SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DEPT 101

Date: DECEMBER 2, 2021			
Honorable: RONALD S. COEN	Judge	ESTHER DUARTE	Deputy Clerk
NONE	Bailiff	NONE	Reporter

(Parties and Counsel checked if present)

CASE#: BH013656
(Underlying Criminal Case No. A253156)

In re
LESLIE VAN HOUTEN, Petitioner
HABEAS CORPUS PETITION

Counsel for Petitioner: Rich Pfeiffer, Esq.

Counsel for Respondent: Jennifer L. Heinisch, DAG

NATURE OF PROCEEDING: PETITION FOR WRIT OF HABEAS CORPUS MEMORANDUM OF DECISION

**********IN CHAMBERS**********

Petition for writ of habeas corpus by Petitioner Leslie Van Houten, represented by Rich Pfeiffer, Esq. Respondent, the Honorable Gavin Newsom, Governor of the State of California, represented by Deputy Attorney Jennifer Heinisch. Denied.

Memorandum of Decision on Habeas Corpus petition is filed this date and incorporated herein by reference.

A copy of this minute order and a copy of the court's Memorandum of Decision is sent via U.S. Mail addressed as follows:

Richard D. Pfeiffer
Law Office of Rich Pfeiffer
P.O BOX 721
Silverado, CA 92676

Department of Justice, State of California
Office of the Attorney General
300 South Spring St., Suite 1702
Los Angeles, CA 90013
Attn: Jennifer L. Heinisch, Deputy Attorney General

Minutes Entered
12/2/2021
County Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

CLARA SHORTRIDGE FOLTZ CRIMINAL JUSTICE CENTER

CRIMINAL WRITS CENTER

In re LESLIE VAN HOUTEN, Petitioner, On Habeas Corpus	**Habeas Case No.: BH013656** (Underlying Criminal Case No.: A253156) MEMORANDUM OF DECISION (Habeas Corpus)

IN CHAMBERS

Petition for writ of habeas corpus by Petitioner Leslie Van Houten, represented by Rich Pfeiffer, Esq. Respondent, the Honorable Gavin Newsom, Governor of the State of California, represented by Deputy Attorney General Jennifer Heinisch. Denied.

BACKGROUND

In 1971, a jury convicted Petitioner of two counts of first-degree murder and one count of conspiracy to commit murder, in violation of Penal Code sections 187, subdivision (a) and 182. The trial court sentenced Petitioner to death. The judgment was automatically appealed to the California Supreme Court and, while the appeal was pending, the Supreme Court invalidated the death penalty in *People v. Anderson* (1972) 6 Cal.3d 628. The appeal was transferred to the Second District Court of Appeal, which reversed Petitioner's convictions. (*People v. Van*

Houten (1980) 113 Cal.App.3d 280.) Petitioner was retried and, after the jury failed to reach a verdict, the court declared a mistrial.

In 1978, Petitioner was retried a third time, and was ultimately convicted of two counts of first-degree murder and one count of conspiracy to commit murder. The trial court sentenced Petitioner to two indeterminate life sentences with the possibility of parole. Petitioner is currently serving her sentence at California Institution for Women, located in Corona, California.

On July 23, 2020, Petitioner appeared before the Board of Parole Hearings ("Board") for her 22nd subsequent parole suitability hearing. The Board found Petitioner suitable for parole[1] based on a supportive Comprehensive Risk Assessment ("CRA"), a lack of juvenile or adult criminal record, signs of remorse, her status as both a youthful offender and an elderly offender, realistic plans for release and marketable skills, and positive institutional behavior. (Hearing Transcript ("HT"), dated Jul. 23, 2020, at pp. 108-121, attached to Petn. as Exh. 3.)

On November 27, 2020, the Governor reversed the Board's grant of parole based on the nature of the commitment offense, an unsupportive psychological evaluation, a lack of insight, and minimization. (Governor's Reversal ("Reversal"), dated Nov. 27, 2020, at pp. 1-4, attached to Petn. as Exh. 2.)

On June 11, 2021, Petitioner filed the instant petition for writ of habeas corpus with this court[2] challenging the Governor's reversal of the Board's decision to grant her parole. Specifically, Petitioner argues that the Governor violated Petitioner's constitutional right to due process because he "focused nearly exclusively on the gravity of the commitment murders without articulating a nexus between the murder and Ms. Van Houten's current circumstances [and] misconstrued the evidence supporting the reversal." (Petn., dated Jun. 11, 2021, at p. 44.) Petitioner further argues that the Governor misstated the psychologist's conclusion and

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[1] Petitioner has been granted parole five times, beginning in 2016 and most recently in 2021, after the instant petition for writ of habeas corpus was filed. (CDCR Public Inmate Locator System, Inmate Board Actions, available at https://inmatelocator.cdcr.ca.gov/Details.aspx?ID=W13378, as of Nov. 23, 2021.)

[2] Petitioner also filed a peremptory challenge against the Honorable Judge William C. Ryan, who would normally be assigned to adjudicate the petition pursuant to rule 8.33(a)(3) of the Local Rules of the Superior Court of Los Angeles County. On June 16, 2021, the Supervising Judge of the Criminal Division reassigned the petition to the undersigned.

