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6 **BEFORE THE VICTIM COMPENSATION BOARD**  
7 **OF THE STATE OF CALIFORNIA**  
8

9 In the Matter of:

10 **Zachary Vanderhorst**

11 Claim No. 23-ECO-33  
12

**Proposed Decision**

**(Penal Code §§ 851.865, 1485.55, and 4900 et seq.)**

13 **Introduction**

14 Zachary Vanderhorst (Vanderhorst) submitted an application for compensation to the California  
15 Victim Compensation Board (CalVCB) as an erroneously convicted person pursuant to Penal Code  
16 section 4900, subdivision (b), based on his vacated convictions for a robbery and rape committed in  
17 1974 on Ellis Street in San Francisco. In this claim, Vanderhorst<sup>1</sup> requested compensation in the  
18 amount of \$1,225,840 based on the 24-year sentence imposed for his erroneous convictions, or,  
19 alternatively, in the amount of \$460,180 based on the nine-year difference between the sentence  
20 imposed for his erroneous convictions and his still valid robbery conviction. Neither calculation  
21 accounts for the concurrent life sentence Vanderhorst was serving for an unrelated murder conviction.  
22 The Attorney General's Office<sup>2</sup> contended Vanderhorst was not entitled to any compensation.

23 The matter was assigned to CalVCB Senior Attorney Caitlin Christian. After considering all of  
24 the evidence in the record and affording Vanderhorst an opportunity to present additional evidence and  
25 arguments at a hearing, it is recommended the CalVCB approve payment in the amount of \$280 as  
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27 <sup>1</sup> Vanderhorst is represented by Khari Tillery of Keker, Van Nest, and Peters, LLP and Rebecca Young  
of Young and Associates.

28 <sup>2</sup> The Attorney General's Office is represented by Deputy Attorney General Sharon Loughner.

1 indemnification for the injury sustained through the erroneous convictions, based on the two days of  
2 imprisonment solely attributable to Vanderhorst's erroneous convictions for the Ellis Street robbery and  
3 rape.

## 4 **Procedural History**

### 5 **I. Events Leading to Vanderhorst's Convictions.**

6 In October of 1974, Vanderhorst was indicted by a grand jury and charged with 14 crimes,  
7 which occurred over the course of three different days and at three different locations.<sup>3</sup> In counts 1  
8 through 3, Vanderhorst was charged with murder with special circumstances for committing an act that  
9 resulted in a death during the commission of a burglary, burglary, and robbery based on the events that  
10 took place on September 12, 1974, at 942 Fell Street (the Fell Street crimes).<sup>4</sup> In counts 4 through 8,  
11 Vanderhorst was charged with three counts of robbery, forcible rape, and burglary based on events that  
12 occurred on July 3, 1974, at 2074 Ellis Street (the Ellis Street crimes).<sup>5</sup> In counts 9 through 14,  
13 Vanderhorst was charged with burglary and four separate robberies, which occurred on July 16, 1974,  
14 at 22 Terra Vista (the Terra Vista crimes).<sup>6</sup> Vanderhorst was further charged with an enhancement for  
15 the personal use of a firearm as to the Fell Street and Ellis Street crimes.<sup>7</sup>

16 Although Vanderhorst told his attorney that he did not commit the Ellis Street or Terra Vista  
17 crimes, his attorney did not investigate the case, interview witnesses, or discuss possible defenses with  
18 Vanderhorst. Instead, he told Vanderhorst accepting a plea agreement was the only way to avoid the  
19 death penalty and impressed upon Vanderhorst that he would be eligible for release after only six  
20 months thanks to the Youth Offender Act. Vanderhorst's attorney told Vanderhorst he would not be  
21 disadvantaged by pleading to crimes he did not commit because any sentence imposed would be  
22 served concurrently with the life sentence imposed for the Fell Street murder. Counsel for the co-  
23 defendant yelled at Vanderhorst, telling him to "be a man" and stop "putting his mother" through this.

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25 <sup>3</sup> Attorney General's Response Letter (AGRL) at pp. 13-15.

26 <sup>4</sup> AGRL at pp. 2, 13.

27 <sup>5</sup> AGRL at pp. 2, 13-14.

28 <sup>6</sup> AGRL at pp. 2, 14-15.

<sup>7</sup> AGRL at pp. 13-15.

1 As a result, on December 17, 1974, Vanderhorst pled guilty to all 14 counts; however, a few  
2 weeks later, on December 31, 1974, the court, believing Vanderhorst was ineligible for sentencing  
3 under the Youth Offender Act, asked Vanderhorst to withdraw his plea.<sup>8</sup> Later that day, Vanderhorst  
4 pled guilty to four of the 14 original charges: the Fell Street murder (count 1), one of the Ellis Street  
5 robberies (count 5), the Ellis Street rape (count 8), and one of the Terra Vista robberies (count 10). He  
6 also admitted to the use of a firearm during the Ellis Street robbery (count 5) and rape (count 8).<sup>9</sup> He  
7 was then sentenced to life in prison for the Fell Street murder (count 1) and concurrent sentences of  
8 six-months to life for each of the remaining counts (counts 5, 8, and 10).

9 On October 14, 1976, after determinate sentencing was implemented, Vanderhorst was  
10 resentenced to life in prison for the Fell Street murder (count 1), to be served concurrently with a 19-  
11 year term for the Ellis Street robbery (count 5) with an enhancement for the use of a firearm, a 24-year  
12 term for the Ellis Street rape (count 8) with an enhancement for the use of a firearm, and a 15-year term  
13 for one of the Terra Vista robberies (count 10).<sup>10</sup>

## 14 **II. Vanderhorst's Release from Custody and Post-Conviction Relief.**

### 15 **A. Vanderhorst was Released from Custody on February 6, 2020.**

16 After the Legislature amended the definition of murder in 2019, Vanderhorst requested the court  
17 vacate his conviction for the Fell Street murder pursuant to Penal Code section 1172.6, which  
18 authorized the court to vacate murder convictions if the underlying conduct does not constitute murder  
19 as it is now defined. On January 24, 2020, the court granted Vanderhorst's request. The court vacated  
20 his conviction for the Fell Street murder and, on January 31, 2020, resentenced Vanderhorst to three  
21 years in prison, time served, for the target offense, the Fell Street burglary.<sup>11</sup> The court ordered that  
22 Vanderhorst be released from custody subject to post-release supervision for up to one year.<sup>12</sup>

23 A few days later, Vanderhorst's attorney contacted the California Department of Corrections  
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25 <sup>8</sup> Vanderhorst's Application (App.) at pp. 77, 493.

26 <sup>9</sup> AGRL at pp. 2, 13-15; App. at p. 493.

27 <sup>10</sup> AGRL at pp. 2, 13-15; App. at pp. 77, 487, 492, 496.

28 <sup>11</sup> Vanderhorst's Supplemental Documents (Clmt. Supp.) at pp. 2, 4-5.

<sup>12</sup> Clmt. Supp. at p. 5.

(CDCR) to inquire why Vanderhorst had not yet been released from custody. Although CDCR initially agreed to release Vanderhorst forthwith, CDCR instead placed a hold on Vanderhorst on February 5, 2020, based on its mistaken belief Vanderhorst could not be released without undergoing a sexually violent predator (SVP) evaluation. Counsel notified CDCR that a SVP evaluation was not required. As a result, CDCR lifted the hold and Vanderhorst was released from custody the following day, February 6, 2020.<sup>13</sup> Vanderhorst was discharged from post-release supervision on February 5, 2021.<sup>14</sup>

**B. Vanderhorst was Found Factually Innocent of the Ellis Street Crimes.**

On February 18, 2021, Vanderhorst filed a motion requesting his convictions for both the Ellis Street and Terra Vista crimes be vacated based on newly discovered evidence. In particular, Vanderhorst's sister told investigators and the court that she and Vanderhorst were together, at their mother's house, on the night the Ellis Street crimes were committed, and she provided photographs of their family from the following day, in support of her statement. On October 18, 2021, the court granted his request as to the Ellis Street crimes only (counts 5 and 8), finding Vanderhorst established by a preponderance of the evidence that his convictions for the Ellis Street robbery (count 5) and rape (count 8) should be vacated as the result of newly discovered evidence of his innocence.<sup>15</sup> The court denied Vanderhorst's request as to the Terra Vista crimes.

On November 18, 2021, Vanderhorst filed a Stipulated Petition for a Finding of Factual Innocence as to the Ellis Street robbery (count 5) and rape (count 8). In his motion, Vanderhorst disclosed that, during an interview with counsel on December 18, 2019, D.J., one of the original suspects in the Ellis Street crimes, declined to identify who committed the Ellis Street rape but confirmed Vanderhorst was not present for or involved in the Ellis Street crimes. During a subsequent interview, D.J. confirmed that he was present for the Ellis Street crimes, and, on June 24, 2021, he signed a declaration confirming Vanderhorst was not present for, nor involved in, any home invasions D.J. participated in, including the invasion in July of 1974, when his crime partner "messed with a

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<sup>13</sup> The parties stipulated that Vanderhorst was placed on a hold for the SVP evaluation on February 5, and released the following day, February 6, 2020. See App. at p. 53; Clmt. Supp. at pp. 29-30, 33-40.

<sup>14</sup> Clmt. Supp. at p. 26.

<sup>15</sup> Clmt. Supp. at pp. 7-8.

woman.”<sup>16</sup>

On December 9, 2021, the court granted the parties’ request that Vanderhorst be found factually innocent of the Ellis Street robbery and rape.<sup>17</sup> Vanderhorst remains validly convicted of the Fell Street burglary and the Terra Vista robbery.

### **III. Vanderhorst’s Erroneously Convicted Person Claim.**

On August 15, 2023, Khari Tillery of Kecker, Van Nest, and Peters, LLP submitted an Erroneously Convicted Person Claim form, which was supplemented on September 29, 2023, seeking compensation on behalf of Vanderhorst as an erroneously convicted person pursuant to Penal Code section 4900, subdivision (b) based on his convictions for the Ellis Street crimes. In this claim, Vanderhorst challenges only his convictions for the Ellis Street crimes. Vanderhorst does not challenge his convictions for the Fell Street murder or Terra Vista robbery. Vanderhorst requested \$1,225,840 in compensation, which includes 8,756 days (i.e., 24 years) of the 16,754 days he was imprisoned based on the sentence imposed for the Ellis Street crimes, concurrent terms of 19 and 24 years. In the alternative, Vanderhorst requested \$460,180 in compensation, which includes 3,287 days (i.e., 9 years) of imprisonment, based on the difference between the concurrent sentences imposed for the Ellis Street (24 years) and Terra Vista crimes (15 years).

On October 2, 2023, this claim was deemed filed and the Attorney General’s Office was invited to provide a response within 45 days, pursuant to Penal Code section 4902, subdivision (d). The Attorney General’s response letter and exhibits were submitted on January 2, 2024, after receiving one 45-day extension of time. In their response, the Attorney General’s Office opposed Vanderhorst’s injury calculation, instead contending Vanderhorst was not entitled to any amount of compensation in light of the concurrent life sentence he was serving for the Fell Street murder. The Attorney General’s Office did not object to, nor challenge, the court’s finding Vanderhorst was innocent of the Ellis Street crimes.

Given the extent of the parties’ disagreement on the issue of injury, the CalVCB advised the parties that a hearing on the issue of injury was necessary to ensure the claim was fairly resolved. The

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<sup>16</sup> Despite these statements, at the hearing on Vanderhorst’s motions for post-conviction relief, D.J. testified he did not recall any home invasion robbery. App. at pp. 79-80.

<sup>17</sup> Clmt. Supp. at pp. 12-15.

1 parties were notified that a hearing could be conducted on the written record, in-person, or virtually. The  
2 CalVCB notified the parties that an in-person or virtual hearing could not be scheduled until March and  
3 requested the parties confer and advise the CalVCB of their preference on how to proceed.  
4 Vanderhorst requested a hearing be conducted in-person. The Attorney General's Office requested to  
5 appear virtually. The CalVCB asked the parties to confer and provide potential hearing dates. On  
6 February 6, 2024, Vanderhorst provided several potential hearing dates, during April and May, which  
7 the Attorney General's Office later agreed to. Neither party objected to the presentation of additional  
8 evidence and arguments at a hearing, nor to the delay that would accompany an in-person or virtual  
9 hearing.

10 At the CalVCB's request, the parties both submitted pre-hearing statements and briefing. A  
11 hybrid hearing was conducted on May 21, 2024. Vanderhorst, counsel for Vanderhorst, and their  
12 witness appeared in-person. The Attorney General's representative appeared via Zoom. Vanderhorst  
13 did not testify. The only witness called to testify was Charles Carbone, a parole law expert. The  
14 Attorney General's representative did not ask the witness any questions or present any additional  
15 evidence. Neither party lodged any objections during the hearing. The parties were invited to provide  
16 post-hearing briefing but declined. The record therefore closed at the end of the hearing, with the  
17 agreement of the parties.

## 18 **Statement of the Facts**

### 19 **I. Facts Related to Vanderhorst's Arrest and Convictions.**

#### 20 **A. The Ellis Street Crimes: Burglary, Rape, and Three Robberies.**

21 On July 3, 1974, at around 10:00 p.m., someone rang the doorbell to Allen Warner's home, on  
22 Ellis Street in San Francisco. When Warner opened the door, a young Black man asked if Cecil was  
23 home. Warner said no one named Cecil lived there and started to close the door, but the man shoved  
24 the door back open and pushed his way into Warner's home, with another man in tow. The men  
25 slammed Warner into the door and, while holding a gun to Warner's head, demanded Warner face the  
26 wall before pushing him into his bedroom. Warner was gagged, bound, blindfolded, and kicked and hit  
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1 several times, before the men took his wallet and left him face down on the bed.<sup>18</sup>

2 Warner was in the bedroom and the men were still rummaging through the house when  
3 Warner's housemate, Spiro Boupheidis (Spiro), returned home with his girlfriend Gail.<sup>19</sup> After Spiro and  
4 Gail stepped inside, a masked Black man with a gun emerged and ordered Spiro and Gail to face the  
5 wall.<sup>20</sup> The man had large, slanted eyes, a small nose, and looked very young.<sup>21</sup> Another man, who  
6 was standing in a nearby bedroom, was also pointing a gun at them.<sup>22</sup>

7 The men threatened to kill Spiro and Gail if they did not cooperate and then took Gail and  
8 Spiro's money and valuables, including a Seiko watch with a silver or black band.<sup>23</sup> Spiro and Gail  
9 were herded to a backroom, where the men blindfolded Spiro and tied up both Spiro and Gail.<sup>24</sup> They  
10 forced Spiro to kneel on the floor with his body leaning face down on bed. They told Spiro to be quiet  
11 or they would cut his throat. They forced Gail down beside him and demanded more money, but Spiro  
12 and Gail said they did not have any.

13 A few minutes later, Spiro heard Gail's clothing being torn off of her body.<sup>25</sup> Gail later explained  
14 the man used a knife to cut her clothes off of her body and then tried to rape Gail but could not attain  
15 an erection.<sup>26</sup> Spiro heard them say, "If you keep this up, we are going to cut your husband's ear off."<sup>27</sup>  
16 One of the men held a knife to Spiro's ear. Gail was fighting against the man, who was still struggling  
17 to penetrate Gail with his penis. Eventually the man threw Gail on the floor, yelled at her, and tried to  
18 penetrate Gail with his gun.<sup>28</sup> Gail estimated this went on for 45 minutes.<sup>29</sup> Spiro estimated this went

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20 <sup>18</sup> AGRL at pp. 66, 68-69, 90.

21 <sup>19</sup> AGRL at pp. 57-58, 90-91.

22 <sup>20</sup> AGRL at p. 58.

23 <sup>21</sup> AGRL at p. 59.

24 <sup>22</sup> AGRL at p. 59.

25 <sup>23</sup> AGRL at pp. 20-21, 59, 91.

26 <sup>24</sup> AGRL at p. 59.

27 <sup>25</sup> AGRL at pp. 60-61.

28 <sup>26</sup> AGRL at p. 91.

<sup>27</sup> AGRL at p. 62.

<sup>28</sup> AGRL at pp. 70-71.

on for about 15 minutes before the man who committed the rape invited the other man to “try.”

The other man declined, and the two men then left the room to ransack the remainder of the house.<sup>30</sup> About 30 minutes later, the men returned to put pillows over Spiro’s and Gail’s heads, their faces still pressed into the bed. The men left shortly thereafter in Warner’s car with the money and other valuables they took from Warner and Spiro’s Ellis Street home.<sup>31</sup> Spiro eventually freed himself and called the police.<sup>32</sup>

Gail told police that she believed the men referred to each other as Randy and E.J., but she was not sure.<sup>33</sup> One of the perpetrators was described as a Black male in his twenties, who was about five feet eleven inches tall, with black hair, brown eyes, and armed with a small grey automatic weapon. The other perpetrator was identified as a Black male, in his twenties, who was thin, five feet, ten inches tall, with black hair, brown eyes, and also armed with a small grey automatic weapon.<sup>34</sup> Fingerprints taken from Ellis Street did not match Vanderhorst’s fingerprints, and the semen sample obtained during Gail’s rape kit was never tested.<sup>35</sup>

#### **B. The Terra Vista Crimes: Burglary and Five Counts of Robbery.**

On July 16, 1974, Robert Berndorff (Robert) and his housemate, Jim Van Buskirk (Jim), were throwing a party in their new apartment on Terra Vista in San Francisco.<sup>36</sup> Only six of their guests had arrived at 7:00 p.m., when the doorbell rang. One of the guests, Rona, answered the door. A short, Black man asked if “John” was there. The door flung open almost immediately. The short man who rang the bell barged in with a taller Black man in tow.<sup>37</sup> Robert came to the door and found Rona

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<sup>29</sup> AGRL at p. 72.

<sup>30</sup> AGRL at p. 62.

<sup>31</sup> AGRL at p. 63.

<sup>32</sup> AGRL at p. 91.

<sup>33</sup> AGRL at p. 71.

<sup>34</sup> AGRL at p. 20.

<sup>35</sup> App. at p. 69.

<sup>36</sup> AGRL at p. 73.

<sup>37</sup> AGRL at p. 74.



1 standing in the foyer with two men. The taller man had a gun, which he used to hit Rona in the head.<sup>38</sup>  
2 The gunman told Robert and Rona to go into Jim's bedroom, where they were told to lie face down on  
3 the bed, while the intruders searched them and took their valuables before tying them up.<sup>39</sup> The men  
4 then brought Jim and the other guests into the bedroom by gunpoint, one by one or in groups of two,  
5 where the victims were tied up, forced to lay face down on the bed or floor, and stripped of their  
6 valuables.<sup>40</sup> Once everyone was in the room and tied up, the intruders pulled a sheer blanket over  
7 their heads and left.<sup>41</sup>

8 **C. Darryl Jones (D.J.) was Arrested for the Ellis Street and Terra Vista Crimes.**

9 On July 31, 1974, police made contact with Darryl Jones (D.J.) on a public sidewalk. D.J. was  
10 sitting beside Vanderhorst and, as he watched the police approach, he set something aside. Police  
11 later identified the object as a billy club. D.J. was wearing two unusual rings and a Seiko watch. A .45  
12 caliber gun was found in his pocket.<sup>42</sup>

13 Police noticed that D.J. matched the description of one of the men involved in the Ellis Street  
14 crimes: he was a tall Black man with slanted eyes and "an oriental look about him," and therefore  
15 suspected the name Gail heard was "D.J.," not "E.J."<sup>43</sup> D.J. also matched the description of one of the  
16 individuals involved in the Terra Vista crimes, and Vanderhorst matched the description of the other  
17 man involved in the Terra vista crimes: a young, Black man, between five feet, four inches and five  
18 feet, six inches tall, 140 pounds, with a light complexion and short afro.<sup>44</sup>

19 D.J. was arrested and taken into custody for the Ellis Street crimes, with a notation he was also  
20 a possible suspect in the Terra Vista crimes.<sup>45</sup> D.J. was placed in a lineup, but Spiro, the only witness  
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22 <sup>38</sup> AGRL at p. 74.

23 <sup>39</sup> AGRL at pp. 75-76.

24 <sup>40</sup> AGRL at pp. 76-79, 82-83.

25 <sup>41</sup> AGRL at p. 77.

26 <sup>42</sup> AGRL at p. 23.

27 <sup>43</sup> AGRL at p. 23; App. at p. 68.

28 <sup>44</sup> AGRL at pp. 23, 25.

<sup>45</sup> AGRL at p. 24.

1 who attended the line-up, was unable to identify him. Gail was not invited to look at the unusual rings  
2 D.J. was wearing at the time police found him. Without explanation, police then released D.J. and  
3 returned the rings to him.<sup>46</sup> There is no indication police conducted any further investigation into D.J.'s  
4 involvement in the Ellis Street or Terra Vista crimes.<sup>47</sup>

5 **D. The Fell Street Crimes: Murder, Burglary, and Attempted Robbery.**

6 At 8:00 p.m. on September 12, 1974, someone rang the doorbell to John Klees's one-story flat  
7 on Fell Street, in San Francisco.<sup>48</sup> John saw two figures through the window and opened the door just  
8 a few inches. One of the men asked whether "Rich" was home and began pushing the door open.  
9 John realized one of the men had a gun and retreated into his flat.<sup>49</sup>

10 The man who knocked on the door chased John down the hall, but John fell before reaching  
11 the flat's rear entrance.<sup>50</sup> The man got on top of John, pushed John's face into the floor, and  
12 threatened to "blow [John's] head off." John could see a gun. The man who knocked on the door then  
13 pulled John by his hair and forced him into a nearby chair. He threatened to kill John if he was not  
14 quiet.<sup>51</sup>

15 The man holding John called out to the other man, who, at that point, was still on the front  
16 porch. Just then, John's upstairs neighbor, Allen McCarthur (Allen), walked through the back door.<sup>52</sup>  
17 The man holding John's head let John go and chased Allen down the hallway, gun in hand. John ran  
18 into a nearby bedroom and closed the door. The gunman caught up with Allen just shy of the backdoor  
19 to the flat. Allen backed out of the flat with the gunman's arm outstretched and the gun trained on his  
20 person.<sup>53</sup> A few moments later, John heard a gunshot.<sup>54</sup> John eventually emerged after a period of

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21  
22 <sup>46</sup> App. at p. 68.

