life. (Pen. Code, § 190.) For

CieloDrive.com ARCHIVES

conviction for a single offense but is the result of [her] conviction for multiple violent . . . offenses"; it is thus difficult to imagine how Van Houten could even devise a reference for comparison to the La Bianca's gruesome murders. (*Karsai*, *supra*, 131 Cal.App.3d at p. 242 [rejecting defendant's comparison of his multiple offenses to a single murder conviction].)

The failure to discuss the second and third *Lynch* techniques forecloses any claim under the federal Constitution's Eighth Amendment. While "[a]rticle I, section 17 of the California Constitution prohibits infliction of cruel *or* unusual punishment," the "Eighth Amendment to the United States Constitution . . . prohibits the infliction of cruel *and* unusual punishment." (*Baker*, *supra*, 20 Cal.App.5th at p. 723, internal quotation marks omitted.) "The distinction in wording is purposeful and substantive rather than merely semantic." (*Ibid.*) Specifically, the disjunctive nature of California's excessive punishment provision means that a defendant may successfully challenge a sentence by making a sufficiently strong showing on only one of the *Lynch* techniques. (*Nunez*, *supra*, 173 Cal.App.4th at p. 725.) Under the federal Constitution, however, the defendant must show not only that the first technique favors invalidation—i.e., that the sentence is cruel—but also that some combination of the second and third techniques show that the sentence is unusual. (*Graham v. Florida* (2010) 560 U.S. 48, 60, citing *Harmelin v. Michigan* (1991) 501 U.S. 957, 1005.) Even if Van Houten made a showing under the first *Lynch* technique, which she did not, the fact she did not attempt any showing on the second or third *Lynch* techniques necessarily precludes the finding of an Eighth Amendment violation.

Van Houten's entire argument relies on *Palmer*, *supra*, 10 Cal.5th 959, and she asserts, "her continued custody after five grants of parole and proven rehabilitation has become unconstitutionally excessive." (Petn., p. 118.) But the *Palmer* decision does not help Van Houten. In *Palmer*, the California Supreme Court did not address whether the petitioner's punishment was disproportionate because, unlike Van Houten, Palmer was granted parole and released while his petition was pending. (*Palmer*, *supra*, 10 Cal.5th at p. 974.) *Palmer* is therefore of limited usefulness to Van Houten because it simply reiterated that an inmate denied release on parole *can* bring a disproportionality claim under the California Constitution if the inmate believes that their punishment has become excessive. (*Id.* at p. 970, italics added.) *Palmer* does not conclude that an indeterminately sentenced individual convicted of multiple

---

multiple murders or murders manifesting exceptional depravity, the penalty is death or life imprisonment without the possibility of parole. (Pen. Code, § 190.2, subds. (a)(3), (a)(14).) New York punishes first degree murder as a class A-1 felony punishable by death, life imprisonment without parole, or life imprisonment. (N.Y. Penal Law, §§ 60.06, 70.00, 125.27 (McKinney).) In Illinois, there are three possible punishments for first degree murder: a determinate term between 20 and 60 years, a determinate term between 60 and 100 years, or natural life depending on aggravating circumstances. (730 Ill. Comp. Stat., Ann. 5/5-4.5-20.) Texas punishes the murder of multiple people in a single incident by death or life without the possibility of parole. (Tex. Penal Code Ann., §§ 12.31, 19.03 (West).)

CieloDrive.com ARCHIVES

homicides, like Van Houten, who has served 25, 50, or even 75 years in prison, is subject to an unconstitutionally excessive punishment.

To the extent that the circumstances of Palmer's crimes and punishment matter at all—given that the Court declined to "take up the 'fact-specific inquiry' about whether Palmer's continued incarceration became cruel or unusual" (*Palmer*, *supra*, 10 Cal.5th at p. 974)—those circumstances illustrate by contrast why Van Houten cannot show "'clearly, positively and unmistakably'" that her continued confinement is unconstitutional (*id.* at p. 972, quoting *Lynch*, *supra*, 8 Cal.3d at p. 415). Before Palmer was released on parole, he had served more than 30 years for a single kidnapping for robbery he committed when he was a 17-year-old juvenile. (*Id.* at pp. 965-966.) The kidnapping was of relatively short duration, Palmer intentionally used an unloaded gun to avoid the risk of hurting anyone, and the only person injured was Palmer himself. (*Id.* at p. 966.) Palmer was promptly arrested, confessed to his crime, and pleaded guilty to the single count. (*Ibid.*) Thus, with respect to the danger posed by Palmer's conduct, the manner in which his particular kidnapping for robbery was committed was considerably less egregious than it might have been.

Taken in contrast, Van Houten slaughtered a stranger to invoke a race war that she hoped would end with her and the Manson Family in control. (*In re Van Houten*, *supra*, 116 Cal.App.4th at p. 344; *People v. Manson et al.*, *supra*, 61 Cal.App.3d at pp. 127-130.) Van Houten's participation in the La Bianca murders stands in stark contrast to Palmer's single "impulsive 'spur of the moment' decision to turn an attempted robbery with an unloaded gun into a kidnapping for robbery," which Palmer later admitted "didn't make any sense," and of which Palmer demonstrably "had no idea of the consequences." (*In re Palmer* (2019) 33 Cal.App.5th 1199, 1212, rev'd on other grounds in (2021) 10 Cal.5th 959.) *Palmer* thus permits inmates like Van Houten to raise disproportionality claims by way of a habeas petition, but it does not support granting this petition on its merits.

Sincerely,

/s/ Jennifer L. Heinisch

JENNIFER L. HEINISCH
Deputy Attorney General
State Bar No. 245235

For ROB BONTA
Attorney General

LA2022602831/65712079.docx

CieloDrive.com ARCHIVES

DECLARATION OF ELECTRONIC SERVICE AND SERVICE BY U.S. MAIL

Case Name: **In re Leslie Van Houten** No.: **B320098**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collecting and processing electronic and physical correspondence. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business. Correspondence that is submitted electronically is transmitted using the TrueFiling electronic filing system. Participants who are registered with TrueFiling will be served electronically. Participants in this case who are not registered with TrueFiling will receive hard copies of said correspondence through the mail via the United States Postal Service or a commercial carrier.

On January 30, 2023, I electronically served the attached

SUPPLMENTAL RETURN

transmitting a true copy via this Court's TrueFiling system. Because one or more of the participants in this case have not registered with the Court's TrueFiling system or are unable to receive electronic correspondence, on January 30, 2023, I placed a true copy thereof enclosed in a sealed envelope in the internal mail collection system at the Office of the Attorney General at 300 South Spring Street, Suite 1702, Los Angeles, CA 90013-1230, addressed as follows:

Nancy L. Tetreault
tetreault150352@gmail.com
Attorney for Petitioner Van Houten
via TrueFiling

Richard D. Pfeiffer, Esq.
highenergylaw@yahoo.com
Attorney for Petitioner Van Houten
via TrueFiling

The Honorable Ronald S. Coen, Judge
Los Angeles County Superior Court
Clara Shortridge Foltz Criminal Justice
210 West Temple St. Department 101
Los Angeles, CA 90012
via U.S. Mail

Appellate Division
Los Angeles County District Attorney's Office
appellate.nonurgent@da.lacounty.gov
via Email

I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on January 30, 2023, at Los Angeles, California.

J. Murray	/s/ J. Murray
Declarant	Signature

LA2022602831
65711898.docx

CieloDrive.com ARCHIVES