evaluation, and claims, "when read in context, it is not possible to interpret [the psychological] evaluation as concluding Ms. Van Houten currently poses an unreasonable risk of violence." (*Id.*, at pp. 45, 48.) Petitioner also avers that the Governor failed to support his finding that Petitioner currently poses an unreasonable risk of danger to public safety with any evidence. (*Id.*, at p. 52.) Furthermore, Petitioner argues that the Governor failed to give great weight to the youthful offender criteria, and that "his conclusory analysis does not analyze how the hallmarks of youth factored into Ms. Van Houten's level of culpability. (*Id.*, at p. 53.) Petitioner asserts that this court should review the Governor's reversal de novo. (*Id.*, at pp. 53-54.) Petitioner also claims, "the Governor's refusal to fairly apply the governing legal standard to Ms. Van Houten's individualized circumstances constitutes the imposition of a de facto sentence to life without the possibility of parole, in violation of the 8th Amendment prohibition against cruel and unusual punishment. (*Id.*, at pp. 64-67.) Petitioner also asserts, "the principle of equitable estoppel prevents the Governor from relying on the gravity of the commitment offense as a reason for denying parole because he did not cite this as a reason in the 2016 reversal." (*Id.*, at pp. 67-69.) Petitioner further claims that she "was denied her rights of constitutional due process when the prosecution withheld exculpatory evidence contained in the audio recordings of Charles 'Tex' Watson." (*Id.*, at pp. 70-74.) Additionally, Petitioner argues that allowing the Governor to make the final parole decision in murder cases violates equal protection. (*Id.*, at pp. 75-82.) Finally, Petitioner claims that the Governor's reversal is invalid because he "exceeded his 30-day period of jurisdiction to issue the decision." (*Id.*, at p. 82.)

On June 10, 2021, this court issued a request for an informal response. On October 12, 2021, Respondent filed an informal response, and, on October 25, 2021, Petitioner filed an informal reply. The matter was thereafter deemed submitted.

SUMMARY

Having independently reviewed the record and giving deference to the broad discretion of the Governor in parole matters, the court finds that the record contains "some evidence" to support the determination that Petitioner is not suitable for release on parole because she

currently poses an unreasonable risk of danger to society. The court also finds that Petitioner's additional claims lack merit. The petition for writ of habeas corpus must be denied.

COMMITMENT OFFENSE[3]

Petitioner's life before her crime was ordinary and she was, for the most part, a normal teenager: she sang in the church choir, attended church camp every summer, and was the homecoming queen at her high school in Monrovia, California. In other respects, however, Petitioner was dangerously unstable. Petitioner's parents divorced when she was 14, and she turned to drugs to cope with the shame of being the child of divorced parents. (Petn., at p. 14.) By age 15, Petitioner was using Marijuana, Methedrine, Mescaline, Benzedrine, and Lysergic Acid Diethylamide, commonly known as LSD. When Petitioner became pregnant at 17, her mother encouraged her to have an abortion, which Petitioner later admitted would probably not be legal under today's standards. (CRA, dated Nov. 1, 2018, at p. 4, attached to Petn. as Exh. 1.) After Petitioner graduated from high school, she earned a legal secretary certificate and left home shortly thereafter. Petitioner met a boyfriend and traveled up and down the West Coast for about five months.

During her travels, Petitioner heard about a commune at the Spahn Ranch in Chatsworth, California, established by a man named Charles Manson. Manson had established the commune with about 20 people who had gathered around him in the Haight–Ashbury area after his release from prison in 1967. The group, which became known as "the Family," was allowed to live at the ranch in exchange for work. Petitioner, attracted by the communal lifestyle, decided to live on the ranch and become a member of the Family. By August 1969, the Family included Petitioner, Charles Tex Watson, Susan Atkins, Patricia Krenwinkel, Linda Kasabian, Steven Grogan, and others.

Initially, life at the ranch seemed idyllic to Petitioner, who described the ranch as "this wonderful commune of kids, and the women all embroidered all the time, and you took care of the kids." (*In re Van Houten*, *supra*, at p. 334.) Soon, however, a darker side of the Family

[3] The facts of the commitment offense are taken from *People v. Manson* (1976) 61 Cal.App.3d 102, *People v. Van Houten* (1980) 113 Cal.App.3d 280, and *In re Van Houten* (2004) 116 Cal.App.4th 339.

emerged. Manson dominated and manipulated the members of the Family. "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.*) Petitioner admitted that she shared Manson's beliefs, goals, and means, which required violence to start the revolution they envisioned. (*Ibid.*; Exh. 2, at pp. 21, 30.)

On the evening of August 8, 1969, Watson, Atkins, Krenwinkel, and Kasabian brutally murdered Sharon Tate Polanski, Voitcek Frykowski, Abigail Folger, Jay Sebring, and Steven Parent, at Manson's request. These murders were collectively referred to as the "Tate murders." (See *People v. Manson, supra,* 61 Cal.App.3d at pp. 131–132; see also *People v. Van Houten, supra*, 113 Cal.App.3d at pp. 280, 284.) The victims were shot, clubbed, and stabbed multiple times at Polanski's home. (*Ibid.*)

The following day, Atkins and Krenwinkel told Petitioner that they had committed the Tate murders. Petitioner recounted feeling "left out" and wanted to be included next time. (Petn., at p. 23.) Manson later approached Petitioner and asked her "if she was crazy enough to believe in him and what he was doing" and Petitioner "said yes." (*People v. Manson, supra,* 61 Cal.App.3d at p. 227.)

That night, on August 9, 1969, Petitioner, along with Manson, Watson, Krenwinkel, Atkins, Grogan, and Kasabian, got in one of the cars at the ranch. Manson ordered them to bring a change of clothes in case their clothes "got bloody." (*In re Van Houten, supra*, 116 Cal.App.4th at p. 410.) Kasabian drove around for about four hours, until Manson told her to stop in front of a residence on Cielo Drive. Manson told the people in the car that he was going to the house next door that belonged to victims Leno and Rosemary La Bianca.

Manson and Watson went inside first and tied up the La Biancas. Manson returned alone several minutes later with one of the victim's wallets and, speaking directly to Petitioner and Krenwinkel, "told them to go into the house and do what Watson told them to. He also told them not to let the victims know they would be murdered." (*In re Van Houten, supra*, at p. 411.)