23 <sup>47</sup> App. at pp. 68-69.

24 <sup>48</sup> AGRL at pp. 31-32.

25 <sup>49</sup> AGRL at pp. 33-34, 40.

26 <sup>50</sup> AGRL at p. 34.

27 <sup>51</sup> AGRL at pp. 35-36, 90.

28 <sup>52</sup> AGRL at p. 90.

<sup>53</sup> AGRL at p. 90.

1 silence and went outside to find Allen, lying on the ground, below the back entrance to John's flat.<sup>55</sup>

2 Allen was transported to the hospital, where he died from a gunshot wound to the back of his  
3 head.<sup>56</sup> During the ensuing investigation, police found two sets of fingerprints on the door to John's  
4 flat: one set belonged to David Carter (Carter) and the other belonged to Vanderhorst.<sup>57</sup>

5 **E. Vanderhorst was Arrested on September 22, 1974.**

6 Vanderhorst was arrested on September 22, 1974, for two other, unrelated robberies police  
7 suspected he had committed with Carter.<sup>58</sup>

8 Law enforcement interviewed Vanderhorst on September 25, 1974.<sup>59</sup> He denied any  
9 involvement in the murder and robbery on Fell Street, instead naming "Crazy David" Carter and D.J. as  
10 the perpetrators of those crimes.<sup>60</sup> During an interview the following day, Carter told law enforcement  
11 he and Vanderhorst were friends and saw each other nearly every day. However, he said they had not  
12 "run around" together for about two months.<sup>61</sup>

13 Vanderhorst participated in a line-up, and many of the Ellis Street, Terra Vista, and Fell Street  
14 victims were invited to participate. According to Vanderhorst he volunteered to participate in these line-  
15 ups but was then required to wear a bright yellow jacket. Warner identified Vanderhorst as the man  
16 who first knocked on the door to his Ellis Street apartment.<sup>62</sup> Robert identified Vanderhorst as the  
17 shorter man, who originally knocked on the door to his home on Terra Vista.<sup>63</sup> John said Vanderhorst  
18 may have been the man who first came to the door of his Fell Street flat.<sup>64</sup> At that time, Vanderhorst

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19  
20 <sup>54</sup> AGRL at p. 36.

21 <sup>55</sup> AGRL at pp. 36-37.

22 <sup>56</sup> AGRL at pp. 41-42.

23 <sup>57</sup> AGRL at pp. 45-48, 51.

24 <sup>58</sup> Carter was arrested on October 14, 1974, and booked for the Fell Street crimes.

25 <sup>59</sup> AGRL at pp. 52-57.

26 <sup>60</sup> AGRL at pp. 54-56.

27 <sup>61</sup> AGRL at p. 56.

28 <sup>62</sup> AGRL at pp. 67, 85.

<sup>63</sup> AGRL at pp. 80, 85.

<sup>64</sup> AGRL at pp. 39, 85.

1 was five feet, six inches tall and weighed 135 or 140 pounds.<sup>65</sup>

## 2 **II. Facts Related to Sentencing: The Probation Report and Sentencing Factors.**

3 A probation report was prepared on January 7, 1975.<sup>66</sup> The probation report included a  
4 summary of Vanderhorst's criminal history, Vanderhorst's statements, social factors, and sentencing  
5 recommendations.<sup>67</sup>

### 6 **A. Vanderhorst's Adolescence: 1966 through 1972.**

7 Vanderhorst first came to the attention of law enforcement when he was arrested for petty theft  
8 in September of 1966, at the age of 11. He was again arrested for petty theft in March of 1967. Each  
9 time, he was admonished and then dismissed. However, following an arrest for burglary and purse  
10 snatching in April of 1969, Vanderhorst was sentenced to two weekends in juvenile hall.<sup>68</sup>

11 In the eighth grade, Vanderhorst began skipping school "because everyone else was doing it"  
12 and soon graduated to purse snatchings, assaults, and robberies. In December of 1969, Vanderhorst  
13 was again arrested for burglary, although the charge was subsequently reduced to truancy.<sup>69</sup>  
14 Vanderhorst was later expelled for hitting a female student in the mouth. Vanderhorst explained that  
15 she hit him in the eye earlier that day without provocation, so he spent the rest of the day looking for  
16 her so that he could retaliate.<sup>70</sup>

17 In late 1970, Vanderhorst, along with four other youths, robbed the new boyfriend and ex-  
18 girlfriend of one of the youths he was with. The youths then took the ex-girlfriend against her will to a  
19 high cliff, where she was raped by her ex-boyfriend while Vanderhorst and the other youths watched.  
20 Vanderhorst did not express feeling compassion or empathy for the ex-girlfriend. Instead, he worried  
21 her cries would attract unwanted attention, which they did. Law enforcement's arrival prevented the  
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23  
24 <sup>65</sup> AGRL at pp. 5, 87.

25 <sup>66</sup> AGRL at p. 87.

26 <sup>67</sup> AGRL at pp. 80-98.

27 <sup>68</sup> AGRL at p. 88.

28 <sup>69</sup> AGRL at pp. 88, 93.

<sup>70</sup> AGRL at p. 93.

1 incident from becoming a gang rape.<sup>71</sup>

2 Vanderhorst was committed to a juvenile institution for kidnapping, rape, robbery, and joyriding.  
3 Following his release from custody, in August of 1971, Vanderhorst began the ninth grade. By then, he  
4 was involved in “a little bit of everything.” Despite his recent commitment, Vanderhorst was not  
5 bothered by his participation in criminal activity and felt okay about himself, noting it felt good to have  
6 money in his pocket.<sup>72</sup> He insisted all of the youth in the area where he grew up engaged in similar  
7 activities.<sup>73</sup> He continued to commit robberies and snatch purses until November 15, 1971, when he  
8 was placed in the California Youth Authority for his involvement in several purse snatchings and  
9 robberies. According to the declaration Vanderhorst prepared as part of his erroneously convicted  
10 person claim, by that time, he was addicted to heroin.<sup>74</sup>

11 During his confinement, Vanderhorst underwent testing, which concluded his IQ was roughly  
12 equivalent to that of a third or fourth grader.<sup>75</sup> A report prepared, and psychological assessment  
13 performed, during his confinement in the Youth Authority were summarized in the probation report  
14 following his convictions for the Fell Street, Ellis Street, and Terra Vista crimes. Vanderhorst told Youth  
15 Authority officials he was the “real victim” in the robberies because the police failed to return his  
16 umbrella and confiscated \$10 of his money as restitution for the robbery victims. His thoughts clearly  
17 indicated an insensitivity to people, dislike and distrust of police, and a failure to accept societal  
18 norms.<sup>76</sup> Yet, Vanderhorst perceived “himself as having nothing really bad about himself[.]”<sup>77</sup> He  
19 expressed “considerable feeling” about his own misfortunes but expressed no concern whatsoever for  
20 the robbery victims.<sup>78</sup> Instead, Vanderhorst appeared to be generally pleased with himself.

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21  
22 <sup>71</sup> AGRL at p. 95.

23 <sup>72</sup> AGRL at p. 93.

24 <sup>73</sup> AGRL at p. 95.

25 <sup>74</sup> App. at p. 44.

26 <sup>75</sup> AGRL at p. 94.

27 <sup>76</sup> AGRL at p. 95.

28 <sup>77</sup> AGRL at p. 96.

<sup>78</sup> AGRL at p. 96.

1 Although Vanderhorst likely could not be considered impulsive, the evaluator observed a  
2 tendency to satisfy his immediate needs rather than plan for long-term goals. In addition, Vanderhorst  
3 tended to minimize things and exhibited “numerous hostile precepts,” which indicates a “tolerance for  
4 hurting others in order to satisfy one’s desire.” Although that did not mean Vanderhorst would  
5 necessarily hurt others, it evidenced an insensitivity to the suffering of other people. Despite these  
6 conclusions, the evaluator did not have enough information to make a diagnosis and, consequently,  
7 did not deem Vanderhorst emotionally disturbed or ill.<sup>79</sup>

8 **B. Vanderhorst’s Transition to Adulthood.**

9 Vanderhorst was released from the Youth Authority in February 1973 and, in the months that  
10 followed, graduated from high school and then worked as a dishwasher for eight months.<sup>80</sup> However,  
11 Vanderhorst quit his job as a dishwasher when his employer asked him to do something that  
12 Vanderhorst did not agree with.<sup>81</sup> Vanderhorst said he had, since then, been taking it easy.  
13 Vanderhorst’s girlfriend was pregnant, and he hoped to marry her. Vanderhorst told probation that he  
14 had outgrown his previous pattern of delinquent behavior.<sup>82</sup>

15 Yet, in September of 1973, Vanderhorst was again arrested for burglary, but no charges were  
16 filed against him. Vanderhorst was arrested for another robbery on May 15, 1974, but the charges  
17 were then dismissed in the interest of justice on August 1, 1974.<sup>83</sup> On July 18, 1974, two days after the  
18 Terra Vista crimes, Vanderhorst was arrested for possessing a dangerous weapon, receiving stolen  
19 property, and battery. On August 8, 1974, he pled guilty to two counts of battery.<sup>84</sup> According to a  
20 declaration submitted in connection with this claim, by that time, Vanderhorst’s “addiction was running  
21 his life.”<sup>85</sup>

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22  
23 <sup>79</sup> AGRL at p. 96.

24 <sup>80</sup> AGRL at p. 88.

25 <sup>81</sup> AGRL at p. 94.

26 <sup>82</sup> AGRL at p. 94.

27 <sup>83</sup> AGRL at p. 88.

28 <sup>84</sup> AGRL at p. 88.

<sup>85</sup> App. at p. 44.

1 On September 22, 1974, 10 days after the Fell Street crimes, Vanderhorst was arrested and  
2 held to answer for an unrelated robbery.<sup>86</sup> That robbery charge was later consolidated with the  
3 charges for the Ellis Street, Terra Vista, and Fell Street crimes.<sup>87</sup> Vanderhorst admitted he was present  
4 for the robbery that took place on September 22, 1974, but denied being involved in that crime, or any  
5 of the Fell Street, Ellis Street, or Terra Vista crimes. Vanderhorst told probation he only pleaded guilty  
6 because counsel told him that otherwise he would face the death penalty.<sup>88</sup>

7 According to the information obtained for and included in the probation report, Vanderhorst had  
8 a “substantial record” as a juvenile, including serious offenses against the person of others. Multiple  
9 confinements as the result of his behavior had “little impact” on his behavior.<sup>89</sup> Vanderhorst also had a  
10 pattern of minimizing his behavior and consistently maintained the stance he was a helpless victim.  
11 For example, when he was asked about the 1970 kidnapping and rape, Vanderhorst told the probation  
12 department he was the victim because he was committed to a juvenile institution even though he  
13 “really hadn’t done anything.” Vanderhorst was asked whether he attempted to prevent the kidnapping.  
14 Vanderhorst responded that it was not his responsibility to stop people from doing what they wanted to  
15 do, and that he was helpless because he was the smallest member of the group.<sup>90</sup>

16 The report concluded Vanderhorst had “proven himself to be a serious and dangerous threat to  
17 the community” and appeared to have a “sociopathic personality who is totally insensitive to the  
18 feelings of others and who experiences no remorse or guilt over brutal behavior.”<sup>91</sup> It went on to state:  
19 “This type of personality is almost impossible to modify and for the sake of the community, it would  
20 appear that [Vanderhorst] should be incarcerated for as long a period as is legally possible.”<sup>92</sup>

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23 <sup>86</sup> AGRL at pp. 89, 92.

24 <sup>87</sup> AGRL at p. 89.

25 <sup>88</sup> AGRL at p. 92.

26 <sup>89</sup> AGRL at p. 97.

27 <sup>90</sup> AGRL at p. 93.

28 <sup>91</sup> AGRL at p. 97.

<sup>92</sup> AGRL at p. 97.

1 **III. Parole Hearings and Disciplinary Proceedings from 1974 through 1995.**

2 **A. Disciplinary Issues and Parole Hearings from 1974 through 1984.**

3 Vanderhorst was found guilty of several serious rule violations<sup>93</sup> between 1974 and 1980: (1)  
4 loitering, (2) being in another inmate's cell, (3) covering the window to his cell, (4) possessing  
5 marijuana, and, in March of 1980, (5) refusing to submit to a pat down search. Vanderhorst was also  
6 found to have violated institutional rules (CDC 128s) by: (1) possessing another inmate's canteen  
7 ducats and (2) refusing to sit where ordered in the dining hall.<sup>94</sup>

8 Vanderhorst provided 12 pages from the 76-page transcript of the October 23, 1980, parole  
9 hearing.<sup>95</sup> In the pages provided, Vanderhorst told the panel he had nothing to do with the Ellis Street  
10 or Terra Vista crimes and only accepted a plea on the advice of counsel so that he could avoid the  
11 death penalty. In light of his concurrent life sentence for Allen's murder, Vanderhorst did not believe he  
12 would be disadvantaged by pleading to crimes he did not commit. The panel had to accept  
13 Vanderhorst's guilt but understood that his denial and the circumstances of his plea were being offered  
14 in mitigation.

15 Vanderhorst confirmed he was guilty of the Fell Street murder and knew Carter was armed with  
16 a loaded gun when they entered the Fell Street flat. Vanderhorst also confirmed that he volunteered to  
17 chase the victim down the hallway with Carter, but Carter said he could handle it on his own, so  
18 Vanderhorst went into the living room to check out a color television instead. Carter told Vanderhorst  
19 he murdered someone when he returned from the hallway. However, Vanderhorst then said he did not  
20 know whether there were two men inside the flat because he did not see anyone. Vanderhorst said he  
21 was only there because Carter needed a ride, although he then admitted he knew Carter planned to  
22 commit a robbery and, only once there, did he decide to go inside.<sup>96</sup> Vanderhorst then also admitted  
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24 <sup>93</sup> A serious rule violation, also referred to as a "CDC 115," is misconduct that violates the law.  
25 Institutional misconduct, also referred to as a "CDC 128," is more minor in nature and violates  
26 institutional rules as opposed to the law.

26 <sup>94</sup> Hrg. Exh. 3 at p. 4.

27 <sup>95</sup> The transcript included pages 13-19, 21, and 28-31.

28 <sup>96</sup> App. at p. 128.



1 he knew the types of crimes Carter was committing and how he was committing them. He knew about  
2 Ellis Street and Terra Vista because he heard Carter and D.J. brag about them.<sup>97</sup> When the panel then  
3 asked Vanderhorst whether he went inside the Fell Street flat, Vanderhorst replied, “no, not really.”<sup>98</sup>  
4 The transcript of the panel’s reasons for denying parole was not provided.

5 Vanderhorst provided one page from the 43-page transcript of the December 2, 1981, hearing  
6 (page 17). On this page, the panel characterizes a recent psychological evaluation as negative,  
7 quoting the psychologist’s observation that Vanderhorst “tended to minimize or deny his offenses and  
8 generally assumed a blaming attitude toward police and justice officials for his conviction and  
9 imprisonment ... The known developmental and general background seems to suggest faulty  
10 associations with drug usage and addiction.”<sup>99</sup> The transcript of the panel’s reasons for denying parole  
11 was not provided.

12 On November 19, 1983, Vanderhorst was found guilty of another serious rule violation,  
13 possessing stimulants and sedatives.<sup>100</sup>

14 Vanderhorst provided 10 pages from the 101-page transcript of the February 2, 1984,  
15 hearing.<sup>101</sup> The transcript begins with a discussion of the Fell Street murder. Vanderhorst said he was  
16 inside for only a few minutes when Carter returned to the room where Vanderhorst was and  
17 announced he had killed someone. Vanderhorst asked Carter why and they left. Vanderhorst said he  
18 was only convicted of the Ellis Street and Terra Vista crimes because they were committed in the  
19 same manner as the Fell Street crimes.<sup>102</sup> The panel asked Vanderhorst about the rape specifically,  
20 and Vanderhorst said he was not there and again blamed his conviction on the similar tactics used at  
21 each location.<sup>103</sup>

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22  
23 <sup>97</sup> App. at p. 124.

24 <sup>98</sup> App. at p. 128.

25 <sup>99</sup> App. at p. 133.

26 <sup>100</sup> Hrg. Exh. 3 at p. 4.

27 <sup>101</sup> The transcript included pages 8-11, 13, 15-16, 18, 99-100.

28 <sup>102</sup> App. at p. 138.

<sup>103</sup> App. at pp. 139-140.

1 The panel found Vanderhorst's claim "very hard to believe," particularly given his criminal  
2 history and the plea agreement.<sup>104</sup> The exchange then cuts off and picks back up with the panel  
3 saying: "...robbery and murder. You know, you're here because of a murder. It doesn't say specifically  
4 who pulled the trigger, but you were still convicted of murder in the first degree." It goes on: "we can't  
5 change what you're ... convicted of ... I find it really hard to believe ... you were only involved in one  
6 single, isolated incident of robbery."<sup>105</sup> Vanderhorst responded, "But it's true ... when they arrested me  
7 ... all I was (going) for was ... being at the murder scene. All them other charges came along with  
8 them." Vanderhorst reiterated he accepted a plea on the advice of counsel so that he could avoid the  
9 death penalty, but he now felt like "they tricked" him and regretted pleading to crimes he did not  
10 commit.<sup>106</sup>

11 The panel then asked additional questions about the Fell Street murder. Vanderhorst denied  
12 knowing where the murder took place and said he was in the flat "but a minute." The panel then asked  
13 about the rape and Vanderhorst again denied being there.<sup>107</sup> The transcript then jumps to what  
14 appears to be a recitation of the psychological evaluation: "violence potential and (total) behavior may  
15 be viewed as unpredictable ... While he seems to impress as slightly less impulsive at this time, his  
16 overall value system, as well as his consistent denial and rationalization seem to suggest that he will  
17 probably be a calculated parole release risk ... in the immediate future." The report noted  
18 Vanderhorst's opiate abuse and observed that his "psychopathology appear[ed] to be directly related  
19 to the offense and general pattern of behavior." The psychologist concluded Vanderhorst "appear[ed]  
20 to have made no significant changes and none should probably be anticipated in the immediate future  
21 ...." The panel then commended Vanderhorst for his participation in vocational training and positive  
22 work reports but, nonetheless, found him unsuitable for parole. The transcript of the panel's reasons  
23 for denying parole was not provided.<sup>108</sup>

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24  
25 <sup>104</sup> App. at p. 141.

26 <sup>105</sup> App. at p. 142.

27 <sup>106</sup> App. at pp. 140, 142-143.

28 <sup>107</sup> App. at pp. 144-145.

<sup>108</sup> App. at pp. 145-148.

1           **B. The 1985, 1986, and 1987 Parole Hearings.**

2           Vanderhorst provided nine pages from the 66-page transcript of the January 29, 1985,  
3 hearing.<sup>109</sup> Vanderhorst disclosed he committed another robbery, which he was not convicted of, on  
4 September 22, 1974. The panel then asked whether Vanderhorst believed he was “fairly convicted” of  
5 the charges in this case.<sup>110</sup> Vanderhorst admitted he was present for the murder but denied committing  
6 any of the other crimes he was convicted of. Vanderhorst explained that the plea was a package deal,  
7 and as a result, he had to plead guilty to all of the offenses to avoid the death penalty. The panel then  
8 confirmed Vanderhorst believed he was “only actual[ly] guilt[y of] being present when the murder was  
9 committed.”<sup>111</sup> When asked whether he accepted responsibility for Allen’s murder, Vanderhorst  
10 responded that he “always” felt Allen’s murder was “wrong,” “senseless,” and “wasn’t right.”  
11 Vanderhorst then reiterated he did not commit the other crimes he was convicted of and only accepted  
12 a plea to avoid the death penalty.<sup>112</sup>

13           Vanderhorst told the panel he had grown out of “running the streets” and just wanted to be with  
14 his family.<sup>113</sup> Vanderhorst wanted to provide his son with the things he did not have. When asked what  
15 would prevent him from trying to rob someone to get money if he was released, Vanderhorst replied:  
16 “Myself is going to prevent me. I would prefer to be at home living off my wife’s income rather than  
17 running around snatching ....”<sup>114</sup> The transcript then jumps several pages and picks up with  
18 Vanderhorst telling the panel he had remorse for the crime he was involved in but not for the Ellis Street  
19 or Terra Vista crimes, which he did not commit. Vanderhorst said he bettered himself because it  
20 pleased him.

21           The transcript then jumps to what appears to be the panel announcing one of its reasons for  
22 denying parole. It states: “Number three: Although the current psychological evaluation ... is basically

23 \_\_\_\_\_  
24 <sup>109</sup> The transcript included pages 9-14, 61-62, and 65.

25 <sup>110</sup> App. at p. 152.