Petitioner and Krenwinkel went into the residence and found Watson holding the La Biancas at the point of his bayonet. Meanwhile, the others who had stayed in the car drove to a

gas station and planted the stolen wallet in a gas station restroom, "hoping that it would be discovered by a Black person[4] who would use the credit card and be blamed for the theft and murder." (*People v. Manson*, *supra*, 61 Cal.App.3d at pp. 133, 147.)

At the La Bianca home, Watson instructed Petitioner and Krenwinkel to take Mrs. La Bianca into her bedroom and kill her. Krenwinkel retrieved two knives from the kitchen, and then the women went into the bedroom. Petitioner placed a pillowcase over Mrs. La Bianca's head and wrapped a lamp cord still attached to the lamp around her neck. When Mrs. La Bianca heard "the sound of [her husband] being stabbed" in the living room, she grabbed the lamp attached to the cord around her neck and swung the lamp at Petitioner. (*People v. Manson*, *supra*, at pp. 133, 147.) Petitioner knocked the lamp out of Mrs. La Bianca's hand and wrestled her back onto the bed, pinning her down so that Krenwinkel could stab her. Krenwinkel stabbed Mrs. La Bianca in the collarbone so forcefully that the knife blade bent.

Petitioner then summoned Watson to the bedroom, who came with the bayonet. Petitioner turned away from Mrs. La Bianca, and heard Watson stab Mrs. La Bianca with the bayonet eight times, each of which could have been fatal alone and seven of which were in the back. Watson turned Petitioner around, handed her a knife, and told her to "do something." (*In re Van Houten*, *supra*, 116 Cal.App.4th at p. 411.) Petitioner thought that Mrs. La Bianca was already dead on the floor, but was not sure. Petitioner then stabbed Mrs. La Bianca with a knife, admitting that she stabbed her between 14 and 16 times. In total, Mrs. La Bianca was stabbed 42 times. Petitioner later told another Family member that stabbing Mrs. La Bianca was "fun." (*People v. Manson, supra,* 61 Cal.App.3d at p. 227.)

After the stabbing, Petitioner wiped the home of fingerprints while Krenwinkel wrote in blood on various surfaces in the residence. Petitioner gave her extra clothes to Watson, put on some of Mrs. La Bianca's clothes, and discarded the clothes they came in in a dumpster.

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[4] "Manson believed that the Beatles in their song, 'Helter Skelter,' were warning him of an impending bloody, civilization-ending, worldwide race war between Blacks and Whites. During this war Manson and his followers would hide in a bottomless pit in Death Valley. Manson foretold that the Blacks would succeed in their "revolution," but that the Family would emerge from the pit to take control and restore order. Manson came to believe that he would have to precipitate the race war by murdering Whites in the way he thought Blacks would do it in the race war and in such a way that Blacks would be blamed for the murders." (*In re Van Houten*, *supra*, 116 Cal.App.4th 339, fn. 1, [citing *People v. Manson*, *supra*, 61 Cal.App.3d at pp. 129-130, 131, 139-140].)

When they returned to Spahn Ranch, Petitioner burned Mrs. La Bianca's clothes. Petitioner hid out for over two months at a remote location until she was arrested on November 25, 1969. (*In re Van Houten*, *supra*, 116 Cal.App.4th at p. 412.)

APPLICABLE LEGAL PRINCIPLES

Parole Suitability

The Governor is constitutionally authorized to make "an independent decision" as to parole suitability for persons convicted of murder. (Cal. Const., art. V, § 8, subd. (b); *In re Rosenkrantz* (2002) 29 Cal.4th 616, 660 (*Rosenkrantz.*) His parole decisions are governed by Penal Code section 3041.2 and section 2402 of title 15 of the California Code of Regulations.[5] The Governor must consider "[a]ll relevant, reliable information available" (§ 2402, subd. (b)), and his decision must not be arbitrary or capricious. (*In re Rosenkrantz*, *supra*, at p. 677.)

Although the Governor must consider the same factors as the Board, he may weigh them differently. (*In re Prather* (2010) 50 Cal.4th 238, 257, fn. 12.) The paramount consideration in making a parole eligibility decision is the potential threat to public safety upon an inmate's release. (*Id.* at p. 252.) The Governor's decision must be based upon some evidence in the record of the inmate's current dangerousness not merely the presence of a particular factor that may indicate unsuitability. (*In re Lawrence* (2008) 44 Cal.4th 1181, 1205–1206 ("*Lawrence*").) Only a modicum of such evidence is required. (*Id.* at p. 1226.) "This standard is unquestionably deferential, but certainly is not toothless, and 'due consideration' of the specified 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." (*Id.* at p. 1210.)

Factors tending to show unsuitability for parole include the nature of the commitment offense, a previous record of violence, an unstable social history, sadistic sexual offenses, psychological factors, and institutional behavior constituting serious misconduct. (§ 2402, subd. (c).) Factors tending to show suitability include a lack of a juvenile record, a stable social history, signs of remorse, that the crime was committed due to significant life stress, that the

[5] All further undesignated statutory references are to title 15 of the California Code of Regulations.

criminal behavior was the result of battered woman syndrome, a lack of a history of violent crime, that the inmate's current age reduces the probability of recidivism, that the inmate has realistic plans for release or marketable skills that can be utilized upon release, and that the inmate's institutional behavior indicates an enhanced ability to be law-abiding upon release. (§ 2402, subd. (d).) The weight and importance of these factors are left to the judgment of the Board and Governor. (§ 2402, subds. (c)–(d).)

In reviewing the decision of the Governor, the court is not entitled to reweigh the circumstances indicating suitability or unsuitability for parole. (*In re Reed* (2009) 171 Cal.App.4th 1071, 1083.) Instead, "'[r]esolution of any conflicts in the evidence and the weight to be given the evidence are within the authority of the [Governor].' [Citation.]" (*Lawrence*, *supra*, 44 Cal.4th at p. 1204, quoting *Rosenkrantz*, *supra*, 29 Cal.4th at p. 656.) Thus, unless the inmate can demonstrate that there is no evidence to support the Governor's conclusion that the inmate is a current danger to public safety, the petition fails to state a prima facie case for relief and may be summarily denied. (*People v. Duvall* (1995) 9 Cal.4th 464, 475.)

Youth Offender Parole

In 2013, the Legislature enacted Senate Bill 260, which added sections 3051 and 4081 to the Penal Code and created a mechanism for inmates who were under 18 at the time of their offenses to seek early parole consideration. (Sen. Bill No. 260 (2013-2014 Reg. Sess.) § 1.) In 2015, the Legislature enacted Senate Bill 261, which extended eligibility for youthful offender parole consideration to inmates who were under 23 at the time of their crimes. (Stats. 2015, ch. 471.) Then, in 2017, the Legislature enacted Senate Bill 394, which extended eligibility for youthful offender parole consideration to inmates who were under 25 years of age or younger at the time of their crimes. (Stats. 2017, ch. 684; see also Pen. Code, § 3051.)

When considering the parole suitability of a youth offender, the Governor must "give great weight to the diminished culpability of juveniles as compared to adults, the hallmark features of youth, and any subsequent growth and increased maturity of the prisoner." (Pen. Code, § 4801, subd. (c).) The Governor must actually apply and grapple with each of these factors, not merely give "lip-service" to them. (*In re Perez* (2016) 7 Cal.App.5th 65, 93.)

DISCUSSION

Standard of Review Claim

Preliminarily, Petitioner argues that this court should review the Governor's reversal de novo. (Petn., at pp. 53-54.) Petitioner's argument, however, belies precedent established by the California Supreme Court, which indisputably states that the appropriate standard of review in the parole suitability context is the "some evidence" standard. (*See In re Rosenkrantz* (2002) 29 Cal.4th 616, 625; *In re Dannenberg* (2005) 34 Cal.4th 1061, 1071; *In re Lawrence* (2008) 44 Cal.4th 1181, 1190-1191; *In re Shaputis* (2008) 44 Cal.4th 1241, 1246; *In re Prather* (2010) 50 Cal.4th 238, 243; *In re Shaputis* (2011) 53 Cal.4th 192, 198 (*Shaputis II*).) Accordingly, Petitioner's request that this court review the Governor's decision de novo is denied, and the court will analyze whether the Governor's decision is supported by some evidence.

Some Evidence Supports the Governor's Determination of Unsuitability

The court finds that there is some evidence to support the Board's decision that Petitioner poses an unreasonable risk of danger to society, and if released, a threat to public safety due to (1) the nature of the commitment offense, (2) an unsupportive psychological evaluation; (3) a lack of insight, and (4) minimization. (Exh. 2, at pp. 1-4.)

Nature of the Commitment Offense

The Governor reversed the Board's decision, finding Petitioner's crime to be "gruesome" and "part of a series of crimes that rank among the most infamous and fear-inducing in California history." (Exh. 2, at p. 3.) A commitment offense that is perpetrated in an especially heinous, atrocious, or cruel manner is a circumstance tending to show unsuitability for parole. (§ 2402, subd. (c)(1).) The commitment offense may be considered especially heinous, atrocious or cruel when: (A) multiple victims were attacked, injured, or killed in the same or separate incidents; (B) the offense was carried out in a dispassionate and calculated manner, such as an execution-style murder; (C) the victim was abused, defiled, or mutilated during or after the offense; (D) the offense was carried out in a manner which demonstrates an exceptionally callous disregard for human suffering; and (E) the motive for the crime is inexplicable or very trivial in relation to the offense. (§ 2402, subd. (c)(1)(A)–(E).)

While the Governor does not discuss each factor individually, the record provides ample evidence to support the finding that Petitioner's commitment offense was committed "in an especially heinous, atrocious or cruel manner." (Cal. Code Regs., tit. 15, § 2402, subd. (c)(1).) Preliminarily, multiple victims, both Mr. and Mrs. La Bianca, were killed. (§ 2402, subd. (c)(1)(A).) Furthermore, the crime was carried out in a dispassionate and calculated manner: the Family brought a change of clothes in the event that the crime would be particularly gruesome, tied up both victims and stabbed them multiple times, and planted evidence in order to support their narrative of an impending race war. (§ 2402, subd. (c)(1)(B).) Because multiple victims were killed and Petitioner's actions prior to and during the crime reveal that the crime was carried out in a dispassionate and calculated manner, the commitment offense is especially heinous.

The victims were also abused, defiled, and mutilated by Petitioner and her accomplices. (§ 2402, subd. (c)(1)(C).) Mrs. La Bianca was stabbed over 40 times, of which Petitioner admitted to personally perpetrating between 14 and 16 stab wounds. (*People v. Manson*, *supra*, 61 Cal.App.3d at p. 125; *In re Van Houten*, *supra*, 116 Cal.App.4th at p. 227.) A carving fork was stuck in Mr. La Bianca's stomach, "the two tines inserted down to the place where they divide. On Mr. La Bianca's stomach was scratched the word 'War.' An electric cord was knotted around his neck. The coroner's examination revealed 13 stab wounds . . . and 14 puncture wounds apparently made by the tines of the carving fork. A knife was found protruding from his neck." (*People v. Manson*, *supra*, at p. 125.) In affirming Petitioner's murder convictions, the Court of Appeal noted that the killings involved a "great deal of cutting and hacking . . . ." (*People v. Van Houten*, *supra*, at p. 284.) Because the victims were abused, defiled, and mutilated, the offense is considered especially heinous. (§ 2402, subd. (c)(1)(C).)