26 <sup>111</sup> App. at pp. 153-154.

27 <sup>112</sup> App. at p. 155.

28 <sup>113</sup> App. at p. 157.

<sup>114</sup> App. at pp. 157-158.

1 positive, previous reports have not been supportive of release.... The panel would be more favorably  
2 impressed with a series of positive evaluations.” The panel then commended Vanderhorst “for his 14-  
3 month period of disciplinary free behavior,” watch repair vocational training, and positive work reports  
4 and recommended he remain disciplinary free and continue participating in institutional  
5 programming.<sup>115</sup>

6 Vanderhorst provided 10 pages from the 68-page transcript of the January 16, 1986, hearing.<sup>116</sup>  
7 Vanderhorst said he did not “go to the back,” presumably referencing the Fell Street murder, and  
8 denied taking drugs before the Fell Street crimes.<sup>117</sup> When he was asked who committed the Ellis  
9 Street rape, Vanderhorst merely responded that he was not there. Vanderhorst said he was charged  
10 with the Ellis Street and Terra Vista crimes because he admitted to police that he knew about them,  
11 even though he was not there. Vanderhorst then reiterated he accepted a plea to avoid the death  
12 penalty, noting his attorney claimed it was the best deal Vanderhorst would get.<sup>118</sup> The panel noted  
13 several other charges were not included in the plea.<sup>119</sup> The transcript then jumps to Vanderhorst telling  
14 the panel that Fell Street was the first time he “ever ran in on somebody like that.” The panel then  
15 asked Vanderhorst if he was identified as the man who knocked on the Terra Vista door. Vanderhorst  
16 replied that he did not commit the Terra Vista crimes.<sup>120</sup> The transcript then jumps to the panel  
17 observing Vanderhorst’s evaluations had been “more positive” since the 1981 evaluation, and then  
18 jumps again to Vanderhorst saying he is no longer “a little guy running around doing nothing.”<sup>121</sup> The  
19 panel then twice expressed concern about Vanderhorst’s ability to get a job as a watch repairman or in  
20 a clerical environment, given his conviction for forcible rape. The transcript of the panel’s reasons for  
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22  
23 <sup>115</sup> App. at p. 160.

24 <sup>116</sup> The transcript included pages 13-16, 23, 35-36, 48, 52-53.

25 <sup>117</sup> App. at p. 165.

26 <sup>118</sup> App. at pp. 166-167.

27 <sup>119</sup> App. at p. 168.

28 <sup>120</sup> App. at p. 169.

<sup>121</sup> App. at pp. 170-172.

1 denying parole was not provided.<sup>122</sup>

2 Vanderhorst provided 15 pages from the 145-page transcript of the January 7, 1987, hearing.<sup>123</sup>  
3 The transcript begins with Vanderhorst denying the Ellis Street and Terra Vista crimes and reiterating  
4 that he only pleaded to these crimes on the advice of counsel.<sup>124</sup> Vanderhorst then repeatedly admitted  
5 he heard Carter and D.J. brag about their involvement in the Ellis Street and Terra Vista crimes.<sup>125</sup> The  
6 panel doubted Vanderhorst's claims based on the police report indicating Vanderhorst previously  
7 admitted to committing "the crime."<sup>126</sup> The panel noted for Vanderhorst's claim to be true the police  
8 officer either misunderstood or falsified the report; Vanderhorst agreed.<sup>127</sup>

9 The transcript then skips a few pages and picks up with Vanderhorst saying: "... as far as all the  
10 other little extra things that they do involving crimes, I just don't see it, so I turns away from it. But I'm  
11 just as guilty as they is, just by being there, but I just can't see myself saying I did it just because I was  
12 there." Vanderhorst continued: "I'm man enough to stand up and say, 'Yeah, I was there, I participated  
13 into it,' but I didn't do this ... I wasn't active in that part of the crime." He went onto say, "I have my  
14 guilts. ... But as far as something I didn't do wrong ... I'm not going to cop to it. I'm not going to say I  
15 did it and I didn't do it. I was there, but I didn't do that actual part right there."<sup>128</sup> The panel then  
16 confirmed Vanderhorst was guilty of murder. Vanderhorst replied: "Yes, I was there." The panel then  
17 confirmed that Vanderhorst denied participating in the Ellis Street or Terra Vista crimes.<sup>129</sup> The  
18 transcript then skips several pages and picks up with an unnamed speaker quoting from psychological  
19 evaluations. In 1975, the evaluation expressed concern that Vanderhorst exhibited a tolerance for  
20 hurting others and tended to deny, rationalize, or minimize his antisocial conduct. In 1976 and again in

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21  
22 <sup>122</sup> App. at pp. 172-173.

23 <sup>123</sup> The transcript included pages 14, 31, 33-35, 38, 59-62, 65-67, and 108-109.

24 <sup>124</sup> App. at pp. 181, 184.

25 <sup>125</sup> App. at pp. 181-183, 185.

26 <sup>126</sup> It is unclear whether the panel was referencing the Ellis Street or Terra Vista crimes.

27 <sup>127</sup> App. at pp. 186-187.

28 <sup>128</sup> App. at pp. 189-190.

<sup>129</sup> App. at p. 191.

1 1981, the evaluators noted Vanderhorst’s tendency to “deny, rationalize, or minimize his offenses and  
2 involvement in his offenses.” In 1983, the evaluator concluded Vanderhorst’s “violence potential was in  
3 check in a controlled setting such as the prison.”<sup>130</sup> The transcript of the panel’s reasons for denying  
4 parole was not provided.

5 In May of 1987, Vanderhorst was found guilty of another serious rules violation for possessing  
6 marijuana.<sup>131</sup>

7 **C. The 1990 Parole Hearing and 1992 Conviction for Trafficking a Controlled Substance.**

8 The officer who investigated the Fell Street, Ellis Street, and Terra Vista crimes wrote a letter in  
9 support of Vanderhorst’s request for parole on February 14, 1990. He said both Allen and Vanderhorst  
10 lost their lives the day of the Fell Street murder. He characterized Vanderhorst as a young, angry,  
11 drug-addicted, 19-year-old, who acted out by engaging in antisocial behavior as the result of the  
12 “flagrant neglect by an insensitive society.” He believed that time had brought about the natural  
13 changes needed for Vanderhorst to be paroled and reiterated Vanderhorst was a young drug addict  
14 living in an area with a “gang atmosphere” and was not armed at the time of the crime.<sup>132</sup>

15 Vanderhorst provided 10 pages from the 58-page transcript of the February 15, 1990,  
16 hearing.<sup>133</sup> Vanderhorst reiterated he only pleaded to the Ellis Street and Terra Vista crimes on the  
17 advice of counsel to avoid the death penalty and because those crimes were committed in the same  
18 manner as the Fell Street crimes.<sup>134</sup> Vanderhorst said he did not consider committing crimes  
19 acceptable after he was released from custody for kidnapping, rape, robbery, and joyriding, but “what  
20 else you gonna do[?]”<sup>135</sup> The transcript then jumps to the panel noting John identified Vanderhorst as  
21 the man who grabbed him by the hair and threatened to kill him, and Warner identified Vanderhorst as  
22 the man who knocked on the door of his Ellis Street home. Vanderhorst replied that he had no reason

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23  
24 <sup>130</sup> App. at pp. 192-193.

25 <sup>131</sup> Hrg. Exh. 3 at p. 4.

26 <sup>132</sup> Hrg. Exh. 4 at pp. 1-2.

27 <sup>133</sup> The transcript included pages 13-15, 17-18, 22, 43, 46-47, and 54.

28 <sup>134</sup> App. at pp. 196, 199-200.

<sup>135</sup> App. at p. 200.

1 to deny those crimes. The panel noted the fact that Vanderhorst was identified by witnesses he  
2 confronted, talked to, and grabbed onto reflected negatively on him.<sup>136</sup>

3 The transcript then jumps again to the Deputy District Attorney saying she had not noticed  
4 much change in Vanderhorst and “found it especially disturbing there were three separate incidents  
5 where Vanderhorst was identified,” which “tied [him] to more than just the killing....”<sup>137</sup> The transcript  
6 then jumps to an unnamed speaker saying Vanderhorst was vulnerable to substance abuse during  
7 times of stress, and there was a likelihood he would resume use if under stress. The speaker believed  
8 Vanderhorst needed to attend Narcotics Anonymous (N.A.) and deal with what he had done. “These  
9 were violent robberies, people were beaten, people were threatened, one person died. Until he  
10 confronts and deals with those facts, he cannot be considered for parole.” The speaker recommended  
11 Vanderhorst be denied parole based on “the facts of the crimes, multiple victims, multiple offenses, his  
12 failure to profit from the previous attempts to help him prior to the life crime,<sup>138</sup> his failure to benefit  
13 from [programs available to him in prison].”<sup>139</sup>

14 The transcript then jumps several pages to an unidentified speaker, who appears to be a panel  
15 member, saying they rely on information compiled for the panel’s benefit by psychologists,  
16 psychiatrists, and their own investigative unit, and, irrespective of Vanderhorst’s statements about the  
17 murder, a lot of what he says is consistently contradicted. The Board then noted Vanderhorst’s drug  
18 use and the clinicians’ observations that Vanderhorst lacked insight, had a propensity to use drugs,  
19 and needed to attend a program regardless of whether the other participants were abusing the  
20 program. It concluded Vanderhorst’s claim that he was not going to have a problem flew in the face of  
21 the evidence.<sup>140</sup> The transcript then cuts off. The transcript of the panel’s reasons for denying parole  
22 was not provided.

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23  
24 <sup>136</sup> App. at pp. 202-203.

25 <sup>137</sup> App. at pp. 203-204.

26 <sup>138</sup> The term “life crime” refers to the crime that yielded a life sentence. In Vanderhorst’s case, the Fell  
27 Street murder is the “life crime.”

27 <sup>139</sup> App. at p. 206.

28 <sup>140</sup> App. at p. 207.

1 On November 19, 1990, Vanderhorst was found guilty of another serious rule violation for  
2 grand theft.<sup>141</sup>

3 **D. The 1992 Parole Hearing and Subsequent Disciplinary Issues and Conviction.**

4 Three pages from the 65-page transcript of the January 29, 1992, parole board hearing were  
5 provided.<sup>142</sup> In the documented exchange, the panel confirms Vanderhorst denies committing the Ellis  
6 Street and Terra Vista crimes.<sup>143</sup> When asked to confirm he participated in the Fell Street murder,  
7 Vanderhorst replied: “I didn’t murder anybody, but I was there when it happened.” The panel then once  
8 again asks Vanderhorst to confirm he is claiming innocence as to the remaining Ellis Street and Terra  
9 Vista convictions. The panelist again asks about the murder: “[I]n your opinion, you’re guilty then of the  
10 first-degree murder. Is that right?” Vanderhorst replies: “Because I was there, yes, I am.”<sup>144</sup> The  
11 transcript then skips from a discussion about Vanderhorst’s participation in institutional programming  
12 and picks back up with questions related to Vanderhorst’s decision to plead to offenses, despite “now  
13 testifying he was innocent of everything but the murder first.” Vanderhorst reiterated he pled on the  
14 advice of counsel and out of fear. He was “just being led along.” The panelist followed up with a  
15 question about Vanderhorst’s involvement in the 1971 kidnapping, robbery, and battery, which the  
16 panelist noted were “heavy duty” charges.<sup>145</sup> The transcript of the panel’s reasons for denying parole  
17 was not provided.

18 On September 13, 1992, Vanderhorst committed institutional misconduct by failing to “sign in  
19 properly on the institution’s visiting room out count.”<sup>146</sup>

20 On December 25, 1992, Vanderhorst was found guilty of another serious rule violation for  
21 trafficking and possessing cocaine. He was later charged, convicted, and, on June 22, 1993,  
22 sentenced to a two-year term of imprisonment for possessing a controlled substance for sale, to run  
23

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24 <sup>141</sup> Hrg. Exh. 3 at p. 4.

25 <sup>142</sup> The transcript included pages 22-23 and 32.

26 <sup>143</sup> App. at pp. 212-213.

27 <sup>144</sup> App. at p. 213.

28 <sup>145</sup> App. at p. 214.

<sup>146</sup> Hrg. Exh. 3 at p. 4.



1 concurrently with his life sentence.<sup>147</sup>

2 **E. The 1995 Parole Hearing and Subsequent Discipline.**

3 Only three pages of the 34-page transcript from the March 28, 1995, parole board hearing were  
4 provided.<sup>148</sup> Vanderhorst said he was “only involved in the murder crime. I wasn’t involved in those  
5 robberies and rape crimes.” The panel confirmed Vanderhorst was, nonetheless, convicted of “the  
6 robberies and rape” and identified as one of the perpetrators in both the Ellis Street and Terra Vista  
7 crimes. Vanderhorst said he was not convicted based on the identification; he was convicted because  
8 he accepted a plea deal.<sup>149</sup> The panelist recited Vanderhorst’s criminal history, noting he first came to  
9 the attention of law enforcement for theft at the age of 11 in 1966, and then again in 1967 and 1969 for  
10 other theft-related offenses, including petty theft, burglary, and purse snatching.<sup>150</sup> The transcript then  
11 skips to what appears to be a statement by Vanderhorst about the murder: “that was a senseless  
12 killing. I didn’t see it. I don’t know what he looked like to this day. But it wasn’t something that – that  
13 night that we was going to do. And as far as the rape and robberies, the only thing I know about them is  
14 just street talk. ... I was never there.”<sup>151</sup> The transcript of the panel’s reasons for denying parole was  
15 not provided.

16 In July of 1995, Vanderhorst committed another serious rule violation, tampering with a  
17 deadlock, but the allegation was ultimately reduced to institutional misconduct, placing an inmate  
18 manufactured wedge into the side of the door jamb to his cell.<sup>152</sup> Vanderhorst was found to have  
19 committed institutional misconduct on three other occasions between July of 1995 and the 2001 parole  
20

21  
22 \_\_\_\_\_  
23 <sup>147</sup> Vanderhorst did not originally disclose his 1992 conviction. Instead, the CalVCB saw a reference to  
24 an intervening conviction during a subsequent parole hearing in one of the partial transcripts provided  
25 and requested additional documentation. Hrg. Exh. 3 at p. 4; Clmt. Supp. at pp. 17-18; Health & Saf.  
26 Code § 11351.

27 <sup>148</sup> The transcript included pages 7-8 and 29.

28 <sup>149</sup> App. at pp. 218-219.

<sup>150</sup> App. at p. 219.

<sup>151</sup> App. at p. 220.

<sup>152</sup> Hrg. Exh. 3 at p. 4.

1 hearing.<sup>153</sup>

2 **IV. Evidence Related to and the Transcript from the May 7, 2001, Parole Hearing.**

3 **A. Evidence Prepared for the 1998 and 2000 Parole Hearings.**

4 The January 23, 1998, psychological evaluation, which was performed for Vanderhorst's 15th  
5 parole hearing, said Vanderhorst expressed regret for the Fell Street murder but claimed he was only  
6 there to provide a car. Vanderhorst had a problem with drugs before his incarceration, including  
7 cocaine, heroin, and marijuana, but he was not participating in N.A. His diagnoses included:  
8 "polysubstance abuse, in institutional remission," and "antisocial personality disorder, improved."<sup>154</sup> The  
9 evaluator concluded Vanderhorst's drug use and lifestyle contributed to his crimes but did not directly  
10 determine his actions. Vanderhorst did not have a condition that would benefit from mental health  
11 treatment following release, but he was "showing improvement in his behavior." The evaluator expected  
12 that, if released, Vanderhorst would be able to maintain the gains he made, provided he did not use  
13 drugs. The evaluator recommended Vanderhorst attend N.A. and assessed his level of dangerousness  
14 as likely less than the average inmate.<sup>155</sup>

15 In a letter dated February 22, 1999, the investigating officer indicated he was "not opposed" to  
16 Vanderhorst being released and "believed" Vanderhorst would be "amenable to parole supervision"  
17 based on the evidence indicating Vanderhorst was not armed during the Fell Street murder.<sup>156</sup>

18 The January 11, 2000, psychological evaluation said Vanderhorst "demonstrated significant  
19 insight into his commitment offense." According to the evaluator, Vanderhorst "acknowledged  
20 participating in several robberies but denied that he participated at all in the shooting death of the  
21 victim. ... [D]uring his more than 25 years in prison, [Vanderhorst] ha[d] become more responsible. He  
22 care[d] more about other people[.]" Vanderhorst said that, since his son's birth (25 years earlier), he  
23 better understood the harm he inflicted on others. Another experience that changed him was hearing  
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25 <sup>153</sup> Hrg. Exh. 7 at p. 21.

26 <sup>154</sup> Hrg. Exh. 1 at p. 1.

27 <sup>155</sup> Hrg. Exh. 1 at p. 2.

28 <sup>156</sup> Hrg. Exh. 5 at p. 1.

1 his mother describe the fear she felt as the victim of a home invasion robbery in 1994.<sup>157</sup> The  
2 evaluation noted Vanderhorst had been accused of at least one sex crime.<sup>158</sup>

3 Vanderhorst admitted to a history of drug use, specifically, heroin, but he was attending N.A.  
4 and found it to be a positive experience.<sup>159</sup> His diagnoses remained: “polysubstance abuse, in  
5 institutional remission” and “antisocial personality disorder, improved.” Noting Vanderhorst’s “relative  
6 lack of [serious rule] violations,” extensive criminal history, and greater maturity, the evaluator  
7 concluded his violence potential “within a controlled setting [wa]s considered to be below average,  
8 relative to this level two inmate population.” His violence potential if released was estimated to be “only  
9 slightly above the average citizen in the community.” The evaluator did “not expect [Vanderhorst] to be  
10 involved in criminal activity following parole.”<sup>160</sup> The “most significant risk factor ... would be continued  
11 abuse of illegal drugs, in particular heroin. Should he once again abuse those substances his violence  
12 potential would be much greater.”<sup>161</sup>

13 The December 11, 2000, post-conviction progress report indicated Vanderhorst’s custody status  
14 was “Medium AR”, and his classification score was 0; however, Vanderhorst’s custody status had been  
15 “Medium AR” with a classification score of 0 since January of 1995, shortly before his most recent rule  
16 violation, with no change or improvement.<sup>162</sup> Vanderhorst received a laudatory report for “exceptional  
17 efforts in his culinary assignment during an institutional lockdown” and participation in a walk-a-thon.<sup>163</sup>  
18 He was also attending N.A.<sup>164</sup> The report concluded Vanderhorst would “pose a moderate degree of  
19 risk to the public” if paroled and recommended he maintain a discipline free record, continue  
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22 <sup>157</sup> Hrg. Exh. 2 at p. 3.

23 <sup>158</sup> Hrg. Exh. 2 at p. 1.

24 <sup>159</sup> Hrg. Exh. 2 at p. 2.

25 <sup>160</sup> Hrg. Exh. 2 at p. 3.

26 <sup>161</sup> Hrg. Exh. 2 at p. 4.

27 <sup>162</sup> Hrg. Exh. 3 at pp. 7-11.

28 <sup>163</sup> Hrg. Exh. 3 at p. 1.

<sup>164</sup> Hrg. Exh. 3 at p. 3.

1 participating in self-help programs, and develop more marketable skills.<sup>165</sup>

2 **B. The May 7, 2001, Parole Hearing.**<sup>166</sup>

3 Vanderhorst confirmed he was present for the murder but denied committing, or being present  
4 for, the Ellis Street or Terra Vista crimes.<sup>167</sup> Vanderhorst again said he pled guilty on the advice of  
5 counsel, but he now believed he received the most serious sentence possible and should have gone to  
6 trial.<sup>168</sup>

7 Vanderhorst said he told police what he had heard about the Ellis Street and Terra Vista crimes,  
8 noting those were “vicious” crimes, and he did not “think [he’d] ever done anything like that ....”<sup>169</sup>  
9 Vanderhorst told the panel he felt “really bad” about the murder. Allen’s murder was “a shock,” and  
10 Vanderhorst did not understand why Carter shot Allen.<sup>170</sup> Vanderhorst said he could not visualize the  
11 agony or pain of the people he robbed until his mother was robbed during a home invasion, in 1994.<sup>171</sup>  
12 The feelings Vanderhorst experienced when listening to his mother talk about the fear she felt, helped  
13 him to understand what he was doing to other people and how they felt as a result of his actions.<sup>172</sup>

14 When asked about the murder, Vanderhorst said Carter asked Vanderhorst to drop him off at  
15 Fell Street because Vanderhorst had a car. Vanderhorst agreed to drive Carter to Fell Street because  
16 he did not have much to do. When they entered the flat, Carter took off after John. Vanderhorst began  
17 to follow him, but Carter told Vanderhorst he would handle it. Vanderhorst said he was not thinking of  
18 hurting anyone. He was just thinking of the money because he knew Carter was getting “a lot of jewelry  
19 and stuff” during the robberies he was committing.<sup>173</sup>

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21 <sup>165</sup> Hrg. Exh. 3 at p. 5.

22 <sup>166</sup> Vanderhorst initially provided 5 pages from the 49-page transcript of the May 7, 2001, hearing;  
however, he submitted the complete transcript as an exhibit at the hearing on this claim.

23 <sup>167</sup> Hrg. Exh. 7 at pp. 9-10.

24 <sup>168</sup> Hrg. Exh. 7 at p. 10.

25 <sup>169</sup> Hrg. Exh. 7 at p.12.

26 <sup>170</sup> Hrg. Exh. 7 at pp. 12-13.