Furthermore, the offense was carried out in a manner which demonstrates an exceptionally callous disregard for human suffering. Mrs. La Bianca's "hands were tied with an electric cord. A pillowcase was over her head and an electric cord was wound about her neck." (*People v. Manson*, *supra*, at p. 125.) Mrs. La Bianca also heard "[t]he sound of [her husband] being stabbed" in the living room, and grabbed the lamp attached to the cord around her neck

and swung the lamp at Petitioner. (*Id.*, at pp. 133, 147.) Police discovered Mr. La Bianca with "his face covered with a blood-soaked pillowcase [and his] hands … tied behind his back with a leather thong. (*Ibid.*) These facts demonstrate that the victims were restrained and tortured during the murders, which supports a finding that Petitioner was exceptionally callous in her disregard for the victims' suffering, rendering the offense especially heinous. (§ 2402, subd. (c)(1)(D).)

Finally, the motive for the crime was inexplicable in relation to the offense. (§ 2402, subd. (c)(1)(E).) Petitioner admitted that she committed the murders in order to incite a race war and "spark the revolution." (Exh. 3, at p. 74.) The motive for this crime was inexplicable, nearly impossible to understand, arbitrary, and terrifying, which renders the offense especially heinous. (§ 2402, subd. (c)(1)(E).)

In light of these facts, the court finds that the serious commitment offenses were especially heinous, atrocious, and cruel. The manner of and the motive for Petitioner's crimes are some evidence supporting the Governor's decision that if paroled at this time, Petitioner would pose an unreasonable risk of danger to society. (§ 2402, subd. (c)(1).)

Petitioner argues that the Governor violated Petitioner's constitutional right to due process because he "focused nearly exclusively on the gravity of the commitment murders without articulating a nexus between the murder and Ms. Van Houten's current circumstances [and] misconstrued the evidence supporting the reversal." (Petn., at p. 44.) As discussed, *post*, there is some evidence, in addition to the nature of the commitment offense, that supports a finding that Petitioner currently poses an unreasonable risk to public safety. Furthermore, this court notes for the record and takes judicial notice of the Court of Appeal's finding in *In re Van Houten* (2004) 116 Cal.App.4th 339, 353 that "the Board would have been justified in relying solely on the character of the offense in denying parole, and the Board was justified in relying primarily and heavily on the character of the offense in denying parole." (Evid. Code, § 451, subd. (a).)

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Unsupportive Psychological Assessment

The Governor partly based his reversal on the psychological evaluation. An inmate's psychological evaluation of his risk of future violence directly bears on his suitability for parole, but such assessment does not dictate the Governor's parole decision. (*In re Lazor* (2009) 172 Cal.App.4th 1185, 1202.) The Governor must consider the psychological report's assessment of an inmate's risk of future violence, but it is not bound by the report's conclusions. (*In re Lazor* (2009) 172 Cal.App.4th 1185, 1202.)

The Governor noted that the psychologist indicated that several historical factors were present in Petitioner's case, including "prior violence, violent attitude, other antisocial behavior, troubled relationships, traumatic experiences, and substance abuse problems." (Exh. 2, at p. 4; Exh. 1, at p. 11.) While the psychologist ultimately determined that Petitioner represented a low risk for violent re-offense, the psychologist also concluded that these historical factors "are present and relevant to future risk of violent recidivism." (*Ibid.*)

Petitioner argues that the Governor misstated the psychologist's conclusion and evaluation, and claims, "when read in context, it is not possible to interpret [the psychologist's] evaluation as concluding Ms. Van Houten currently poses an unreasonable risk of violence." (Petn., at pp. 45, 48.) However, as stated, *ante*, the Governor is not bound by the psychologist's conclusion that Petitioner is a low risk for violence. Here, the Governor considered Petitioner's historical risk factors and noted that those same factors which led Petitioner to participate in such a violent murder are still present even after decades in prison. Resolution of any conflicts in the evidence and the weight to be given the evidence are matters within the authority of the Board of Parole Hearings or the Governor considering a murder defendant's suitability for parole. (*In re Busch* (2016) 246 Cal.App.4th 953, 967; accord, *In re Perez* (2016) 7 Cal.App.5th 65, 84.) Here, the Governor articulated a rational nexus between the psychological traits present both when Petitioner committed the crime and today, and Petitioner's current dangerousness. (*In re Butler* (2014) 231 Cal.App.4th 1521, 1530; accord *In re Perez* (2016) 7 Cal.App.5th 65, 84.)

Accordingly, the record supports the Governor's conclusion that the psychological assessment weighed against finding Petitioner suitable for release.

Lack of Insight

The Governor's decision was also based on a finding that Petitioner lacked insight. (Exh. 2, at pp. 3, 4.) As articulated by the California Supreme Court, "the presence or absence of insight 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." (*In re Shaputis* (2011) 53 Cal.4th 192, 218 (*Shaputis II*).) Lack of insight "can reflect an inability to recognize the circumstances that led to the commitment crime; and such an inability can imply that the inmate remains vulnerable to those circumstances and, if confronted by them again, would likely react in a similar way. (*In re Ryner*, *supra*, 196 Cal.App.4th at p. 547.) "[T]he 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." (*Id.* at pp. 548-549.)

The Governor stated that Petitioner's "explanation of what allowed her to be vulnerable to Mr. Manson's influence remains unsatisfying." (Exh. 2, at p. 3.) The Governor noted that Petitioner said that her parents' divorce and her forced abortion caused her to become a weak person susceptible to Manson's influence. (*Ibid.*) Indeed, Petitioner engaged in a lengthy discussion about how those two events caused her to "shut down emotionally" and become self-critical. (Exh. 3, at pp. 3-4, 27-29.) Accordingly, Petitioner told the psychologist that she was "'desperate to be accepted,' was 'chosen' by Mr. Manson, 'had to kill them for the beginning of the revolution,' and wanted Mr. Manson to 'know I was completely committed to him and his cause.'" (Exh. 2, at p. 3.)