27 <sup>171</sup> Hrg. Exh. 7 at p. 39.

27 <sup>172</sup> Hrg. Exh. 7 at pp. 39-40.

28 <sup>173</sup> Hrg. Exh. 7 at p. 16.

1 The panel shifted its focus to Vanderhorst's criminal history. Vanderhorst said he was "running  
2 with the wrong crowd." When asked about the rape, robbery, kidnapping, and joyriding case,  
3 Vanderhorst said the boys he was with were snatching purses and then "drove along some woman and  
4 once they snatched her purse, they're snatched in the car at the same time. And drove about three  
5 blocks away and started to rape the girl." Vanderhorst said he got out and stood by the car while the girl  
6 was being raped. Before long, the police arrived. The panel commented that the girl was lucky the  
7 police arrived.<sup>174</sup> Vanderhorst replied: "Yeah. Two of us went to the boys' ranch, and the other guys  
8 went to the youth authority."<sup>175</sup>

9 The panel then noted Vanderhorst's other criminal behavior, including the two batteries he  
10 committed, as well as prior criminal interventions and the fact that this crime occurred while he was on  
11 probation. Vanderhorst replied: "Yes."<sup>176</sup> Vanderhorst confirmed in 1992 he was sentenced to two years  
12 for being "part of running some cocaine in."<sup>177</sup> The panel noted Vanderhorst's history of infractions and  
13 that Vanderhorst had not participated in academics or vocational training since 1981.<sup>178</sup> A board report  
14 from 1995 identified Vanderhorst as posing "a high degree of risk to the public," and another report in  
15 2000 that classified him as a "moderate risk."

16 Vanderhorst then provided details about his plans for release, including letters of support from  
17 his sister, wife, and a potential employer.<sup>179</sup> Vanderhorst said he was participating in N.A. but had not  
18 done the steps.<sup>180</sup> Vanderhorst said he would need to associate with people who do things other than  
19 drugs, which he believed he could do. He was also willing to continue attending N.A. and get a sponsor  
20 following his release.<sup>181</sup> Vanderhorst was then asked about his wife, who was accused of helping

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22 <sup>174</sup> Hrg. Exh. 7 at pp.17-18.

23 <sup>175</sup> Hrg. Exh. 7 at p. 18.

24 <sup>176</sup> Hrg. Exh. 7 at p. 22.

25 <sup>177</sup> Hrg. Exh. 7 at p. 26.

26 <sup>178</sup> Hrg. Exh. 7 at p. 25.

27 <sup>179</sup> Hrg. Exh. 7 at pp. 26-27, 32-33.

28 <sup>180</sup> Hrg. Exh. 7 at p. 35.

<sup>181</sup> Hrg. Exh. 7 at p. 38.

1 Vanderhorst traffic drugs in prison. Vanderhorst said that allegation was not true but offered no  
2 additional details.<sup>182</sup>

3 The panel found Vanderhorst unsuitable for parole. It found the Fell Street murder was carried  
4 out in an especially cruel manner, which demonstrated a callous disregard for human suffering.<sup>183</sup> The  
5 panel noted Vanderhorst was also convicted of two other robberies, including one that involved a rape,  
6 and that he denied those crimes despite having pleaded guilty to them. The panel then cited  
7 Vanderhorst's criminal history, history of rule violations, and 1992 conviction for possessing cocaine for  
8 sale while incarcerated, which indicated an escalating pattern of criminal conduct, failure to profit from  
9 prior legal interventions, and failure to sufficiently participate in beneficial self-help and therapy  
10 programming, including N.A.<sup>184</sup>

11 The panel noted Vanderhorst's continued drug use despite his incarceration and psychological  
12 evaluations indicating a return to drug use amplified his potential for violence. Both of the most recent  
13 psychological reports indicated a need for observation, evaluation, and treatment, specifically noting  
14 that Vanderhorst had not fully participated in N.A. The panel told Vanderhorst he would need to get a  
15 better handle on the twelve steps and be able to articulate how he was going to be able to stay clean  
16 and sober. Lastly, the panel noted it had been twenty years since Vanderhorst completed his watch  
17 repair vocational training, and it was time for him to get into another vocation.<sup>185</sup>

18 Although the evaluations evidenced a pattern of improvement over time, particularly in relation  
19 to Vanderhorst's Antisocial Personality Disorder, they were not totally supportive of his release.<sup>186</sup> In  
20 particular, the evaluations concluded Vanderhorst still posed "a moderate degree of threat if released  
21 from custody." The panel believed Vanderhorst needed "therapy in order to face, discuss, and  
22 understand the causative factors that led to his life crime, and to explore his culpability in that life  
23 crime." Until progress was made, Vanderhorst continued to be unpredictable and a threat to others.

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25 <sup>182</sup> Hrg. Exh. 7 at pp. 38-39.

26 <sup>183</sup> Hrg. Exh. 7 at pp. 45-46.

27 <sup>184</sup> Hrg. Exh. 7 at pp. 46-47.

28 <sup>185</sup> Hrg. Exh. 7 at pp. 50-51.

<sup>186</sup> Hrg. Exh. 7 at p. 47.

1 Although there were positives, the positives did not outweigh the factors of unsuitability.<sup>187</sup>

2 **V. The 2009, 2012, 2015, and 2018 Parole Hearings.**

3 **A. The June 10, 2009, Parole Hearing.**

4 Vanderhorst provided seven pages (pages 52-53, 97-100, and 106) from the transcript of the  
5 June 10, 2009, hearing. In the passages provided, Vanderhorst recognized Allen, Allen's family, Allen's  
6 friends, and anyone else that knew or cared about Allen, were all hurt by Allen's death, as was  
7 Vanderhorst's own family, his children, and his grandchildren. He went on to say the murder "was not  
8 planned or ... supposed to happen and I've forgiven and I'm so sorry to all that was involved ... it's  
9 something that I can't change, but I am truly sorry for."<sup>188</sup>

10 Vanderhorst told the panel remorse is "a deep pain ... that's an inside pain that does not go  
11 away. It stays with you. You think about it during times when you're not thinking about it, or you dream  
12 about it when you at your best and you're resting, you dream about it or you have thoughts about it  
13 when you're not. ... It's an ongoing sorrow ... it doesn't go away[.]"<sup>189</sup> The panel asked if Vanderhorst  
14 felt remorseful for this crime. He replied: "Yes, I didn't ... dream about it. I didn't ask questions about  
15 why did it happen or why did he do what he did or why was I even there ... I was there, and that what it,  
16 you know, and even I asked my codefendant like why, and that's my big question to him is like why,  
17 why did you do it there, why? And he, you know, he can't even answer ...."<sup>190</sup>

18 The panel then cites the psychological assessment, which says Vanderhorst "showed no  
19 empathy and a lack of remorse toward the victims, of any victims." Vanderhorst attributed that to his  
20 denial of the Ellis Street and Terra Vista crimes. He explained: "It's not that ... I'm saying that I'm not  
21 responsible for it. I'm not taking, you know, remorse for it. ... [W]hen I explained I can't, you know,  
22 admit to being – I just can't cop to something I didn't do." Vanderhorst again reiterated he pleaded to  
23 the Ellis Street and Terra Vista crimes on the advice of counsel because they were part of the plea  
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25 <sup>187</sup> Hrg. Exh. 7 at p. 48.

26 <sup>188</sup> App. at p. 232.

27 <sup>189</sup> App. at p. 232.

28 <sup>190</sup> App. at p. 233.

offer.<sup>191</sup> Vanderhorst's attorney asked Vanderhorst whether he accepted responsibility "for the crimes he discussed with the panel,<sup>192</sup> other than the Ellis Street rape," and Vanderhorst replied, "Yes."

The Deputy District Attorney recited part of the evaluation, which said Vanderhorst "continue[d] to offer excuses and rationalizations, has impulsivity disorders, and that his Antisocial Personality [Disorder] is not in remission." He had not learned another vocation. He did not describe what skills or insights he had learned that would reduce his risk to the community.<sup>193</sup> Vanderhorst was categorized as a moderate risk when compared to the male inmate population, which means "average, and the average inmate is not ready for society ... that's why they remain incarcerated."<sup>194</sup>

The panel found Vanderhorst unsuitable for parole.<sup>195</sup> Before making its findings, the panel said: "I want to ... put on the record. We understand that you have consistently denied your involvement in [the Ellis Street crimes], however, you pleaded guilty and were subsequently convicted of th[at] crime, as well as the [Terra Vista crimes]. ... we have to take the findings of the court to be what they are."<sup>196</sup> The transcript then cuts off before the panel explains the reasons it found Vanderhorst unsuitable for parole.<sup>197</sup>

#### **B. The May 22, 2012, Parole Hearing.**

Vanderhorst provided two pages of the 92-page transcript from the May 22, 2012, hearing.<sup>198</sup> The transcript begins with an unnamed speaker, who appears to be Vanderhorst, saying he "spoke the truth." He says "It's not going to impress you either way, whether I tell you I pulled the trigger, if I didn't pull the trigger, the time is going to be the same. I have no reason to lie to you." "I accept responsibility for all the things that have happened. In 38 years, I've accepted it, I'm still accepting it, and I have

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<sup>191</sup> App. at p. 234.

<sup>192</sup> Since only a partial transcript was provided, it is unclear which crimes he is referencing.

<sup>193</sup> App. at p. 236.

<sup>194</sup> App. at p. 237.

<sup>195</sup> App. at p. 238.

<sup>196</sup> App. at p. 238.

<sup>197</sup> App. at pp. 238-239.

<sup>198</sup> The transcript included only pages 80 and 90.



1 accepted it. And ... I'm sorry for [Allen]'s death. And I'm honestly, truthfully, I wasn't involved in the  
2 other crimes. But I'm just as responsible because I'm convicted for it. ... I didn't do it. ... and I hope,  
3 maybe this time, you'll give me a date.”<sup>199</sup>

4 The transcript then jumps to the last page of the panel's 10-page decision. It states: “the  
5 commitment offense ... it was horrible. It was a heinous crime. You've heard that many times before. It  
6 took the life of Allen ... and that's unfortunate. And you continued with your criminality, you picked up  
7 another one while in prison and, as I said, those are in the past, but when we talk about the connection  
8 with the present, it's still there. ... [B]ased on these findings, we do conclude that you do pose an  
9 unreasonable risk of danger and a threat to public safety if you were released from prison.” The panel  
10 went on to note Vanderhorst showed remorse and “became emotional during the hearing,” noting it was  
11 “important that [he] understand all the victims that [he] hurt ... throughout [his] life ... in all the crimes  
12 that [he] committed.”<sup>200</sup>

13 **C. The January 27, 2015, Parole Hearing.**

14 Vanderhorst provided 12 pages of the 99-page transcript from the January 27, 2015, hearing.<sup>201</sup>  
15 The panel noted that, during his psychological evaluation, Vanderhorst said he shot Allen and raped  
16 Gail but, when he later met with a doctor, he recanted.<sup>202</sup> When asked about this, Vanderhorst said he  
17 was “making a point,” not admitting to the crime, and denied saying he shot Allen or raped Gail.<sup>203</sup>  
18 Vanderhorst again denied knowing Carter would kill someone when they entered the Fell Street flat and  
19 said he was only present when the homicide occurred. The panel then confirmed the homicide and  
20 rape were different incidents.<sup>204</sup>

21 The transcript jumps 20 pages to Vanderhorst saying he hurt Allen, Allen's family, anybody that  
22 came into contact with Allen's family, as well as his own family. The panel then confirmed that, among

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23  
24 <sup>199</sup> App. at p. 242.

25 <sup>200</sup> App at p. 243.

26 <sup>201</sup> The transcript included pages 23-24, 27, 47-49, 76-77, 88-90, and 94.

27 <sup>202</sup> App. at p. 247.

28 <sup>203</sup> App. at pp. 247-248.

<sup>204</sup> App. at p. 249.

1 his direct victims, Vanderhorst included only Allen.<sup>205</sup> The panel then asked again whether he had other  
2 victims. Vanderhorst responded: “I even put John, Warner, Gail, and Rona because I didn’t commit  
3 those crimes but knew what happened to them ... everybody knew about those crimes in their  
4 neighborhood.”<sup>206</sup>

5 The transcript then skips to an unnamed speaker noting Vanderhorst still failed to acknowledge  
6 that he supplied the gun and bullet that Carter used to kill Allen<sup>207</sup> but maintained he was only guilty of  
7 the murder because he was there. Vanderhorst supplied a dangerous weapon to someone with a bad  
8 reputation before committing a robbery that went bad. Vanderhorst also continued to deny the other  
9 crimes, despite having been identified by witnesses and held to answer by a grand jury for those  
10 crimes. “[T]he fact that he still can’t admit them, that he showed very ... little remorse or empathy for  
11 the victims ... that he has no insight ... as to why he committed the crimes” does not support a  
12 suitability finding.<sup>208</sup>

13 The speaker, who is likely the District Attorney, goes on to acknowledge Vanderhorst had been  
14 consistently attending Narcotics Anonymous since 2009, and completed “Alternatives to Violence,  
15 Victims Awareness, and Partnership for Reentry,” yet he was not able to articulate how these programs  
16 changed his life. Instead, he focused on things outside of himself, such as moving to the sensitive  
17 needs yard, to take away temptation. However, “in the real world, temptation is not going to be taken  
18 away. He says he can rely on – his relatives that provided statements of support, however, none of  
19 those relatives had visited since 2009, and Vanderhorst did not have a sponsor in the community.”<sup>209</sup>

20 The transcript then jumps to Vanderhorst expressing his “heartfelt remorse, guilt, and shame.”  
21 He could not articulate how “heavy” his heart was for the pain and heartache he inflicted on Allen’s  
22 family, John and his family, Warner and his family, Gail and her family, Rona and her family, and  
23 Robert and his family, as well as his own family and anyone else who was directly or indirectly

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24  
25 <sup>205</sup> App. at p. 250.

26 <sup>206</sup> App. at pp. 250-252.

27 <sup>207</sup> This fact was otherwise omitted from the record.

28 <sup>208</sup> App. at p. 253.

<sup>209</sup> App. at p. 254.

1 victimized by his reckless actions. He recognized that he caused irreparable damage to many innocent  
2 lives and felt deep remorse for being the cause of their suffering.<sup>210</sup> He offered his most sincere  
3 apology to all of the people who suffered as a result of the Fell Street, Ellis Street, and Terra Vista  
4 crimes. The remorse he felt had served as motivation to mature and gain insight. He upgraded  
5 educationally and participated in self-help programs. He made amends to others in his past  
6 relationships. He arranged for residential and transitional housing programs and developed parole and  
7 relapse prevention plans. He had done everything he could to correct his flaws and believed he was a  
8 person of changed character although he would always live with the guilt of Allen's death and the pain  
9 of what happened to John, Warner, Gail, Robert, and Rona.<sup>211</sup> The transcript then jumps again.

10 Vanderhorst provided one page from the panel's nine-page explanation of why he remained  
11 unsuitable for parole. The panel found Vanderhorst "still lack[ed] adequate insight into his own  
12 criminality[.]" When "discussing factors that led to his past substance abuse and his past criminality, he  
13 focuses almost exclusively on ... external factors rather than internal factors." Although recognizing  
14 external triggers is important, "being able to focus as well on internal factors and internal triggers is  
15 essential."<sup>212</sup> "The fact that Mr. Vanderhorst has not yet done so to a sufficient degree is perhaps best  
16 illustrated during our exchange regarding the decision-making process that resulted in him deciding to  
17 seek [Sensitive Needs Yard] status,"<sup>213</sup> which was probably a "good move," but Vanderhorst "focused  
18 entirely on external issues."<sup>214</sup>

19 **D. The January 10, 2018, Parole Hearing.**

20 Vanderhorst provided 10 pages of the 144-page transcript from the January 10, 2018,  
21 hearing.<sup>215</sup> The Deputy District Attorney appeared and opposed Vanderhorst being released on parole,

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22  
23 <sup>210</sup> App. at p. 255.

24 <sup>211</sup> App. at p. 256.

25 <sup>212</sup> App. at p. 258.

26 <sup>213</sup> The partial transcript provided did not include the referenced exchange and, therefore, does not  
27 include an explanation of the decision-making process that resulted in Vanderhorst's move to the  
28 Sensitive Needs Yard.

<sup>214</sup> App. at p. 258.

<sup>215</sup> The transcript included pages 5, 115, 125-131, and 139.

1 based on arguments that Vanderhorst still lacked insight into his crimes and his involvement in the  
2 crimes. Specifically, they noted Vanderhorst said Carter set up the Fell Street crimes and seemed to  
3 have a hook-up but then said the robberies were all random. The next sentence begins, “Those are  
4 completely ...” but the transcript then jumps 10 pages and picks up with Vanderhorst’s statement to the  
5 panel.<sup>216</sup>

6 Vanderhorst read a statement he prepared with his inmate sponsor. Vanderhorst expressed his  
7 remorse for the murder of Allen, stating it was a selfish act, apologizing for the pain and suffering he  
8 caused their family, and acknowledging they were likely angry with him. Vanderhorst took “full  
9 responsibly,” noting he was “19 years old, and [allowed his] emotions, depressions, and ... low self-  
10 esteem to cloud [his] decision making.”<sup>217</sup> He had taken advantage of self-help programs, like N.A., and  
11 surrounded himself with people who shared his desire to better themselves. At the age of 62, after 42  
12 years in prison, he understood the negative effects his choices had on those around him and felt like  
13 God had given him a second chance.<sup>218</sup>

14 The Deputy District Attorney then read a victim impact statement, prepared by Gail.<sup>219</sup> Gail’s  
15 statement described the rape and robbery.<sup>220</sup> She described how the rape impacted her and inspired  
16 several choices she now regretted and her continued loneliness.<sup>221</sup> She continued to suffer an  
17 emotional toll as the result of the rape, which also impacted her children and her ability to build and  
18 maintain relationships.<sup>222</sup>

19 The last page provided is one page from the panel’s 13-page explanation of why Vanderhorst  
20 remained unsuitable for parole. The panel found that Vanderhorst engaged in a significant amount of  
21 drug use both before and during prison, which continued through 2009 and was found to be trafficking

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22 <sup>216</sup> App. at p. 263.

23 <sup>217</sup> App. at p. 265.

24 <sup>218</sup> App. at p. 266.

25 <sup>219</sup> App. at p. 267.

26 <sup>220</sup> Although Gail’s statement includes additional details about her experience during and after the rape,  
27 those details are not included here as they are not necessary for disposition of the issues in this claim.

27 <sup>221</sup> App. at pp. 268-269.

28 <sup>222</sup> App. at pp. 269-270.

1 cocaine while in prison. His criminal thinking, unstable history, and misconduct continued well into his  
2 incarceration. As a result, the panel found Vanderhorst did not have a “long period of positive  
3 rehabilitation.”<sup>223</sup> The panel also indicated credibility was an issue for Vanderhorst, noting the panel  
4 was “again ... faced with a number of inconsistencies.” Notably, Vanderhorst denied the rape that he  
5 admitted to during a conversation with a doctor in 2017. In addition, he had a history of changing his  
6 explanation of the crimes. Although the crimes themselves carried less weight as time passed,  
7 Vanderhorst’s lack of credibility continued to concern the panel.<sup>224</sup> The transcript then cuts off.

8 According to the declaration that Vanderhorst prepared in support of his Erroneously Convicted  
9 Person claim,<sup>225</sup> Vanderhorst lied to the panel during the 2018 hearing. He told the panel he was the  
10 one that shot Allen, and that he was involved in both the Ellis Street and Terra Vista crimes, but he then  
11 struggled to answer questions about the Ellis Street crimes when they were asked because he did not  
12 actually have any personal knowledge of what occurred there.<sup>226</sup> In his declaration, Vanderhorst  
13 continued to deny his involvement in the Ellis Street crimes.

#### 14 **VI. The Declaration and Testimony of Charles Carbone, a Parole Law Expert.**

15 Since 2001, Charles Carbone (Carbone) has exclusively worked as counsel in prisoner’s rights  
16 litigation, advocating on behalf of clients who are seeking release at parole hearings. Carbone  
17 estimated he has personally appeared before the Parole Board in more than 1,000 hearings.<sup>227</sup> He has  
18 been recognized as an expert on parole law “by several courts” and retained as an expert by criminal  
19 defense lawyers “numerous times.”<sup>228</sup>

20 ///

21 ///

22 \_\_\_\_\_

23 <sup>223</sup> App. at p. 271.

24 <sup>224</sup> App. at p. 271.

25 <sup>225</sup> Vanderhorst’s declaration also included details about the emotional and physical toll of being  
26 labelled a rapist and sex offender both before and after his release from custody. However, those  
27 details are omitted as they are not necessary for the CalVCB’s resolution of the issue in this claim.

28 <sup>226</sup> App at p. 52.

<sup>227</sup> App. at p. 102.

<sup>228</sup> App. at p. 103.

1           **A. Evaluations, Classification Scores, and Disciplinary Issues.**

2           According to Carbone, psychological evaluations<sup>229</sup> play a “huge role” in the panel’s suitability  
3 assessment. He explained the most important documents at each parole hearing include: the  
4 psychological evaluation and the transcript from the last parole hearing, including the advice or  
5 guidance the panel provided to the inmate. Institutional reports, which include assessments of the  
6 inmate’s risk, likelihood of recidivism, and progress the inmate has made, are also weighed heavily.  
7 Inmates are also assigned various scores, based on their criminal history and the sentence imposed.  
8 The panel also considers an inmate’s disciplinary history, including the types of offenses and length of  
9 time since their last serious rules or institutional infraction. Inmates generally will not be considered for  
10 parole until they have been discipline-free for five or more years.