The Governor, however, remained "unconvinced that these factors adequately explain her eagerness to submit to a dangerous cult leader or her desire to please Mr. Manson, including engaging in the brutal actions of the life crime." (Exh. 2, at p. 3.) Ultimately, the Governor concluded that Petitioner lacked insight, explaining, "given the extreme nature of the crime in which she was involved, I do not believe she has sufficiently demonstrated that she has come to terms with the totality of the factors that led her to participate in the vicious Manson Family killings." (*Id.*, at p. 4.) The Governor encouraged Petitioner to "do more to develop her understanding of the factors that caused her to seek acceptance from such a negative, violent influence, and perpetrate extreme acts of wanton violence." (*Ibid.*)

As stated, *ante*, "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*, *supra*, 196 Cal.App.4th at pp. 548-549, emphasis added.) Petitioner attributed her involvement in the brutal murder to feeling weak and susceptible to Manson's influence. The fact that the Governor found that she still lacks insight into exactly what led her to follow such a dangerous man and blindly accept his teachings shows that she currently poses an unreasonable risk of danger.

Ultimately, the Governor determined that Petitioner's lack of insight indicated that she was unsuitable for release. This lack of insight is some evidence supporting the Governor's finding of current dangerousness. (§ 2402, subd. (b).)

Minimization

The Governor also found that Petitioner minimized her culpability in the murders. (Exh. 2, at p. 3.) An inmate's minimization of her responsibility for his conduct provides some evidence of a lack of insight and current dangerousness. (*In re Shaputis* (2008) 44 Cal.4th 1241, 1260, fn. 18.)

During the hearing, Petitioner explained that she held Mrs. La Bianca down while Krenwinkel stabbed the victim. Petitioner also told the Board that she assumed the victim was dead when she personally stabbed the victim 16 times. (Exh. 3, at p. 24; Exh. 2, at p. 3.) The Governor found that Petitioner's explanation minimized her role, explaining "I remain concerned by Ms. Van Houten's characterization of her participation in this gruesome double murder, part of a series of crimes that rank among the most infamous and fear-inducing in California history." (Exh. 2, at p. 3.) While Petitioner expressed remorse for her role in the murders and at times took responsibility for her actions, the Governor ultimately concluded that her minimization was some evidence that she posed a current unreasonable risk of danger. The Governor's finding that Petitioner minimized her role in the murders is also some evidence of current dangerousness. (§ 2402, subds. (b) & (d)(3).)

Weighing of the Evidence

The Governor also considered factors that weigh in favor of Petitioner's suitability, including Petitioner's age,[6] stating, "I acknowledge that Ms. Van Houten committed this crime when she was 19 years old and that she has been incarcerated for 50 years." (Exh. 2, at p. 2.) The Governor also commended Petitioner for having "made efforts to improve herself in prison." (*Id.*, at p. 3.) The Governor noted that Petitioner has both participated in and facilitated numerous rehabilitative self-help programs, including Narcotics Anonymous, Victim Offender Education Group, and the Actors' Gang Prison Project. (*Ibid.*) Petitioner has also upgraded educationally, earning "her bachelor's and master's degrees." (*Ibid.*) Furthermore, the Governor found that Petitioner has "completed vocational training." (*Ibid.*) Finally, the Governor discussed the fact that Petitioner "has served on the Inmate Advisory Council and has an exemplary disciplinary record." (*Ibid.*) Positive institutional behavior is a factor in favor of finding Petitioner suitable for release. (§ 2402, subd. (9).)

In the end, however, the Governor concluded that the nature of the commitment offense, Petitioner's unsupportive psychological assessment, a lack of insight, and minimization

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[6] For a more detailed discussion of the Governor's consideration of the youthful offender factors, see *post*.

outweighed the positive factors and demonstrate that she is unsuitable for parole. (Exh. 2, at p. 3.) This court is not entitled to reweigh the evidence before the Governor; rather, it is tasked with determining whether the record contains some evidence in support of the Governor's conclusion. (*In re Rosenkrantz*, *supra*, 29 Cal.4th at pp. 656, 665-677.) The court finds it does, and that there is a rational nexus between the evidence in the record and the Governor's determination of Petitioner's current dangerousness.

Youthful Offender Claim

Petitioner argues that the Governor failed to give great weight to the youthful offender criteria, and that "his conclusory analysis does not analyze how the hallmarks of youth factored into Ms. Van Houten's level of culpability. (Petn., at p. 53.) Here, Petitioner committed the crime when she was 19 years old. (Exh. 2, at p. 2.) As such, she qualifies as a youthful offender.

Petitioner told the Board that her early teenage years were traumatic following the divorce of her parents and the forced abortion. (Exh. 3, at pp. 109-110.) When the Board asked Petitioner how she would change her life, she explained that she would have been more supportive of her mother following her parent's divorce, and would not have "become rebellious." (*Id.*, at p. 42.) Petitioner also admitted to being vulnerable to negative influences, stating that she allowed herself to "make the group more important than [her] early teachings of right and wrong." (*Id.*, at p. 29.) Petitioner reiterated that at the Ranch, she was "trying really hard to be accepted." (*Id.*, at p. 45.) Petitioner admitted, "I believed in the revolution, so I wasn't thinking of consequences," and explained that she did not even consider that she could be arrested following the murders. (*Id.*, at p. 77.)