11           **B. The Role of Insight into the Life Crime and other Past Crimes.**

12           The panel affords great weight to an inmate’s answers on questions related to whether they  
13 have insight. According to Carbone, questions directed at determining whether the inmate has gained  
14 insight into their behavior is considered “highly probative” because the inmate’s answers are “so  
15 probative of current dangerousness.” These questions focus on four areas, which Carbone repeatedly  
16 indicated are used to assess the inmate’s present perception of the crime that resulted in a life  
17 sentence (the life crime). Carbone said the panel utilizes a four-part rubric for assessing an inmate’s  
18 insight into their crimes: whether the inmate (1) takes responsibility for their crimes, (2) exhibits  
19 remorse, (3) understands the crime’s impact, and (4) exhibits an understanding of the crime’s  
20 causative factors.

21           According to Carbone, when the panel asks whether an inmate (1) accepts responsibility for  
22 the life crime, generalized statements are viewed as disingenuous. The panel wants to hear an  
23 inventory of the actions and inactions that led to the life crime in a manner that maximizes the inmate’s  
24 responsibility for the crime. The panel also wants the inmate to (2) demonstrate remorse, by exhibiting  
25 empathy, making amends to those harmed, and expressing shame, regret, or guilt. The panel wants  
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27 <sup>229</sup> Carbone noted that psychological evaluations are also referred to as “Comprehensive Risk  
28 Assessments.”

1 the inmate to exhibit an (3) understanding of the impact their crime had on the victim, the victim's  
2 family, and the community in a broader sense. Questions directed at the crime's (4) causative factors  
3 focus on whether the inmate has an understanding of why they committed the crime. The panel wants  
4 inmates to express an understanding of cause and effect because if the inmate doesn't understand the  
5 cause, they are more likely to repeat it.

6 **C. Accepting Responsibility and Denial of Crimes.**

7 In Carbone's experience, panel members "frown upon," and are more likely to deny parole for,  
8 "inmates who refuse to discuss the facts of their crimes and their insight into those facts." Carbone  
9 attributes this to the panel's "mistake[n]" perception that an inmate's "silence about ...or refusal to  
10 admit a crime" indicates the inmate has "something to hide," is "guarded," or is "minimizing" their role in  
11 or responsibility for their crime. As a result, lifers often feel compelled to discuss their life offense and  
12 "generally do so in a manner which attempts to maximize their responsibility because the known  
13 consensus in the lifer population is that the" panel is more likely to "grant parole to inmates who  
14 demonstrate a high degree of acceptance of responsibility."<sup>230</sup>

15 "Silence, refusals to discuss, or denials of guilt are not the norm, [ ] invariably lead [the panel]  
16 to question the credibility and sincerity of those seeking parole," and can be interpreted as a lack of  
17 maturity, remorse, or a failure to accept responsibility.<sup>231</sup> Panels want to hear lifers "take ownership of  
18 their crimes and act as credible historians of their criminal history—taking inventory of the[ ] specific  
19 actions and inactions which contributed [to]/caused their criminal convictions. Blanket statements, such  
20 as 'I take full responsibility,' are generally disregarded," while detailed inventories of specific acts are  
21 "favored" and "rewarded." Some of Carbone's clients "have repeatedly and expressly been denied  
22 parole for failing to admit to or accept responsibility for their crimes of conviction."<sup>232</sup>

23 **D. Concerns Unique to Inmates Convicted of Sex Offenses.**

24 Panels have heightened concerns when faced with an inmate convicted of a sex offense. Sex  
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26 <sup>230</sup> App. at p. 104.

27 <sup>231</sup> App. at p. 104.

28 <sup>232</sup> App. at p. 105.

1 offenders require more time and therapy to prevent recidivism, are less likely to discuss these crimes  
2 due to the risks posed by other inmates, and therefore, are less likely to openly discuss their crimes in,  
3 and therefore benefit from, the limited therapeutic programs available to them in prison. Sex offenders  
4 are also considered “untested” because they have no access to victims while incarcerated. Sex  
5 offenders are also asked more questions about causation and expected to have more concrete post-  
6 release plans. According to Carbone, the panel is also impacted by the “stigma” associated with sex  
7 offenders and more “trepidatious about releasing them.” The rape of a “stranger,” as occurred during  
8 the Ellis Street crimes, presents particular concerns because, according to Carbone, this type of rape  
9 indicates the inmate’s conduct was “motivated strictly by violence, power and control,” and the denial  
10 of stranger rape therefore presents “substantial concerns ... because of the criminogenic traits of a  
11 rapist generally, in the insidious dimensions of rape of a stranger, and the deep denial and paralyzing  
12 shame inferred when such a crime is committed.” According to Carbone, the “denial of such a crime is  
13 viewed as showing an on-going criminal mindset” and suggests the inmate has not received  
14 treatment.<sup>233</sup>

15 **E. Carbone’s Assessment of Vanderhorst’s Case.**

16 Carbone offered general opinions based on his review of transcripts that were not provided, in  
17 whole, as part of this claim.<sup>234</sup> Carbone contended that, due to his denial of the Ellis Street rape,  
18 Vanderhorst was “unquestionably” in a “completely different universe” than other lifers seeking parole.  
19 He characterized Vanderhorst’s denial of the Ellis Street rape as “pulverizing” to Vanderhorst’s  
20 prospects of parole, especially given the nature of the Ellis Street rape and the panel’s comments that  
21 it did not “like what [it was] hearing.”

22 According to Carbone, the panel was incredulous that Vanderhorst would deny committing the  
23 Ellis Street rape after pleading guilty. His denial would have been interpreted as a failure to obtain  
24 insight, demonstrate remorse, or understand the significance of that crime. Vanderhorst’s refusal to  
25 accept responsibility for “the most heinous offense” while also blaming law enforcement, his attorney,  
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27 <sup>233</sup> App. at p. 107.

28 <sup>234</sup> This paragraph summarizes and quotes Carbone’s statements, not the transcripts themselves.



1 and the judicial system would have been seen as a continuation of “longstanding entrenched criminal  
2 values” and evidence of unresolved “psychosexual issues.”<sup>235</sup> The District Attorney’s Office also  
3 faulted Vanderhorst for being unrepentant and failing to accept responsibility for the crimes he was  
4 convicted of. As a result of his claims of innocence, Vanderhorst was in a “completely different  
5 universe” than other lifers being considered for parole. The panel would “presume” Vanderhorst  
6 understood his denial would hurt his chances for parole and view his behavior as “audacious” and a  
7 “reflection of continued antisocial values,” and his denial of a “stranger rape” in particular would have  
8 been “utterly devastating” to his prospects of obtaining parole.

9 In his declaration and testimony, Carbone also provided examples from the transcripts to  
10 support his general assessment. At the 1980 hearing, the panel asked Vanderhorst why he pled to  
11 crimes he did not commit. During the 1981 hearing, the panel quoted the psychological evaluation,  
12 which said Vanderhorst “tended to minimize or deny his offenses,” which Carbone said the panel relied  
13 on to “support a larger negative inference that such denials were part of a long pattern of criminogenic  
14 thinking,” which made Vanderhorst dangerous.<sup>236</sup> According to Carbone, the 1984 panel concluded  
15 Vanderhorst’s “overall value system, as well as his consistent denial and rationalization” suggested  
16 Vanderhorst would “probably be a calculated parole release risk ...” In 1985, the panel again  
17 questioned why Vanderhorst would plead guilty to crimes he did not commit, and, in 1986, the panel  
18 noted his rape conviction could be a barrier to employment.<sup>237</sup>

19 According to Carbone, the panel likely interpreted the 1987 exchange about the accuracy of the  
20 police report to mean Vanderhorst was an “unrepentant rapist who chose to wrongfully blame the  
21 praise-worthy law enforcement officer who the” panel and deputy district attorney knew and trusted.<sup>238</sup>  
22 In 1990, the panel said it was “stuck with the evidence” that named Vanderhorst “in these two other  
23 crimes,” which Carbone opined was in reference to the Ellis Street rape and robbery. At that hearing,  
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25 <sup>235</sup> Although Carbone repeatedly references an exchange regarding the possibility Vanderhorst had  
26 “psychosexual issues,” the term “psychosexual” is not used in any of the transcripts provided.

27 <sup>236</sup> App. at pp. 108-109.

28 <sup>237</sup> App. at p. 110.

<sup>238</sup> App. at p. 110.

1 the panel went on to say Vanderhorst pleaded guilty “to those charges,” which it viewed negatively.  
2 The panel also said it would not allow Vanderhorst to admit to the killing and “ignore the rest ....”  
3 According to Carbone, the panel then denied Vanderhorst parole based “primarily” on Vanderhorst’s  
4 lack of insight.<sup>239</sup>

5 During the 1992 hearing, Vanderhorst denied having a “psychosexual problem,” when asked by  
6 the panel.<sup>240</sup> Carbone asserted “[s]uch denials in light of the [Ellis Street rape] made Vanderhorst  
7 vulnerable to criticism that denial of his criminal proclivities would stunt any rehabilitation....” In 1995,  
8 the Board asked about the “rape and robberies.” In 2001, the panel “commented twice in their decision  
9 that Vanderhorst had been duly convicted of the [Ellis Street rape],” and reiterated “various parts of the  
10 record,” before indicating Vanderhorst needed more self-help programming.<sup>241</sup> Carbone testified the  
11 panel relied on the rape at the 2001 hearing based on the panel’s comments that Vanderhorst made  
12 inconsistent statements, needed to accept responsibility for his crimes, and needed more  
13 programming. When asked for a citation, Carbone quoted a passage he considered an “obvious” and  
14 “good exemplar”: “the prisoner does need therapy in order to face, discuss, understand the cause of  
15 the factors that led to his life crime and to explore his culpability in that life crime.” Carbone concluded  
16 that when the panel said Vanderhorst needed therapy to explore his culpability they were referring to  
17 his need for psychosexual therapy to address his role in the Ellis Street rape.

18 Relying on the Deputy District Attorney’s statement, “you can tell by his tone that he was not  
19 remorseful,” the panel’s recitation of its boilerplate language that it must “take the findings of the court  
20 to be what they are,” and that the “first concern expressed by the panel was Vanderhorst’s denial of  
21 the Ellis Street rape,” Carbone asserted the 2009<sup>242</sup> panel’s denial was based on Vanderhorst’s “lack  
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24 <sup>239</sup> App. at pp. 110-111.

25 <sup>240</sup> Neither the partial transcript from the 1992 parole hearing, nor any of the other transcripts provided,  
26 included a discussion of Vanderhorst having a “psychosexual problem.”

27 <sup>241</sup> App. at p. 111.

28 <sup>242</sup> Carbone did not express any opinions about, nor were any transcripts provided from, the 2005  
parole hearing.

1 of remorse for the rape [and] ... general denial.”<sup>243</sup> Carbone attributed the 2009 unsuitability finding to  
2 the Ellis Street rape because Vanderhorst denied committing the Ellis Street rape but was found to  
3 have shown remorse for the murder conviction. Carbone acknowledged that, in 2012, the panel began  
4 to see “emerging” signs of remorse for Allen’s murder.<sup>244</sup>

5 In 2015, Vanderhorst was denied parole after being asked about the requirement for  
6 registration as a sex offender<sup>245</sup> and hearing closing statements by the deputy district attorney, which  
7 highlighted Vanderhorst “still [could]n’t admit” to the crimes he committed nor provide the panel with  
8 insight into “why he committed the crimes.” Citing the panel’s concerns that Vanderhorst was focused  
9 on the external, not internal, causes of criminality, Carbone contends the panel’s denial was again  
10 based on Vanderhorst’s denial of the Ellis Street crimes.<sup>246</sup>

11 In 2018, the panel again found Vanderhorst lacked credibility and insight after he told the panel  
12 he falsely admitted to committing the Ellis Street and Terra Vista crimes. According to Carbone, a  
13 review of the transcripts reveals a “pattern.” He posited: the panel “deem[ed] Vanderhorst’s claims of  
14 innocence as false, especially when tied to a plea agreement where he had legal counsel,” and  
15 indicated “he possessed a criminal mindset oriented toward blaming others, especially authority  
16 figures.” He claimed: “The mindset of denial, minimization, and blame was the type of victim mentality  
17 possessed by criminals, and[,] without the aid of focused sex offender rehabilitative programming,  
18 Vanderhorst would remain a serious and unreasonable risk to public safety.”<sup>247</sup>

19 At the hearing, Carbone was asked to describe the impact of Vanderhorst’s denial of the Terra  
20 Vista crimes and how we can distinguish between the impact of his denial of the erroneous (Ellis  
21 Street), and his still valid (Terra Vista), convictions. Carbone said we can conclude the panel relied on  
22 his denial of the Ellis Street, not the Terra Vista crimes, based on the types of crimes committed. Terra  
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24 <sup>243</sup> App. at p. 111.

25 <sup>244</sup> App. at p. 112.

26 <sup>245</sup> The partial transcript from the 2015 hearing did not include reference to the requirement for  
27 registration, nor the exchange Carbone is relying on.

27 <sup>246</sup> App. at p. 112.

28 <sup>247</sup> App. at pp. 112-113.

1 Vista did not include a serious stranger rape, and “everything” leads back to the finding that  
2 Vanderhorst refused to take responsibility for the Ellis Street rape. He further testified that the Deputy  
3 District Attorney focused on the Ellis Street crimes as the most probative of current dangerousness.  
4 Lastly, he indicated the panel did not ask Vanderhorst about the Terra Vista crimes and instead  
5 focused on the Ellis Street crimes.

6 **F. Carbone’s Estimate of When Vanderhorst Should Have Been Released.**

7 Carbone acknowledged that parole is rarely granted and admitted the “vast majority” of parole  
8 hearings end in a denial. He estimated that only 14% of parole hearings result in release.<sup>248</sup> Although  
9 the CDCR report Vanderhorst provided indicates the average term served by a lifer is 23 years,<sup>249</sup>  
10 Carbone testified that the average lifer serves “between 15 and 19 years before being found suitable  
11 for parole.” Carbone had “never” seen someone serve 46 years on a life sentence. He then clarified it  
12 was “rare” for someone to serve 46 years, and a term that long would generally be reserved for an  
13 inmate convicted of first-degree murder with a special circumstance<sup>250</sup> or where the victim was a police  
14 or correctional officer.

15 Nonetheless, Carbone opined Vanderhorst “served longer than most prisoners convicted of  
16 related offenses due to his wrongful convictions.” Despite admitting “it is not an exact science,”  
17 Carbone testified there was “no mistaking that Vanderhorst was denied parole for failing to accept  
18 responsibility for th[e Ellis Street rape].”<sup>251</sup> Carbone estimated Vanderhorst served “at least 20 years  
19 more ... than he would have otherwise because of his rape conviction and subsequent denial of the  
20 crime.” In other words, Carbone opined that, but for his erroneous convictions, Vanderhorst would  
21 have been released before or at the 2001 parole hearing, e.g., 19 years earlier.

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23 <sup>248</sup> App. at p. 106.

24 <sup>249</sup> Vanderhorst’s application was accompanied by a 200-page CDCR report (App. at pp. 274-474),  
25 entitled “Offender Data Points for the 24-Month Period Ending in June 2018;” however, the report is  
26 cited only for this fact (App. at p. 345) and, therefore, is not otherwise summarized.

27 <sup>250</sup> The CalVCB notes Vanderhorst was originally charged with first degree murder with a special  
28 circumstance, personally committing an act which caused Allen’s death during the commission of a  
burglary, but the special circumstance allegation was dismissed per the plea agreement. (AGRL at p.  
13; App. at pp. 480, 493.)

<sup>251</sup> App. at p. 108.

1 Carbone testified that 2001 was the first possible time Vanderhorst would have been found  
2 suitable for parole based on various factors, including Carbone's estimation that at that point, after 27  
3 years of imprisonment, anyone convicted of murder would have been found suitable for parole. At that  
4 point, Vanderhorst had favorable scores, and it had been more than five years since his last serious  
5 rule violation. Carbone noted Vanderhorst did not engage in violent behavior while in custody, obtained  
6 his GED in 1976, had a laudable work history, participated in self-help programming, and had a  
7 number of marketable skills, including watch repair and culinary experience. According to Carbone, the  
8 panel's finding of unsuitability at the 2001 hearing was a result of Vanderhorst's claim he was innocent  
9 of the Ellis Street crimes.

10 He also noted Vanderhorst's substance abuse disorder was deemed to be in "institutional  
11 remission," which, according to Carbone, indicates "longstanding" recovery and working a daily  
12 program that could withstand challenges.<sup>252</sup> Vanderhorst had stable relationships with his family and  
13 his wife, who regularly visited him. The Deputy District Attorney was not present, which Carbone  
14 interpreted to mean the District Attorney Office did not oppose Vanderhorst's release. The letter from  
15 the investigating officer acknowledged Vanderhorst did not pull the trigger. Vanderhorst also had  
16 realistic and detailed release plans, including two job offers and multiple housing options. However, the  
17 counselor indicated Vanderhorst posed a "moderate" risk, which Carbone indicated was "sort of middle  
18 tier." He testified that, for someone with Vanderhorst's criminal history and convictions "moderate  
19 would be supportive of release."

20 Carbone also noted that Vanderhorst's Antisocial Personality Disorder, which is a "newer term  
21 for" a psychopath or sociopath, was improving. The 1998 psychological evaluation did not believe  
22 Vanderhorst would benefit from mental health treatment following his release and would likely be able  
23 to maintain the gains he had made provided he did not return to drugs. This evaluation concluded his  
24 level of dangerousness was less than "the average inmate." The psychological evaluation from 2000  
25 indicated Vanderhorst had become "more responsible" and cared more about other people. The  
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27 <sup>252</sup> Contrary to Carbone's claim, the panel at the 2001 hearing expressly noted Vanderhorst was not  
28 "fully participating" in N.A., had not done the steps, and needed to get a better handle on the steps and  
be able to articulate how he was going to stay sober if released.

1 evaluator opined being a father positively impacted Vanderhorst, and Vanderhorst's identification of his  
2 family as a victim of his crime was a positive change. The evaluator believed Vanderhorst had  
3 changed significantly and would not participate in criminal activity if paroled. His violence potential in a  
4 controlled setting was considered below average when compared to other medium security offenders,  
5 and his likelihood of recidivism was "only slightly greater than the average citizen," which Carbone  
6 considered to be a good prognosis.

7 Carbone also testified that, if the panel finds an inmate suitable for parole, they are generally  
8 released about 155 calendar days later.

### 9 **Determination of Issues**

10 Since Vanderhorst's convictions for the Ellis Street rape and robbery were vacated and set  
11 aside pursuant to Penal Code section 1473.7, subdivision (a)(2), and he was subsequently found  
12 innocent of those crimes pursuant to Penal Code sections 851.8 and 851.86, the only issue in this  
13 proceeding is the calculation of injury.<sup>253</sup>

14 Vanderhorst originally requested injury be calculated to include either 24 years of  
15 imprisonment, based on the sentence imposed for his erroneous convictions, or, in the alternative,  
16 nine years of imprisonment, which is the difference between the determinate terms imposed for the  
17 Ellis Street and Terra Vista crimes. However, he also contends he would have been granted parole but  
18 for his denial of the Ellis Street crimes at the 2001 parole hearing, and his injury should therefore be  
19 calculated from a date, approximately 155 days, after that hearing. Finally, the CalVCB notes that  
20 while Vanderhorst's arguments focus on the 2001 parole hearing, he also provided partial transcripts  
21 from subsequent hearings, which suggests he intended to argue, in the alternative, that he would have  
22 been released after the 2009, 2012, 2015, or 2018 hearings but for the Ellis Street convictions.

23 The Attorney General, on the other hand, contends Vanderhorst was not injured by his  
24 erroneous convictions because he was serving a concurrent life sentence for the Fell Street murder,  
25 and Vanderhorst's claim that he would have been paroled but for the Ellis Street convictions is too  
26 speculative to establish he, more likely than not, would have been free from custody but for his  
27 \_\_\_\_\_

28 <sup>253</sup> Pen. Code, §§ 1473.7, subd. (a)(2), 851.865.

erroneous convictions for the Ellis Street crimes.

**I. Vanderhorst Bears the Burden of Proving He Was Injured by His Erroneous Convictions.**

Under Penal Code section 4900, a person who has been erroneously convicted of and imprisoned for a felony offense that they did not commit may submit a claim for compensation to the CalVCB.<sup>254</sup> Generally, claimants bear the burden of proving, by a preponderance of the evidence, that the crime with which they were convicted either did not occur or was not committed by them, and that they suffered an injury as the result of their erroneous conviction.<sup>255</sup> However, where, as here, the claimant has obtained a finding of factual innocence, the only issue the CalVCB must resolve is the extent of the claimant's injury, and, consequently, the amount of compensation the claimant is entitled to as the result of their erroneous conviction.<sup>256</sup>

Penal Code section 4904 specifies that the amount of compensation to be approved for the claimant's injury "shall be a sum equivalent to one hundred forty dollars (\$140) per day of incarceration served, and shall include any time spent in custody, including a county jail, that is considered to be part of the term of incarceration."<sup>257</sup> This compensation is "for the purpose of indemnifying the claimant for the injury" sustained "through their erroneous conviction and imprisonment[.]"<sup>258</sup> As a result, this calculation does not include every day the claimant was incarcerated. To the contrary, the injury sustained only includes the number of days the claimant "spent illegally behind bars, away from

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<sup>254</sup> Pen. Code, § 4900, subd. (a).

<sup>255</sup> Pen. Code, §§ 4900, subd. (a), 4903, subd. (a).

<sup>256</sup> Although he obtained a finding of factual innocence, Vanderhorst submitted this claim under Penal Code section 4900, subdivision (b). Neither party objected, nor requested this claim instead proceed under an alternative provision, at any time during these proceedings, including after correspondence confirming this claim would proceed, in accordance with Vanderhorst's request, under Penal Code section 4900, subdivision (b). See *In re Griffin* (1967) 67 Cal.2d 343, 348-349; accord *In re K.C.* (2013) 220 Cal.App.4th 465, 472 (holding parties who requested or consented to the procedure used may not later complain, especially when they benefitted). Therefore, the CalVCB proceeded in accordance with Penal Code section 4900, subdivision (b), at Vanderhorst's request and with the parties' consent, but, nonetheless, unequivocally accepts Vanderhorst's innocence as to the Ellis Street robbery and rape in accordance with Penal Code section 851.865.

<sup>257</sup> Pen. Code, § 4904.

<sup>258</sup> Pen. Code, §§ 4900, subd. (a) (referring to the "injury sustained by the person through the erroneous conviction and imprisonment or incarceration"), 4904.

1 society,” solely as a result of the erroneous conviction.<sup>259</sup> Consequently, injury is “established by  
2 showing that, but for the erroneous conviction, the claimant would not have been in custody.”<sup>260</sup>  
3 The claimant bears the burden of proving the injury they sustained by a preponderance of the  
4 evidence.<sup>261</sup> Recognizing the CalVCB’s injury determination may be both contested and complex,  
5 section 4904 goes on to provide: “Notwithstanding any other provision in this section,” before  
6 approving payment, the CalVCB “may request from both parties additional documents or arguments as  
7 needed to calculate compensation.” In addition, the CalVCB is authorized to consider any other  
8 information it deems relevant to the issue before it, which, in this claim, includes the evidence and  
9 arguments presented at the hearing on this claim. Where, as here, the claimant requests an  
10 opportunity to present additional evidence and arguments at an evidentiary hearing, and the parties  
11 agree, without objection, to the procedures used, the CalVCB is authorized to consider all of the  
12 evidence presented both before and during the hearing, to ensure the claimant was afforded ample  
13 opportunity to satisfy his burden of establishing he was injured within the meaning of Penal Code  
14 section 4904.<sup>262</sup>

15 Vanderhorst bore the burden of proving he was injured through his erroneous convictions and,  
16 with the consent of the parties, presented additional evidence and arguments in support of his claim at  
17 an evidentiary hearing, which was conducted at his request. The CalVCB is therefore entitled to  
18 consider all of the evidence and arguments he presented to determine whether he satisfied his burden  
19 of proving he would have been free from custody but for his erroneous convictions.<sup>263</sup>

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23 <sup>259</sup> Holmes v. Calif. Victim Comp. & Gov’t Claims Board (2015) 239 Cal.App.4th 1400, 1405.

24 <sup>260</sup> Cal. Code of Regs. tit. 2, §§ 640, subd. (f), 644, subds. (d)-(e).

25 <sup>261</sup> Ibid.

26 <sup>262</sup> See *In re Griffin* (1967) 67 Cal.2d 343, 348-349 (parties may not challenge the use of a procedure  
27 they requested or consented to by acquiescing or failing to object); accord *In re K.C.* (2013) 220  
28 Cal.App.4th 465, 472; Cal. Code of Regs. tit. 2, § 617.2, subd. (a)(6) (duty to conduct a fair and  
impartial hearing).

<sup>263</sup> Ibid.



1 **II. Vanderhorst was Serving a Life Sentence for the Fell Street Murder at All Times During His**  
2 **Imprisonment.**

3 Compensation under Penal Code section 4900 is only available for those days of imprisonment  
4 that are solely attributable to the erroneous conviction. However, the term of imprisonment imposed for  
5 the Ellis Street crimes was served concurrently with the life sentence imposed for the Fell Street  
6 murder. Although Vanderhorst was erroneously convicted of the Ellis Street crimes, he was properly  
7 convicted of, and therefore imprisoned for, the Fell Street murder. As a result, Vanderhorst was  
8 properly imprisoned for the Fell Street murder, and no compensation is available for any term of  
9 imprisonment attributable to that crime.<sup>264</sup>

10 Nonetheless, Vanderhorst argued the CalVCB should disregard the concurrent life sentence  
11 imposed for the Fell Street murder. His argument takes two different tracks. First, Vanderhorst  
12 contends the life sentence imposed for Allen's murder should not be "held against him" because that  
13 conviction was eventually vacated. However, Vanderhorst's conviction was vacated due solely to a  
14 change in the law. In 2019, the Legislature amended the definition of murder to preclude murder  
15 convictions based on the felony murder rule absent circumstances that are not present here and  
16 enacted a statutory provision authorizing courts to vacate a murder conviction if the defendant could  
17 not be convicted of murder as it is now defined, following the 2019 amendment.<sup>265</sup> Vanderhorst was  
18 originally convicted of the Fell Street murder based on the felony murder rule because Allen's death  
19 occurred during the commission of a burglary. As a result, the court vacated Vanderhorst's conviction  
20 for the Fell Street murder because he could not be convicted of that crime according to the definition of  
21 murder *now in effect*.

22 However, an erroneous conviction, for purposes of relief under Penal Code section 4900,  
23 means the claimant did not commit the crime they were convicted of according to the law *in effect at*  
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27 <sup>264</sup> Pen. Code, § 4900, subd. (a); Cal. Code Regs., tit. 2, § 640, subd. (f).

28 <sup>265</sup> Stats. 2018, ch. 1015 (S.B.1437), § 3, eff. Jan. 1, 2019; Pen. Code, § 1172.6, subd. (a).

1 *the time the underlying crime occurred.* <sup>266</sup>Here, it is undisputed that Vanderhorst was properly  
2 convicted of murder according to the law in effect at the time of Allen’s death. In fact, Vanderhorst  
3 repeatedly admitted he was committing a burglary at the time of Allen’s murder and that he was guilty  
4 of the Fell Street murder under the law in effect at that time. He also did not allege he was erroneously  
5 convicted of the Fell Street murder in this claim. Consequently, Vanderhorst was properly convicted of,  
6 and imprisoned for, the Fell Street murder according to the law in effect at the time of Allen’s death,  
7 and, pursuant to Penal Code sections 4900 and 4904, no compensation is available for the term of  
8 imprisonment attributable to that crime, despite the subsequent order vacating his conviction based on  
9 a change in the law.<sup>267</sup>

10 In the alternative, Vanderhorst contends he would have been released either 24 years or 9  
11 years earlier based on the 24-year sentence imposed for the Ellis Street crimes, or the 9 year  
12 difference between the 24-year sentence imposed for the Ellis Street crimes and the 15-year sentence  
13 imposed for the Terra Vista crimes.<sup>268</sup> This argument is inconsistent with the well-established laws that  
14 govern criminal sentencing. Both of Vanderhorst’s calculations are predicated on the unsupported  
15 assumption Vanderhorst completed his life sentence for the Fell Street murder after 21 years and *then*  
16 began serving the sentences imposed for his remaining convictions.<sup>269</sup> However, “[a] concurrent term  
17 ... begins on the day it is imposed and is not postponed until the completion of a prior term.”<sup>270</sup> In other  
18 words, concurrent sentences run together, from the date they are imposed, for the time they  
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20 <sup>266</sup> Pen. Code, § 4900, subd. (a); Cal. Code Regs., tit. 2, § 642, subd. (a)(3); *People v. Hollie* (2023) 97  
21 CA5 513, 520-522 (finding vacated murder conviction pursuant to Pen. Code, § 1172.6 “did not  
exonerate him”).

22 <sup>267</sup> *Holmes v. California Victim Compensation & Government Claims Bd.* (2015) 239 Cal.App.4th 1400,  
23 1405; Pen. Code, § 4904 (authorizing compensation for the “injury sustained through their erroneous  
conviction and imprisonment); Cal. Code Regs., tit. 2, § 640, subd. (f).

24 <sup>268</sup> By the time of the hearing, Vanderhorst seemed to have abandoned this argument and instead  
25 focused on arguing he more likely than not would have been released at the 2001 parole hearing, but  
for his erroneous convictions.

26 <sup>269</sup> Vanderhorst was sentenced to life in prison for the Fell Street murder to be served concurrently with  
27 a 19-year sentence for the Ellis Street robbery, 24-year sentence for the Ellis Street rape, and a 15-  
year sentence for the Terra Vista robbery.

28 <sup>270</sup> *People v. Brunner* (1995) 9 Cal.4<sup>th</sup> 1178, fn. 3.

1 overlap.<sup>271</sup> As a result, there is no legal basis for finding Vanderhorst completed the life sentence  
2 imposed for the Fell Street murder and *then* began serving the determinate sentences imposed for the  
3 Ellis Street and Terra Vista crimes.<sup>272</sup> Instead, Vanderhorst began serving the sentences imposed for  
4 all four of his convictions at the same time, and his incarceration beyond the 24-year term imposed for  
5 the Ellis Street crimes was properly attributable to the life sentence imposed for the Fell Street murder.  
6 There is, therefore, no legal basis for concluding the last 24, or the last 9 years, of his imprisonment  
7 were attributable to the Ellis Street crimes based on the sentences imposed for those crimes.<sup>273</sup>

8 Since he was properly convicted of the Fell Street murder according to the law in effect at the  
9 time of Allen's death, the CalVCB has no legal basis for disregarding the sentence imposed for that  
10 crime. Vanderhorst was serving a life sentence for the Fell Street murder at all times during his  
11 imprisonment, and the sentences imposed for the Ellis Street crimes ran concurrently with his life  
12 sentence. Vanderhorst therefore failed to establish the last 24 or 9 years of his imprisonment were  
13 solely attributable to the Ellis Street convictions, and his injury cannot be calculated based on the  
14 sentences imposed for the Ellis Street convictions.

15 **III. Vanderhorst Failed to Establish He, More Likely Than Not, Would Have Been Granted Parole**  
16 **But For the Ellis Street Convictions.**

17 Since his imprisonment is otherwise properly attributable to his conviction for the Fell Street  
18 murder, to obtain compensation Vanderhorst needed to prove he, more likely than not, would have  
19 been granted parole but for his erroneous convictions. To satisfy this burden, Vanderhorst had to  
20 prove either that he would have been found suitable for parole had he not been convicted of the Ellis  
21 Street crimes, or, otherwise stated, that the Ellis Street convictions, more likely than not, served as the

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23 <sup>271</sup> *In re Roberts* (1953) 40 Cal.2d 745, 749; see e.g., *People v. McWilliams* (1948) 87 Cal.App.2d 550,  
24 552-553 (erroneously imposed concurrent sentence was not prejudicial because it did not prolong  
prison term).

25 <sup>272</sup> Notably, Vanderhorst did not provide any legal basis for concluding he completed his life sentence  
26 on a particular date and thereafter began serving the concurrent sentences imposed for his other  
convictions.

27 <sup>273</sup> The CalVCB also notes Vanderhorst was not released from custody until the court vacated his  
28 conviction for the Fell Street murder, confirming his continued incarceration was the result of his  
conviction for Allen's murder, not the Ellis Street robbery and rape.

1 basis for the panels' findings that Vanderhorst remained unsuitable for parole. Vanderhorst failed to  
2 make either showing. Vanderhorst failed to prove he gained insight into his crimes and antisocial  
3 conduct, or that, on balance, consideration of the remaining suitability and unsuitability factors  
4 supported finding Vanderhorst suitable for parole without consideration of the Ellis Street convictions.  
5 Alternatively, Vanderhorst failed to provide a preponderance of evidence establishing he was denied  
6 parole based on his convictions for, and denial of, the Ellis Street crimes.

7 **A. Law Governing Parole Hearings.**

8 At a parole hearing, a panel of commissioners must determine whether an inmate serving a life  
9 sentence will be granted parole.<sup>274</sup> The governing statutory provision provides that inmates "will be  
10 granted parole" unless the panel finds "the gravity of the current convicted offense, or the timing and  
11 gravity of current or past convicted offenses, is such that consideration for public safety requires that  
12 the inmate serve a lengthier period of incarceration."<sup>275</sup> However, the facts of the commitment offense  
13 are not, themselves, sufficient to support a finding the inmate remains unsuitable for parole. The  
14 ultimate question is whether the inmate *currently* poses an unreasonable risk of danger to society.<sup>276</sup>  
15 As a result, "[t]he relevant inquiry is whether the circumstances of the commitment offense, when  
16 considered in light of other facts in the record, are such that they continue to be predictive of current  
17 dangerousness."<sup>277</sup>

18 Consequently, the panel must consider all relevant and reliable information bearing on the  
19 inmate's suitability for release, including: the inmate's past and present mental state and attitude  
20 toward the crime; the inmate's criminal history and conduct before, during, and after the base and  
21 other commitment offenses; the inmate's social history; and any conditions for treatment or control that  
22 may allow the inmate to be safely released into the community. The panel also considers, but is not  
23 bound by, the findings and determinations made during prior hearings.<sup>278</sup> The governing regulation

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25 <sup>274</sup> Pen. Code, §§ 3041, subd. (a), 3041.5, subd. (c), 3041.7.

26 <sup>275</sup> Pen. Code, § 3041, subd. (b).

27 <sup>276</sup> *In re Lawrence* (2008) 44 Cal.4th 1181, 1213.

28 <sup>277</sup> *Id.* at p. 1221.

<sup>278</sup> Pen. Code, §§ 3041.5, subd. (c), 3041.7.

1 also sets forth several factors, which serve as “general guidelines” to assist the panel in making its  
2 determination.<sup>279</sup> However, it is not the existence or nonexistence of suitability factors that dictate the  
3 panel’s finding. Instead, the panel must determine whether, on balance, consideration of all relevant  
4 factors indicates current dangerousness.<sup>280</sup>

5 Whether an inmate has gained insight into the commitment offense and their other antisocial  
6 behavior is considered “highly probative” of current dangerousness.<sup>281</sup> Past criminal conduct and an  
7 inmate’s current attitudes toward that conduct are significant indicators of how an inmate will behave if  
8 released on parole.<sup>282</sup> As a result, the “presence or absence of insight is a significant factor in  
9 determining whether there is a rational nexus between the inmate’s dangerous past behavior and the  
10 threat the inmate currently poses to public safety.”<sup>283</sup> When assessing whether an inmate has gained  
11 insight, the panel considers whether (1) the inmate has accepted responsibility for their crimes and  
12 criminal history, (2) acknowledged the “nature and magnitude” of their offenses, (3) exhibited an  
13 understanding of the causative factors that led to their criminal conduct, and (4) demonstrated remorse  
14 for their actions and the victims of their crime.<sup>284</sup>

15 Therefore, while the governing regulations provide the panel with guidelines to assist in  
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17 <sup>279</sup> Factors tending to indicate an inmate is unsuitable for parole include: the inmate’s offense was  
18 committed in an especially heinous, atrocious or cruel manner; the inmate has a prior record of  
19 violence, tumultuous relationships, or engaging in sadistic sexual offenses; the inmate has a history of  
20 mental problems that relate to the offenses; and engaging in serious misconduct while incarcerated.  
21 (Cal. Code Regs., tit. 15, § 2801, subd. (c).) Factors tending to indicate an inmate is suitable for parole  
22 include: the absence of a juvenile record or history of violent crimes; a stable social history; the  
23 presence of remorse; the crime was motivated by significant life stress that built up over a long period  
24 of time; the inmate’s age reduces the likelihood of recidivism; institutional activities indicating an  
25 enhanced ability to function within the law upon release; and a realistic plan for release. (Cal. Code  
26 Regs., tit. 15, § 2801, subd. (d).)

27 <sup>280</sup> *In re Lawrence*, *supra*, 44 Cal.4th at pp. 1204, 1212, 1221; see also Cal. Code Regs., tit. 15, § 2801,  
28 subd. (c), (d).

<sup>281</sup> See, e.g. *In re Lawrence*, *supra*, 44 Cal.4th at p. 1220 (“[c]hanges in a prisoner’s maturity,  
understanding, and mental state are ‘highly probative’ ... of current dangerousness.”); *In re Shaputis*  
(2011) 53 Cal.App.4th 192, 219.

<sup>282</sup> *In re Shaputis* (2011) 53 Cal.4th 192, 219.

<sup>283</sup> *In re Busch* (2016) 246 Cal.App.4th 953, 968.

<sup>284</sup> *In re Shaputis* (2011) 53 Cal.App.4th 192, 218.

determining whether the inmate continues to pose a risk of danger to society, the panel's decision is not predicated on static factors. Instead, its inquiry is, both "by necessity and by statutory mandate, an individualized one."<sup>285</sup> The panel is afforded broad – in fact, almost unlimited – discretion to identify and weigh the factors relevant to "predicting by subjective analysis whether the inmate will be able to live in society without committing additional antisocial acts."<sup>286</sup> Moreover, "[t]he importance attached to any circumstance or combination of circumstances in a particular case is left to the judgment of the panel."<sup>287</sup> In fact, the panel may find that "[c]ircumstances which taken alone may not firmly establish unsuitability for parole may contribute to a pattern which results in a finding of unsuitability."<sup>288</sup> "The precise manner in which the specified factors relevant to parole suitability are considered and balanced lies within the discretion of the [panel]," who has sole authority to decide which evidence is the most convincing.<sup>289</sup>

**B. Vanderhorst's Lack of Insight Supported a Finding of Unsuitability Regardless of the Ellis Street Crimes.**

Vanderhorst contends, and Carbone opined, the panel's repeated determination that Vanderhorst lacked insight was based on Vanderhorst's denial of the Ellis Street crimes. He therefore reasons he was denied parole as the result of the Ellis Street crimes. However, given the overwhelming evidence indicating Vanderhorst lacked insight into the Fell Street crimes, the circumstances leading to his conviction for the Terra Vista crimes, and his extensive criminal history, Vanderhorst did not establish he, more likely than not, would have been found suitable for parole, even if he was not convicted of the Ellis Street crimes.

**1. Vanderhorst's Lack of Credibility Supported Finding He Lacked Insight.**

Vanderhorst and Carbone repeatedly attributed the panels' findings that Vanderhorst lacked

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<sup>285</sup> *In re Lawrence* (2008) 44 Cal.4th 1181, 1212.

<sup>286</sup> *Id.* at p. 1204; *In re Fuentes* (2005) 135 Cal.App.4th 152, 160.

<sup>287</sup> Cal. Code Regs., tit. 15, § 2281, subds. (c)-(d).

<sup>288</sup> Cal. Code Regs., tit. 15, § 2281, subd. (b).

<sup>289</sup> *In re Criscione* (2009) 180 Cal.App.4th 1446, 1457; *In re Shigemura* (2012) 210 Cal.App.4th 440, 454.

1 insight and credibility to his denial of the Ellis Street crimes. This position is problematic for two  
2 reasons. First, this position necessarily means the panel violated the statutory constraints that govern  
3 its consideration of an inmate's denial. It is well-settled the panel may not conclude inmates lack  
4 credibility or insight merely because they deny committing the underlying offense.<sup>290</sup> To the extent  
5 Vanderhorst and Carbone were arguing the panel violated its statutory obligation by denying parole  
6 based on the Ellis Street crimes, their position is unsupported, as is discussed more fully below.<sup>291</sup>  
7 Second, and more importantly, when an inmate denies committing a crime, their denial is just one  
8 factor that is used to assess the inmate's credibility and willingness to accept and admit to the truth.<sup>292</sup>  
9 Yet, here, there were ample reasons, independent of Vanderhorst's denial of the Ellis Street crimes, for  
10 the panel to question his credibility.

11         At a parole hearing, the panel necessarily assesses the evidence to determine which evidence  
12 is "reliable," and may "decline to give credence to certain evidence" based on credibility concerns.  
13 Given the weight afforded to an inmate's statements during a parole hearing, including whether the  
14 inmate exhibited insight into their criminal conduct and remorse for their actions, a panel's finding that  
15 the inmate lacks credibility can significantly impact an inmate's prospects of parole.<sup>293</sup> In addition, an  
16 inmate's inability to be truthful, both with themselves and the panel, can establish a nexus between the  
17 inmate's past conduct and current dangerousness. As a result, when the inmate fails to provide a  
18 plausible explanation for the circumstances that led to their conviction for a crime they did not commit,  
19 the panel may find the inmate is still hiding the truth and has not been rehabilitated enough to be safe in  
20 society.<sup>294</sup>

21         Vanderhorst did not just deny the Ellis Street crimes. He also denied the Terra Vista robbery

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22 <sup>290</sup> *In re Jackson* (2011) 193 Cal.App.4th 1376, 1391; see also Pen. Code, § 5011, subd. (b); Evid.  
23 Code, § 664 (it is presumed that official duty has been regularly performed); Cal. Code Regs., tit. 15, §  
24 2236.

25 <sup>291</sup> See, *infra*, section C. "Vanderhorst Failed to Establish He was More Likely Than Not Denied Parole  
Based on the Ellis Street Convictions."

26 <sup>292</sup> *In re Busch* (2016) 246 Cal.App.4th 953, 968; *In re Pugh* (2012) 205 Cal.App.4th 260, 273.

27 <sup>293</sup> *In re Pugh* (2012) 205 Cal.App.4th 260, 273.