The Governor stated, "I carefully examined the record for evidence demonstrating Ms. Van Houten's increased maturity and rehabilitation, and gave great weight to all the factors relevant to her diminished culpability as a youthful offender – her impulsivity, inability to adequately foresee the long-term consequences of her behavior, and the inability to manage her emotions – and her other hallmark features of youth." (Exh. 2, at p. 2.) The Governor noted that the psychologist "concluded that 'it seems very likely that Ms. Van Houten's involvement in the life offense was significantly impacted by' these youth factors." (*Ibid.*) The Governor further

explained, "I have given great weight to her subsequent growth in prison during my consideration of her suitability for parole." (*Id.*, at p. 3.) However, the Governor explained, "these factors are outweighed by negative factors that demonstrate she remains unsuitable for parole at this time." (*Ibid.*) The Governor recommended that Petitioner further develop her insight into her actions prior to being released. (*Ibid.*)

The Governor's discussion about the youth factors and the subsequent finding that Petitioner must continue to develop her understanding into her criminal behavior prior to being release indicates that the Governor's decision was rooted in a finding that Petitioner has failed to show the sort of "subsequent growth and increased maturity" contemplated by the youth offender statutes. (Pen. Code, § 4801, subd. (c).) That consideration is sufficient to satisfy the Board's obligations under SB 260. Therefore, contrary to Petitioner's assertion, the Governor properly applied and considered the youth offender factors in accordance with Penal Code section 4801, subdivision (c).

Eighth Amendment Claim

Petitioner also claims that the Governor's reversal violates the 8th Amendment prohibition against cruel and unusual punishment. (Petn., at pp. 64-67.) The California Constitution prohibits the infliction of punishment that is cruel or unusual. (Cal. Const., art. I, § 17.) Punishment is cruel or unusual if it "is so disproportionate to the crime for which it is inflicted that it shocks the conscience and offends fundamental notions of human dignity." (*In re Lynch* (1972) 8 Cal.3d 410, 424, fn. omitted ("*Lynch*").) To maintain the balance of power within the tripartite system, courts must uphold a sentence prescribed by statute unless its unconstitutionality "clearly, positively, and unmistakably appears." (*People v. Carmony* (2005) 127 Cal.App.4th 1066, 1086, quoting *Lynch*, *supra*, 8 Cal.3d at p. 415.)

Preliminarily, Petitioner ignores the fact that she was sentenced to an *indeterminate* term of life in state prison. An indeterminate sentence is, in legal effect, a sentence for the maximum term unless the parole authority acts to fix a shorter term. (*In re Dannenberg* (2005) 34 Cal.4th 1061, 1097-1098.) The statutory maximum for Petitioner's offense is life in prison; thus, she has no vested right to a term that is less than life in prison. Petitioner spending 50 years in prison for

a brutal murder does not amount to a violation of Petitioner's liberty interest. Unless or until Petitioner is found suitable for parole, she remains legally confined.

Furthermore, in order to make a prima facie case for an Eighth Amendment violation, Petitioner must engage in an analysis of the *Lynch* factors. To determine the proportionality of punishment and culpability, courts consider (1) the characteristics of the offense, (2) the challenged punishment in comparison to punishments for more serious offenses, and (3) the challenged punishment in comparison to punishments for the same offense in different jurisdictions. (Lynch, supra, 8 Cal.3d at pp. 425–429.) To the extent that Petitioner raises an argument that her individual culpability is disproportionate to the length of time she has served, Petitioner merely cites *In re Lynch* (1972) 8 Cal.3d 410 and *In re Palmer* (2021) 10 Cal.5th 959. A habeas petitioner must allege with particularity the facts upon which relief is sought. Vague or conclusory allegations made without any explanation of the basis for the allegations do not warrant relief. (*In re Martinez* (2009) 46 Cal.4th 945, 955-956; *People v. Duvall* (1995) 9 Cal.4th 464, 474; *People v. Karis* (1988) 46 Cal.3rd 612, 656; *In re Swain* (1949) 34 Cal.2nd 300, 303-304.)

Equitable Estoppel Claim

Petitioner also asserts, "the principle of equitable estoppel prevents the Governor from relying on the gravity of the commitment offense as a reason for denying parole because he did not cite this as a reason in the 2016 reversal." (Petn., at pp. 67-69.) This claim was raised in prior petitions for writ of habeas corpus and was rejected. (See Min. Orders, case nos. BH010328, BH012512.) Petitioner has not alleged facts establishing an exception to the rule barring reconsideration of claims previously rejected. Such successive claims constitute an abuse of the writ of habeas corpus. (*In re Reno* (2012) 55 Cal.4th 428, 455; *In re Martinez* (2009) 46 Cal.4th 945, 956; *In re Clark* (1993) 5 Cal.4th 750, 767-768; *In re Miller* (1941) 17 Cal.2nd 734, 735.)

Brady Claim

Petitioner further claims that Petitioner "was denied her rights of constitutional due process when the prosecution withheld exculpatory evidence contained in the audio recordings of

Charles 'Tex' Watson." (Petn., at pp. 70-74.) This claim was raised in prior petitions for writ of habeas corpus and was rejected. (See Min. Orders, case nos. BH010328, BH012512.) Therefore, these arguments in the instant petition are procedurally barred as successive. (*In re Clark* (1993) 5 Cal.4th 750, 770, superseded by Proposition 66 on other grounds as stated in *Briggs v. Brown* (2017) 3 Cal.5th 808, quoting *In re Horowitz* (1949) 33 Cal.2d 534, 546–547 ["petitioner cannot be allowed to present his reasons against the validity of the judgment against him piecemeal by successive proceedings for the same general purpose"].) Successive petitions waste scarce judicial resources, requiring the court to repeatedly review the record in order to assess the merits of the petitioner's claims. (*Ibid.*) Petitioner fails to justify the reason for her successive petition. (*In re Reno* (2012) 55 Cal.4th 428, 455; *In re Clark*, *supra*, at p. 798, fn. 35.) This claim, therefore, is denied.

Equal Protection Claim

Additionally, Petitioner argues that allowing the Governor to make the final parole decision in murder cases violates equal protection. (Petn., at pp. 75-82.) Petitioner explains, "the Governor, as an elected official, has an inherent conflict against approving parole for high profile defendants, such as Ms. Van Houten, whose grant of parole may be unpopular with the voting public. This results in an equal protection violation by creating a different parole standard for inmates whose murder convictions arise from celebrated or notorious crimes." (*Id.*, at p. 75.)