28 <sup>294</sup> *Ibid.*; see also *In re Busch* (2016) 246 Cal.App.4th 953, 968 (holding the inmate's implausible denial  
indicated he was not yet honestly addressing the underlying issues that led to his criminal conduct).

1 and failed to accept responsibility or provide a plausible explanation for the circumstances that led to  
2 his conviction for that crime. Although he matched the description of the shorter perpetrator<sup>295</sup> and was  
3 identified by Robert as the “shorter” perpetrator, Vanderhorst’s only explanation for the evidence  
4 against him was to accuse the police of lying that he had been identified as one of the perpetrators.  
5 Vanderhorst failed to acknowledge police suspected him of committing the Terra Vista crimes due to  
6 his participation in several other recent robberies, his friendships with known criminals Carter and D.J.,  
7 and his participation in the Fell Street crimes, which were committed in the same manner as the Terra  
8 Vista crimes. Vanderhorst also failed to acknowledge that he chose to plead to the Terra Vista crimes  
9 so that he could avoid the death penalty for the Fell Street murder, which he admitted to committing.  
10 Although Vanderhorst felt pressured to accept the plea agreement in full, the urgency of the plea deal  
11 was a byproduct of his participation in a murder. Given his failure to provide any explanation or take  
12 responsibility for the events leading to his conviction, the panel could have declined to find  
13 Vanderhorst credible and concluded he lacked insight into his criminal history based on this alone.

14         However, Vanderhorst’s credibility was also compromised by his inconsistent statements and  
15 evolving explanation of the Fell Street murder. For example, at some parole hearings, Vanderhorst  
16 repeatedly maintained he was only guilty of the Fell Street murder because he was “there;” yet, at other  
17 times, Vanderhorst admitted he forced his way into the flat and volunteered to chase down Allen  
18 alongside “Crazy Carter,” who he knew was armed with a loaded gun and had a history of violent  
19 crimes. Vanderhorst claimed he did not know anyone would be harmed but also admitted he knew  
20 Carter was assaulting people during home invasion robberies and provided Carter with the gun and  
21 bullets he used to kill Allen. In addition, Vanderhorst volunteered to chase down Allen and was  
22 identified as the individual who violently forced John into a chair. Yet, he also intermittently claimed he  
23 never actually saw Allen or John and did not know whether anyone was inside the flat.

24         Vanderhorst told the panel that he entered the flat for a few minutes, he did not “really” enter the  
25 flat, and, on other occasions, that he wandered around the flat to eye John’s belongings while Carter

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27 <sup>295</sup> The perpetrator was described as a young, thin Black male between five feet four and five feet six  
28 inches. Vanderhorst was a 19-year-old Black male who, at the time of his arrest, was five feet six  
inches and weighed 135 pounds.



1 murdered Allen in the other room. At times, Vanderhorst claimed he only drove Carter to the Fell Street  
2 flat because Carter wanted a ride. At other times, Vanderhorst admitted he went to Fell Street to rob the  
3 inhabitants because he wanted money, jewelry, "and stuff." Vanderhorst said Carter planned the  
4 robberies, but he later also said the robberies were random. The panel's credibility concerns were,  
5 therefore, likely also based on Vanderhorst's failure to accurately portray his involvement in the Fell  
6 Street murder. In fact, even Carbone noted, the panel wants to hear inmates "act as credible historians"  
7 but then ignored Vanderhorst's failure to act as a credible historian of the crime that resulted in his life  
8 sentence.

9       Lastly, Vanderhorst's credibility was also diminished by his history of lying to the panel and  
10 psychologists. According to the psychological evaluation prepared for the 2009 hearing, Vanderhorst  
11 had a history of pathological lying. According to the psychological evaluation referenced at the 2015  
12 hearing, Vanderhorst told the assessor he raped Gail and shot Allen. However, at the 2015 hearing,  
13 when he was asked about these statements, Vanderhorst denied admitting to the rape or shooting  
14 Allen, explaining he was just "making a point." Vanderhorst admits, in a declaration submitted in  
15 support of his erroneously convicted person claim, that he lied to the panel about his involvement in  
16 these crimes at the 2018 parole hearing in an effort to obtain parole. At that hearing, he told the panel  
17 he shot Allen, raped Gail, and was involved "in crimes [he] did not commit." However, according to the  
18 transcripts provided, Vanderhorst actually lied about his involvement in the Ellis Street crimes during a  
19 psychological evaluation in 2017 but then denied his involvement in those crimes at the 2018 parole  
20 hearing. The 2018 panel then, understandably, indicated credibility was "a problem" for Vanderhorst,  
21 who the panel noted had a history of changing his explanation of the crimes. Consequently,  
22 Vanderhorst's own statements undermined his credibility and established a willingness to lie to obtain  
23 the outcome he wanted.

24       Vanderhorst failed to provide a plausible explanation for the events leading to his conviction for  
25 the Terra Vista crimes, made inconsistent statements about the Fell Street crimes, and repeatedly lied  
26 to both psychologists and the panel. As a result, the panel had ample grounds, independent of the Ellis  
27 Street convictions, to question Vanderhorst's credibility and, consequently, whether he had gained  
28 insight into this criminal behavior and the circumstances that lead to his convictions.

2. Vanderhorst's Failure to Accept Responsibility Supported Finding He Lacked Insight.

The first factor used to assess whether an inmate has developed insight into their criminal conduct is whether the inmate has accepted responsibility for their crime and criminal history. When an inmate fails to take responsibility for their crime, criminal history, and the pattern of behavior leading up to the offenses, the panel may conclude the inmate has not yet obtained insight into their behavior and, consequently, continues to pose a risk of danger to society if released on parole.<sup>296</sup> As noted, the transcripts provided do not prove Vanderhorst had accepted responsibility for his criminal history or behavior regardless of his convictions for the Ellis Street crimes.

Professionals had long expressed concerns about Vanderhorst's pattern of minimizing and justifying his criminal and antisocial conduct, instead of taking responsibility for it. The 1974 probation report observed that Vanderhorst – who at that time continued to deny being involved in the Fell Street murder – had a “pattern of minimizing” his culpability despite having a “substantial criminal history.” A 1975 evaluation noted Vanderhorst's tendency to minimize, stating: Vanderhorst's “denial, rationalization, and minimization of his antisocial conduct [wa]s quite noticeable.” A 1976 evaluation also noted his tendency to minimize, and the 1981 evaluation said Vanderhorst continued to “deny, rationalize, and minimize his offenses and involvement in his offenses.” At the 2009 hearing, the Deputy District Attorney noted Vanderhorst continued to “offer excuses and rationalizations” for his antisocial conduct. In fact, throughout the records provided, Vanderhorst continued to minimize and rationalize his behavior, instead of taking responsibility for his criminal history and culpability in the Fell Street crime.

According to Carbone, the panel's concerns that Vanderhorst needed to accept responsibility for his conduct were based on Vanderhorst's denial of the Ellis Street crimes. However, Vanderhorst's pattern of minimizing and rationalizing his behavior pre-dated his conviction for the Ellis Street crimes. In 1969 or 1970, Vanderhorst blamed the female student he assaulted for his conduct, stating she hit him first. In 1970, Vanderhorst stood by while his friends kidnapped and raped a young woman, only to

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<sup>296</sup> *In re Busch* (2016) 246 Cal.App.4th 953, 968; *In re Shaputis* (2011) 53 Cal.App.4th 192, 218.

1 later bemoan his detention because he “really hadn’t done anything.” When a panel member at the  
2 2001 parole hearing observed the girl was lucky police arrived, Vanderhorst simply said, “yeah,” and  
3 then noted that he was punished for this incident, but he did not acknowledge his role in the kidnap  
4 and rape nor his failure to intervene on the victim’s behalf.<sup>297</sup> After he was arrested for several purse  
5 snatchings and robberies in 1971, Vanderhorst told police he was the “real victim” because the police  
6 failed to return his umbrella and confiscated \$10 of his money as restitution for one of the robberies. In  
7 1973 and 1974, before he was charged with the crimes in this case, Vanderhorst was arrested for  
8 several other crimes including: a burglary, a robbery, possessing a dangerous weapon, receiving  
9 stolen property, and another assault.

10 Not including the Ellis Street, Terra Vista, or Fell Street crimes, by the time of his 1974 arrest,  
11 Vanderhorst’s criminal history consisted of *at least* two petty thefts, three burglaries, “several” purse  
12 snatchings, two assaults, five robberies, a rape, a kidnapping, possession of a dangerous weapon and  
13 receiving stolen property. Even after he was imprisoned for the Terra Vista and Fell Street crimes,  
14 Vanderhorst continued to engage in criminal behavior. Yet, Vanderhorst failed to establish he accepted  
15 responsibility for any of these crimes during his parole hearings. Although Vanderhorst occasionally  
16 mentioned his other criminal conduct in passing, often in response to a specific question about a prior  
17 crime, he did not, during these exchanges, acknowledge that he had a long-standing criminal history  
18 that culminated in the burglary that resulted in Allen’s death and then continued even after he was  
19 imprisoned.<sup>298</sup> To the contrary, he continued to blame others for his conduct, stating, in 2001, that he  
20 was “running” with the wrong crowd. Even after more than 40 years of imprisonment, Vanderhorst  
21 remained unable to acknowledge his “substantial” criminal history, or his role in those crimes.

22 More importantly, however, Vanderhorst has not proven he took responsibility for his  
23 involvement in the Fell Street murder itself. In fact, Vanderhorst’s level of involvement in the murder  
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25 <sup>297</sup> See *In re Shigemura* (2012) 210 Cal.App.4th 440, 457 (finding an inmate lacked insight where, 21  
26 years after the crime, she was still detached from the victim’s experience and maintained she did not  
actively assist in the crime).

27 <sup>298</sup> *In re Shaputis* (2008) 44 Cal.4th 1181, 1259 (denying parole based on inmate’s failure to recognize  
28 his life offense was the culmination of many years of similar crimes); accord *In re Criscione* (2009) 180  
Cal.App.4th 1446, 1460.

1 remains a mystery due to his inconsistent statements and counsel's decision to provide only partial  
2 transcripts that appear to omit key facts. For example, in 1981, Vanderhorst admitted he went inside  
3 and offered to help chase down Allen but shortly thereafter said he did "not really" go inside. At the  
4 1984 hearing, Vanderhorst said he was only "inside for a few minutes." In 1985, Vanderhorst said he  
5 was only guilty of the Fell Street murder because he was there when the murder occurred. In 1986,  
6 Vanderhorst told the panel that Fell Street was the first time he "ever ran in on somebody like that,"<sup>299</sup>  
7 however, he then, again, maintained he was only guilty of murder because he was present when the  
8 murder occurred. In 1987, Vanderhorst said he was there but "didn't do it." In 1992, Vanderhorst again  
9 said he was only guilty of the Fell Street murder because he was there.<sup>300</sup> Vanderhorst's refusal to  
10 consistently acknowledge his role in this murder exhibited a continued lack of insight and resistance to  
11 taking responsibility for his actions.

12 In 2001, Vanderhorst admitted he drove Carter to the flat and volunteered to help him chase  
13 down the victim despite knowing Carter was armed, violent, and intended to commit a home invasion;  
14 however, he continued to maintain that he was merely present when the murder occurred. When he  
15 was then asked about the kidnap and rape, Vanderhorst essentially provided the same excuse, saying  
16 he was merely present while other people engaged in criminal activity. At the end of the 2001 hearing,  
17 the panel told Vanderhorst he needed "therapy in order to face, discuss, and understand the causative  
18 factors that led to his life crime, and to explore his culpability in that life crime." It went on to state that,  
19 until progress was made, Vanderhorst continued to be a threat to others. Yet, Vanderhorst did not, in  
20 any of the transcripts provided, acknowledge his failure to intervene on behalf of these victims.  
21 Instead, he continued to minimize his culpability, failing to even acknowledge that he provided the  
22 loaded gun that was used to murder Allen.

23 At the 2009 parole hearing, Vanderhorst again said he was there when the murder occurred  
24 but failed to accept responsibility for Allen's death. To the contrary, Vanderhorst told the panel he

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25 <sup>299</sup> The CalVCB notes that Vanderhorst committed other burglaries, prior to his involvement in the  
26 crimes charged here; however, those burglaries may not have included "running" in on someone.

27 <sup>300</sup> See *In re Shigemura* (2012) 210 Cal.App.4th 440, 457 (finding the inmate lacked insight where she  
28 continued to minimize her role in the crime, stating she was merely present but drove the perpetrator to  
the scene of the crime).

1 forgave everyone involved, seemingly without acknowledging that he, too, played a vital role in Allen's  
2 death. In 2012, Vanderhorst made a blanket statement, stating he accepted responsibility "for all the  
3 things that have happened;" however, Carbone testified the board is not persuaded by these types of  
4 blanket statements. There is also no indication Vanderhorst accepted responsibility for the role he  
5 played in Allen's murder at the 2015 parole hearing. Instead, he again told the panel he was only guilty  
6 of the murder because he was present when it occurred, omitting that he provided Carter with the gun  
7 and bullet used to kill Allen.<sup>301</sup> Significantly, the panel subsequently noted Vanderhorst continued to  
8 focus on the "external" factors that impacted his circumstances, instead of the internal factors that he  
9 could change. In 2018, Vanderhorst again failed to acknowledge the role he played in the events that  
10 led to Allen's murder and, instead, appeared to again blame Carter, stating he understood the people  
11 who "influenced" him in a negative way.

12 According to Carbone, an inmate shows the panel that they have gained insight when they take  
13 responsibility for their crime by providing an inventory of the actions and inactions that led to the life  
14 crime. Yet, nowhere in the transcripts provided does Vanderhorst provide a self-appraising inventory of  
15 his actions before, during, or after Allen's death. Nowhere in the transcripts provided, did Vanderhorst  
16 acknowledge that he provided a violent criminal with a loaded gun, drove that criminal to the Fell Street  
17 flat, forced entry into the flat and then volunteered to help the shooter chase down the victim so that he  
18 could obtain money, jewelry, "and stuff" to support his addiction.<sup>302</sup> Instead, Vanderhorst continued to  
19 engage in his long-standing pattern, dating back to the 1960's, of minimizing and rationalizing his  
20 conduct, while blaming others for his circumstances, just as he had after committing many of the other  
21 crimes he was convicted of.

22 Vanderhorst blamed his lawyer instead of acknowledging he accepted a plea to avoid the death  
23 penalty for the murder he was validly convicted of. He blamed the judge for his sentence, and the  
24 police for the contents of their reports. Vanderhorst maintained he had not obtained parole because he

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25 <sup>301</sup> See *In re Tapia* (2012) 207 Cal.App.4th 1104, 1112 (finding inmate failed to accept responsibility for  
26 his life crime where he admitted he was guilty but minimized his conduct and culpability).

27 <sup>302</sup> See *In re Taplett* (2010) 188 Cal.App.4th 440, 448 (denying parole where inmate's description of her  
28 culpability differed markedly from the facts of the offense as related by other witnesses and prior  
accounts).

1 had not told the panel what they wanted to hear. Vanderhorst maintained that Carter planned the Fell  
2 Street crime, Carter murdered Allen, and Carter and D.J. were the individuals who committed the Ellis  
3 Street and Terra Vista crimes. Yet, nowhere in the transcripts provided did Vanderhorst accept  
4 responsibility for his efforts to maintain his relationship with Carter and D.J. who, he admitted, he had  
5 committed other crimes with. He did not acknowledge his pattern of standing by instead of intervening  
6 on behalf of the victims of his crimes, nor demonstrate guilt over his “brutal behavior.” Instead, he  
7 continued to blame others and focus on their conduct, while minimizing and rationalizing his own.

8 Despite more than 40 years in prison, Vanderhorst remained unable to provide a self-  
9 appraising inventory of the actions that culminated in the Fell Street murder and resulted in his  
10 imprisonment. He instead continued to deny, minimize, and rationalize his participation in the murder  
11 and his lengthy criminal history, just as he had after being caught for the numerous other crimes he  
12 had committed.<sup>303</sup> Based on these facts, it is not more likely than not the panel would have concluded,  
13 at any of Vanderhorst’s parole hearings, that he had accepted responsibility for the Fell Street murder  
14 or his history of criminal conduct and, therefore, gained insight into his antisocial behavior, regardless  
15 of his convictions for the Ellis Street crimes.

16 3. Vanderhorst Failed to Establish He Demonstrated Remorse or an Understanding of  
17 How His Actions Effected His Many Victims.

18 The second and third factors used to assess whether an inmate has gained insight into their  
19 criminal conduct are remorse and an understanding of the nature and magnitude of their crimes. The  
20 record does not support finding that, but for the Ellis Street convictions, Vanderhorst would have been  
21 found suitable for parole given his longstanding struggle to express remorse<sup>304</sup> or understand the  
22 impact his actions – and inactions – had on the victims of his crimes.

23 Vanderhorst long struggled to express remorse for or understand how his behavior impacted  
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25 <sup>303</sup> Compare to, e.g. *In re Perez* (2016) 7 Cal.App.5th 65, 87-88 (relying, in part, on inmate’s willingness  
26 to admit to past criminal conduct and acknowledge that they would have ended up serving a prison  
term for another crime if he had not been convicted of the crime he denied committing).

27 <sup>304</sup> According to Black’s Law Dictionary (12th ed. 2024), remorse is defined as: “[a] strong feeling of  
28 sincere regret and sadness over one’s having behaved badly or done harm; intense, anguished self-  
reproach and compunction of conscience, esp[ecially] for a crime one has committed.”

1 his victims. In 1970, Vanderhorst looked on and listened as a young woman cried out while being  
2 raped by his friend. Vanderhorst did nothing to stop the rape and worried only that her cries would  
3 attract law enforcement, even though law enforcement's arrival prevented the victim from being gang  
4 raped. Yet when asked about this crime again, in 1974, Vanderhorst maintained he had not "done  
5 anything," and at the 2001 parole hearing Vanderhorst again failed to express empathy for the victim  
6 or acknowledge his role in the victim's rape. In fact, there is no evidence that Vanderhorst has, at any  
7 time during the 50 years since that offense, expressed remorse for, or even acknowledged, that he  
8 stood by and allowed the rape to happen instead of intervening on the victim's behalf.<sup>305</sup>

9 A psychological evaluation performed the year after the rape expressed concern about  
10 Vanderhorst's apparent lack of empathy for his victims and inability to understand the impact of his  
11 actions. By the time of that evaluation, Vanderhorst had committed numerous robberies, snatched  
12 numerous purses, assaulted a female student at his school, and stood by while his friend kidnapped  
13 and raped a teenage girl. Yet, during the evaluation, Vanderhorst said he was generally pleased with  
14 himself. He expressed no concern whatsoever for the victims of his robberies. The evaluation  
15 concluded Vanderhorst had a tolerance for hurting others. Although this did not mean Vanderhorst  
16 necessarily would hurt others, he exhibited an insensitivity to the suffering of others.

17 The 1974 probation report, prepared at the time Vanderhorst was sentenced, said Vanderhorst  
18 had a "sociopathic personality," was "totally insensitive to the feelings of others," and experienced "no  
19 remorse or guilt over brutal behavior." It went on to state: "this type of personality is almost impossible  
20 to modify and for the sake of the community, [Vanderhorst] should be incarcerated for as long a period  
21 as is legally possible." Vanderhorst was later diagnosed with Antisocial Personality Disorder, which  
22 Carbone confirmed is a "newer term" for a "psychopath" or "sociopath." The records provided do not  
23 establish Vanderhorst's capacity for remorse had appreciably improved given his continued failure to  
24 acknowledge most of the victims of his crimes. For example, in 2000, Vanderhorst admitted he was  
25 unable to understand the impact his crimes had on his victims until his mother shared her experience

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27 <sup>305</sup> Compare to, e.g. *In re Shigemura* (2012) 210 Cal.App.4th 440, 457 (noting that, despite the passage  
28 of 21 years, the inmate still had not gained insight into their role in the crime); *In re Fuentes* (2005) 135  
Cal.App.4th 152, 160 (relying on the inmate's failure to intervene on the victim's behalf).

1 as the victim of a robbery and home invasion. The 2009 psychological evaluation also expressed  
2 concern about Vanderhorst's ability to express remorse or understand the impact of his crimes and  
3 indicated Vanderhorst's Antisocial Personality Disorder was not in remission. It noted, in particular, that  
4 Vanderhorst "showed no empathy" and lacked remorse toward "any victims." In 2012, Vanderhorst  
5 showed signs of what Carbone referred to as "emerging remorse," however, at the 2015 hearing, the  
6 District Attorney observed Vanderhorst still showed "very little remorse or empathy."

7       Moreover, even when Vanderhorst did express remorse, he told the panel that Allen was his  
8 only direct victim. This is contrary to his criminal history which shows that, by the time he was  
9 imprisoned, Vanderhorst had committed numerous crimes with numerous victims. He robbed  
10 numerous people. He committed at least four burglaries. He snatched several purses. He committed at  
11 least two assaults. He stood by while other people were robbed, and he did nothing when his friend  
12 kidnapped and raped a young woman. Yet, Vanderhorst did not express remorse for how his actions  
13 affected any of these people.<sup>306</sup>

14       Even more significantly, however, despite 40 years in prison, Vanderhorst still failed to identify  
15 John as one of his direct victims, even though John was violently assaulted with Vanderhorst's gun  
16 during the Fell Street home invasion either by Vanderhorst or while Vanderhorst stood nearby. In fact,  
17 Vanderhorst did not identify John as a victim of any crime until 2015. However, even then, Vanderhorst  
18 failed to express remorse for what had occurred or express any understanding of how his behavior had  
19 impacted John. Instead, Vanderhorst identified John as one of the victims of the Ellis Street or Terra  
20 Vista crimes, with the qualifier that he "didn't commit those crimes but knew what happened to them."