The principle of equal protection of the laws requires that persons similarly situated with respect to a legitimate purpose of the law must receive like treatment. *People v. Kilborn* (1996) 41 Cal. App. 4th 1325, citing *Purdy & Fitzpatrick v. State of California* (1969) 71 Cal. 2d 566, 578. Additionally, when an act violates more than one criminal statute, the Government may prosecute under either statute so long as it does not discriminate against any class of defendants. (*U.S. v. Batchelder* (1979) 442 U.S. 114, 123-124.) To prevail on an equal protection claim, Defendant must first establish the existence of "two classes ... similarly situated with respect to the purpose of the law in question, but ... treated differently." (*People v. Noyan* (2014) 232 Cal.App.4th 657, 666.)

Here, Petitioner argues that the current system that provides that the Governor can reverse a grant of parole has created a class of inmates that are similarly situated but treated differently: inmates convicted of notorious crimes and inmates who have not been convicted of notorious crimes. (Petn., at p. 81.) Contrary to Petitioner's position, offenders who commit different crimes are not similarly situated. (*People v. Doyle* (2014) 220 Cal.App.4th, 1251, 1266.) Petitioner has failed to support her theory that inmates convicted of notorious crimes are members of a class. Accordingly, the two groups are not similarly situated. Because Petitioner has failed to establish the existence of two similarly situated classes of individuals, Petitioner's equal protection argument is without merit.

Furthermore, the statutory scheme at issue passes constitutional muster because it is rationally related to a legitimate governmental interest.[7] The Governor's role in the parole process is ultimately to review whether a person poses an unreasonable risk of danger and is therefore a public safety concern. Thus, because the difference in treatment is rationally related to a legitimate governmental interest, promoting public safety, it does not violate the equal protection clause. Therefore, this claim must be denied.

Excess of Jurisdiction Claim

Finally, Petitioner claims that the Governor's reversal is invalid because he "exceeded his 30-day period of jurisdiction to issue the decision." (Petn., at p. 82.) This claim is currently before the Court of Appeal, in case number B314316. On November 18, 2021, the Court of Appeal requested that the parties file letter briefs addressing whether the Governor's failure to act within the 30-day period acts as a jurisdictional bar to the Governor's power to review the Board's decision. On November 22, 2021, counsel for Petitioner filed a letter brief with the Court of Appeal. (2nd Appellate District Register of Actions, case no. B314316, available at https://appellatecases.courtinfo.ca.gov/search/case/dockets.cfm?dist=2&doc_id=2356107&doc_

[7] Criminal laws and related sentencing laws are considered social or economic legislation and are only subject to rational basis analysis. (*See People v. Owens* (1997) 59 Cal.App.4th 798, 802 [holding that "California courts should have never accepted the general proposition that all criminal laws, because they may result in a defendant's incarceration, are perforce subject to strict scrutiny."].)

no=B314316&request_token=NiIwLSEmTkg9WzBFSSFdVE9JQFA6USxXIiNeSztSUCAgCg%3D%3D, as of Dec. 2, 2021.)

A trial court lacks jurisdiction to address matters presently before or potentially before the appellate court. (*People v. Mayfield* (1993) 5 Cal.4th 220, 224-225; *France v. Sup. Ct.* (1927) 201 Cal. 122, 131-132.) Therefore, because Petitioner has an appeal pending, the court is divested of jurisdiction, and this claim must be summarily denied.

DISPOSITION

For all the foregoing reasons, the petition for writ of habeas corpus is DENIED.

The Clerk is ordered to serve a copy of this decision upon Mr. Pfeiffer, as counsel for Petitioner, and upon Ms. Heinisch, as counsel for Respondent, the Governor of the State of California.

Dated: 12-2-21

RONALD S. COEN
Judge of the Superior Court

Send copy of this order to:

Rich Pfeiffer
P.O. Box 721
Silverado, CA 92676
Attn: Rich Pfeiffer, Esq.

Department of Justice – State of California
Office of the Attorney General
300 South Spring Street, Suite 1702
Los Angeles, CA 90013
Attn: Jennifer Heinisch, Deputy Attorney General

SUPERIOR COURT OF CALIFORNIA COUNTY OF LOS ANGELES	Reserved for Clerk's File Stamp CONFORMED COPY ORIGINAL FILED Superior Court of California County of Los Angeles DEC 02 2021 Sherri R. Carter, Executive Officer/Clerk of Court By: Esther Duarte, Deputy
COURTHOUSE ADDRESS: Clara Shortridge Foltz Criminal Justice Center 210 W. Temple Street Los Angeles, CA 90012	
PLAINTIFF/PETITIONER: **LESLIE VAN HOUTEN**	
CLERK'S CERTIFICATE OF MAILING	CASE NUMBER: **BH013656**

I, SHERRI R. CARTER, Executive Officer/Clerk of the Superior Court of California, County of Los Angeles, do hereby certify that I am not a party to the cause herein, and that on this date ***the following***:

☐ Order / Document entitled _____ filed _____.

☒ Memorandum of Decision on Petition for Writ of Habeas Corpus filed 12/02/21.

☒ Other: **MINUTE ORDER DATED 12/02/2021** _____.

was served upon each party or counsel named below by depositing in the United States mail at the courthouse in the city of **LOS ANGELES**, County of Los Angeles, State of California, one copy of the original document in a separate sealed envelope to each address as shown below with postage thereon fully prepaid, ***in accordance with standard court practices.***

Rich Pfeiffer, Esq P.O BOX 721 Silverado, CA 92676	Department of Justice, State of California Office of the Attorney General 1300 I Street, Suite 125 P.O. Box 944255 Sacramento, CA 94244-2550 Attn: Jennifer L. Heinisch, Deputy A.G.

Dated: 12/02/2021

SHERRI R. CARTER, Executive Officer/Clerk of Court

By: _____

Deputy Clerk