21       In 2015 and 2018, Vanderhorst also expressed remorse for the impact his crimes had on his  
22 own family, but he made only the type of generalized statements Carbone said the panel finds  
23 unpersuasive. For example, in 2018, Vanderhorst said he understood "the negative effects that all my  
24 choices had on those around" him, but he did not explain what those negative effects were. It also

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26 <sup>306</sup> Vanderhorst also made no effort to identify the individual who had raped Gail, instead, allowing that  
27 person to remain free with the opportunity to harm other victims. See *In re Tapia* (2012) 207  
28 Cal.App.4th 1104, 1111 (noting an inmate's failure to identify the perpetrator of a crime indicates a lack  
of insight into the impact of that crime and continued adherence to criminal thinking over rehabilitation).



bears noting that Vanderhorst began expressing remorse for Allen's family and his own family around the time he began intermittently lying about his involvement in the Fell Street and Ellis Street crimes in an effort to obtain parole. Given Vanderhorst's credibility issues, the panel could have reasonably declined to afford much weight to Vanderhorst's efforts to express remorse or an understanding of the impact his crimes had on others and society at large. Moreover, to the extent the panel credited Vanderhorst for his heartfelt remorse at the 2012 hearing, it went on to say it was "important" Vanderhorst "understand all of the victims that [he] hurt," including the victims of the other crimes he committed throughout his life. Thus, while Vanderhorst did eventually acknowledge the impact his actions had on Allen's family, as well as his own, Vanderhorst still had not, at the time of his last hearing, acknowledged the many other victims who suffered as the result of his crimes.

Finally, Vanderhorst continued to engage in criminal behavior and institutional misconduct for more than 30 years despite his incarceration. This conduct appears to have impacted Vanderhorst's family in more ways than are apparent from the record. Vanderhorst suffered a serious rules violation in 2009, which appeared to relate to his substance abuse. Although it may be a coincidence, Vanderhorst's wife and sister, who consistently visited Vanderhorst up to that point, abruptly stopped visiting in 2009, and do not appear to have returned to visits at any point in the following nine years. Accordingly, it appears Vanderhorst's institutional misconduct may have also impacted his family; however, Vanderhorst did not, in the record provided, express remorse for that conduct either and, instead, apparently attempted to minimize his involvement in those incidents as well. Most notably, when Vanderhorst was asked whether his wife helped Vanderhorst smuggle cocaine into the prison, Vanderhorst said no but refused to further discuss the incident or the impact that incident had, if any, on his relationship with his wife and family members.<sup>307</sup>

In light of these circumstances, Vanderhorst failed to prove he expressed remorse for his crimes or understood the impact of his behavior on the victims of the many crimes he committed. He, therefore, failed to prove he had the insight necessary to be found suitable for parole, regardless of his convictions for the Ellis Street crimes.

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<sup>307</sup> See *In re Stevenson* (2013) 213 Cal.App.4th 841, 870 (affirming the denial of parole where the inmate rationalized wife's drug use and declined to address concerns regarding her behavior).

1                   4.    Vanderhorst's Failure to Adequately Acknowledge or Address the Causative Factors  
2                               Leading to His Crimes Supported Finding He Lacked Insight.

3           The inmate's understanding of the causative factors that led to their criminal behavior is the  
4 fourth and final factor used to determine whether the inmate has gained insight into their criminal  
5 behavior. As stated by Carbone, the panel wants inmates to express an understanding of cause and  
6 effect because if they don't understand the cause, they are more likely to repeat it. Consequently, the  
7 panel affords great weight to whether inmates have identified and begun to address the causative  
8 factors that led to their criminal conduct.

9           Vanderhorst failed to prove by a preponderance that he had acknowledged or addressed the  
10 causative factors that led to his criminal conduct. Vanderhorst continued to use controlled substances  
11 and engage in misconduct despite being repeatedly advised by the panel to remain discipline free and  
12 participate fully in N.A. In 1990, the panel told Vanderhorst he needed to address his substance use,  
13 despite his disdain for N.A. members. In 1990, Vanderhorst committed grand theft. Shortly after being  
14 denied parole in 1992, Vanderhorst was found guilty of trafficking cocaine for sale. Psychological  
15 evaluations in 1998 and 2000 concluded Vanderhorst needed "a longer period of observation,  
16 evaluation, and treatment" to ensure Vanderhorst's continued abstinence. In 2001, the panel again  
17 said Vanderhorst needed "to more fully participate in self-help and therapy programming and [N.A.] in  
18 particular." In finding Vanderhorst unsuitable for parole in 2012, the board noted his continued  
19 participation in criminal activities, including while in prison, and corresponding need for self-help  
20 programs. At the 2015 hearing, the panel said Vanderhorst "still lack[ed] ... insight into his ... past  
21 substance abuse and past criminality." The District Attorney observed that despite consistently  
22 attending N.A. for six years (since 2009), Vanderhorst was unable to articulate how it had changed his  
23 life. At that parole hearing Vanderhorst also declined to provide details when the panel invited  
24 discussion on allegations that Vanderhorst's wife helped Vanderhorst smuggle in the drugs he was  
25 convicted of trafficking in 1992.<sup>308</sup>

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28 <sup>308</sup> See *In re Stevenson* (2013) 213 Cal.App.4th 841, 870 (affirming a finding of unsuitability where the inmate, who had a history of drug use, rationalized his wife being found with drugs).

1 In 2018, Vanderhorst made a statement, which evidenced a deeper understanding of the  
2 causative factors for his criminal behavior, namely the emotions that drove his behavior. He explained,  
3 for example, that when he committed the Fell Street murder, he was young and allowed his emotions,  
4 depression, and low self-esteem to cloud his decision-making. When finding Vanderhorst unsuitable  
5 for parole, the board observed: Vanderhorst engaged in a significant amount of drug use both before  
6 and during his imprisonment, which evidenced continued criminal thinking. As a result, the panel found  
7 Vanderhorst did not have a long enough period of positive rehabilitation and could not be found  
8 suitable for parole absent a longer record of abstinence from both controlled substances and  
9 misconduct. Given the length of Vanderhorst's recovery, nine years, in relation to his 38 years of drug  
10 use, the panel's concerns that the relative recency of his substance abuse and related criminal  
11 conduct supported finding Vanderhorst had not yet developed an adequate understanding of the  
12 behavior that led to his criminal conduct.

13 Vanderhorst's psychological evaluations consistently attributed Vanderhorst's "criminogenic"  
14 behavior to his substance abuse and antisocial behavior, both of which were tied to Vanderhorst's  
15 propensity for violence. Yet, even after 35 years of incarceration, Vanderhorst continued to use  
16 controlled substances, despite being in a controlled environment, and, eventually, appears to have  
17 conceded he needed an even more restrictive environment, the Sensitive Needs Yard, to prevent his  
18 continued use. Notably, Vanderhorst continued to use controlled substances despite being denied  
19 parole, repeatedly admonished to remain discipline free,<sup>309</sup> and suffering another felony conviction (for  
20 trafficking cocaine) which resulted in the imposition of an additional prison term.<sup>310</sup>

21 Vanderhorst failed to prove that, independent of the Ellis Street convictions, he had insight into  
22 his crimes and criminal conduct. He failed to accept responsibility for his involvement in the Fell Street  
23 murder, he remained unable to be honest about his behavior, he failed to demonstrate remorse or an  
24 understanding of the impact of his crimes, and he failed to prove he understood the causative factors

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25 <sup>309</sup> See *In re Reed* (2009) 171 Cal.App.4th 1071, 1084-1085 (finding a minor rules violation justified  
26 finding of current dangerousness where it occurred two months after the panel directed the inmate not  
27 to violate institutional rules).

28 <sup>310</sup> See *In re Montgomery* (2012) 208 Cal.App.4th 149, 162 (finding a nexus to current dangerousness  
where inmate's continued misconduct indicated an inability to adhere to social norms and laws).

1 that led to his criminal conduct. Moreover, even if one of these factors was lacking, the panel was,  
2 nonetheless authorized to find Vanderhorst lacked adequate insight. The governing regulation  
3 provides: "Circumstances which taken alone may not firmly establish unsuitability for parole may  
4 contribute to a pattern which results in a finding of unsuitability." Therefore, even if any one of these  
5 factors – Vanderhorst's inability to accept responsibility, his struggle to express remorse for the victims  
6 of his crimes and understand the impact he had on their lives, and his continued struggle to recognize  
7 and redress the causative factors for his criminal conduct – was not independently sufficient to support  
8 a finding of unsuitability based on a lack of insight, these factors taken together render it more likely  
9 than not that the board would have deemed Vanderhorst unsuitable for parole notwithstanding his  
10 erroneous convictions for the Ellis Street crimes.

11 **C. Application of the Remaining Suitability and Unsuitability Factors Supported Finding**  
12 **Vanderhorst Was Not Suitable for Parole Regardless of the Ellis Street Convictions.**

13 Vanderhorst also failed to prove that application of the suitability and unsuitability factors  
14 supported finding him suitable for parole, regardless of his convictions for the Ellis Street crimes. The  
15 governing regulation sets forth several factors, which the panel uses as guidelines to assess whether  
16 the inmate continues to pose an unreasonable risk of danger, many of which overlap with the  
17 considerations used to assess an inmate's insight. Factors tending to indicate an inmate is unsuitable  
18 for parole include: the inmate's offense was committed in an especially heinous, atrocious or cruel  
19 manner; the inmate has a prior record of violence, tumultuous relationships, or engaging in sadistic  
20 sexual offenses; the inmate has a history of mental problems that relate to the offenses; and engaging  
21 in serious misconduct while incarcerated.<sup>311</sup> Factors tending to indicate an inmate is suitable for parole  
22 include: the absence of a juvenile record or history of violent crimes; a stable social history; the  
23 presence of remorse; the crime was motivated by significant life stress that built up over a long period  
24 of time; the inmate's age reduces the likelihood of recidivism; institutional activities indicating an  
25 enhanced ability to function within the law upon release; and a realistic plan for release.<sup>312</sup> However,  
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27 <sup>311</sup> Cal. Code Regs., tit. 15, § 2281, subd. (c).

28 <sup>312</sup> Cal. Code Regs., tit. 15, § 2281, subd. (d).

1 “[i]t is not the existence or nonexistence of suitability or unsuitability factors that forms the crux of the  
2 parole decision; the significant circumstance is how those factors interrelate to support a conclusion of  
3 current dangerousness to the public.”<sup>313</sup>

4 When applied to the evidence in this case, the suitability and unsuitability factors weigh heavily  
5 in favor of a finding Vanderhorst remained unsuitable for parole throughout his incarceration,  
6 regardless of his convictions for the Ellis Street crimes. Vanderhorst’s crimes were committed in an  
7 “especially heinous, atrocious, or cruel manner.”<sup>314</sup> The panel consistently characterized the Fell Street  
8 murder as an “especially heinous, atrocious, or cruel” crime. Multiple victims were attacked after  
9 Vanderhorst and Carter burst into the Fell Street flat. John was abused, held down on the ground at  
10 gunpoint, and then violently forced into a chair. Even though Allen was fleeing the scene, he was  
11 chased down and executed while Vanderhorst stood by waiting. The panel additionally noted that  
12 Vanderhorst’s conduct during the Fell Street murder demonstrated an “exceptionally callous disregard  
13 for human suffering.” During the Terra Vista crimes, eight victims were attacked, tied up, all of whom  
14 likely expected to be executed after the perpetrators callously covered their faces with sheets.  
15 Although Carbone minimized the Terra Vista robbery, the perpetrators’ actions during the Terra Vista  
16 crime were certainly sufficient to justify a finding those crimes were also committed in an “especially  
17 heinous, atrocious, or cruel manner.”<sup>315</sup>

18 Vanderhorst also exhibited serious “assaultive behavior at an early age.”<sup>316</sup> In his early teenage  
19 years, Vanderhorst committed multiple burglaries, robberies, and assaults, including the assault of a  
20 female student, who he spent the day looking for in order to retaliate. Vanderhorst was later observed

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22 <sup>313</sup> See, e.g. *In re Busch* (2016) 246 Cal.App.4th 953, 968.

23 <sup>314</sup> When determining whether a crime was committed in an “especially heinous, atrocious, or cruel  
24 manner” the panel considers whether: (1) multiple victims were attacked, injured, or killed in the same  
25 or separate incidents; (2) the offense was carried out in a dispassionate and calculated manner, such  
26 as an execution-style murder; (3) the victim was abused, defiled, or mutilated during or after the  
27 offense; and (4) the motivation for the crime was inexplicable or very trivial in relation to the offense.  
28 Cal. Code Regs., tit. 15, § 2801, subd. (c).

<sup>315</sup> *In re Dannenberg* (2005) 34 Cal.4th 1061, 1071, 1084, 1088, 1095 (crimes may be considered  
especially heinous, atrocious, or cruel when the violence or viciousness of the crime is “more than  
minimally necessary to convict [the inmate] of the offense for which he is confined”).

<sup>316</sup> Cal. Code Regs., tit. 15, § 2801, subd. (c).

1 to have a “tolerance for hurting others,” a “lack of empathy,” and insensitivity to others, after standing  
2 by while a teenage girl was kidnapped and raped. Consequently, Vanderhorst’s involvement in the  
3 violent attack and murder at Fell Street was not an isolated incident; it was the culmination of years of  
4 violent crimes ranging from robbery and burglary to kidnapping and rape.<sup>317</sup>

5 Vanderhorst’s mental state further supported a finding of unsuitability.<sup>318</sup> Vanderhorst was  
6 diagnosed with polysubstance abuse and Antisocial Personality Disorder. According to Carbone, the  
7 psychologist’s 2001 conclusion Vanderhorst’s substance abuse disorder was in “institutional  
8 remission” indicated long-standing participation in a treatment program, however, he appears to be  
9 mistaken because Vanderhorst’s substance abuse disorder was deemed in “institutional remission,”  
10 long before Vanderhorst began participating in N.A. In fact, Vanderhorst’s substance abuse disorder  
11 was deemed in institutional remission for years, despite Vanderhorst’s ongoing substance abuse,  
12 failure to participate in or benefit from N.A., and ongoing misconduct, including felony trafficking of a  
13 controlled substance. Similarly, some of the psychological evaluations indicated Vanderhorst’s  
14 Antisocial Personality Disorder was “improved,” however, it was not in remission, even in 2009, after  
15 Vanderhorst had spent 35 years in prison. Vanderhorst continued to exhibit antisocial behavior for  
16 most of the 44 years he was incarcerated, as evidenced by his record of continued institutional  
17 misconduct and rules violations. Both Vanderhorst’s Antisocial Personality Disorder and substance  
18 abuse related to his criminal behavior both before and during his incarceration and, therefore,  
19 reasonably supported a continued finding he remained unsuitable for parole.<sup>319</sup>

20 Vanderhorst’s history of serious rule violations further supported finding he remained unsuitable  
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24 <sup>317</sup> *In re Criscione* (2009) 180 Cal.App.4th 1446, 1460; *In re Shaputis* (2011) 53 Cal.App.4th 192, 219;  
Pen. Code, § 667.5, subds. (c)(9), (14), (18), (21) [defining violent felonies].

25 <sup>318</sup> Cal. Code Regs., tit. 15, § 2801, subd. (c).

26 <sup>319</sup> Compare to *In re Loresch* (2010) 183 Cal.App.4th 150, 162 (finding inmate suitable for parole based  
27 on more than 20 years of successful participation in Alcoholics Anonymous and N.A.) and *In re*  
28 *Lawrence* (2008) 44 Cal.4th 1181, 1225 (finding inmate suitable for parole based on more than 15  
years of consistently positive psychological evaluations) with *In re Criscione* (2009) 180 Cal.App.4th  
1446, 1460 (finding an inmate unsuitable for parole based on lack of rehabilitation).

1 for parole.<sup>320</sup> This factor measures an inmate's continued capacity for "antisocial behavior," which  
2 includes the inmate's ability and willingness to conform to social rules and norms. It is central to the  
3 panel's prediction on whether an inmate will adhere to the law and terms of parole if released on  
4 parole.<sup>321</sup> Vanderhorst was found guilty of serious rule violations in 1975, 1976, 1980, 1983, 1987,  
5 1990, 1992, and 2009. He had barely completed the sentence imposed for his 1992 felony conviction,  
6 when he sustained a serious rule violation on July 9, 1995, although that violation was ultimately  
7 reduced to an administrative offense.<sup>322</sup> Although no records regarding Vanderhorst's behavior were  
8 provided for the years following the 2001 parole hearing, the panel later noted Vanderhorst continued  
9 to use controlled substances through 2009 and, at some point in between the 2001 and 2009 hearing,  
10 suffered at least one serious rule violation for refusing to submit to a drug test.<sup>323</sup> According to  
11 Carbone's "general rule" that an inmate will not be considered for parole until at least five years after  
12 their last disciplinary issue, Vanderhorst's misconduct therefore would have precluded him from being  
13 found suitable until either 2001 or 2015, if not longer.<sup>324</sup>

14 Vanderhorst's systemic and sustained misconduct while incarcerated also supported finding  
15 Vanderhorst had persistent criminal thinking and remained willing to engage in the types of criminal  
16 conduct that precipitated his conviction for the Fell Street murder. Despite numerous prior interventions  
17 and various consequences, Vanderhorst continued to engage in criminal behavior, while out of custody  
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21 <sup>320</sup> Cal. Code Regs., tit. 15, § 2801, subd. (c); see *In re Reed* (2009) 171 Cal.App.4th 1071, 1085  
22 (finding minor rules violations supported finding of current dangerousness based on a demonstrated  
inability to follow society's laws and "predilection to relax the rules").

23 <sup>321</sup> *Ibid.*; accord *In re Montgomery* (2012) 208 Cal.App.4th 149, 162-164 (holding the inmate's continued  
24 misconduct while incarcerated indicating he would be unwilling or unable to adhere to the conditions of  
parole, particularly where the life offense was committed while the inmate was on probation).

25 <sup>322</sup> Vanderhorst was also reprimanded for various less serious offenses during this time, including twice  
in 1977, again in 1992, and the reduced CDC 115 from July 9, 1995.

26 <sup>323</sup> App. at p. 236.

27 <sup>324</sup> Cal. Code Regs., tit. 15, § 2801, subd. (c); *In re Montgomery* (2012) 208 Cal.App.4th 149, 162;  
28 compare to *In re Loresch* (2010) 183 Cal.App.4th 150, 162 (upholding grant of parole based on the  
inmate's 20 years of participation in N.A. meetings).

1 but subject to supervision, as well as during his time in custody.<sup>325</sup> Vanderhorst was first admonished  
2 for criminal conduct at the age of 11, in 1966, and then again in the following year, 1967. Vanderhorst  
3 was arrested for another burglary in 1969 and committed a battery against a female student shortly  
4 thereafter. In 1970, Vanderhorst was sent to a juvenile institution after charges of rape, robbery,  
5 kidnapping, and joyriding were sustained. A few months after he was released, in 1971, Vanderhorst  
6 was placed in the Youth Authority for several purse snatchings and robberies. Vanderhorst was  
7 released from the Youth Authority in 1973.

8 Yet, he was arrested again in September of 1973, May of 1974, and July of 1974, for various  
9 offenses, including burglary, robbery, possessing a dangerous weapon, and battery. Vanderhorst was  
10 still on probation for those offenses when he committed, and was arrested for, the Fell Street murder  
11 and two other unrelated robberies, in September of 1974.<sup>326</sup> Vanderhorst was then found in  
12 possession of controlled substances in 1976, 1983, 1987, and 1992, and committed a grand theft in  
13 1990. His disregard for institutional rules and laws, as well as his substance abuse, then continued  
14 through 2009.<sup>327</sup> Given the consistent assessments indicating drug use would increase Vanderhorst's  
15 potential for violence, it appears likely that his continued criminal conduct and drug use throughout the  
16 2000's precluded a finding of suitability until at least 2015.<sup>328</sup> Additionally, his continued disregard for  
17 social norms and rules further supported a conclusion that, if paroled, Vanderhorst would not adhere to  
18 laws or the terms of his release, both of which are central to the panel's consideration of an inmate's  
19 current dangerousness.

20 While Carbone testified Vanderhorst participated in programs, this does not appear to be a  
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22 <sup>325</sup> See *In re Fuentes* (2005) 135 Cal.App.4th 152, 163 (denying parole based, in part, on the inmate's  
23 failure to benefit from prior legal interventions).

24 <sup>326</sup> See *In re Montgomery* (2012) 208 Cal.App.4th 149, 162 (finding a nexus to current dangerousness  
25 where inmate committed crime while on probation and continued to engage in misconduct following his  
26 incarceration).

26 <sup>327</sup> App. at p. 236.

27 <sup>328</sup> Compare *In re Loresch* (2010) 183 Cal.App.4th 150, 161 (relying on the inmate's 20 years of  
28 abstinence and participation in recovery programs to find inmate suitable for parole); *In re Powell*  
(2010) 188 Cal.App.4th 1530, 1537 (suggesting parole be granted for an inmate who had 20 years of  
positive psychological evaluations).



1 situation where the inmate had “an exemplary record of conduct” or “participated in many years of  
2 rehabilitative programming specifically tailored to address the circumstances that led to [the]  
3 commission of the crime, including anger management programs as well as extensive psychological  
4 counseling.”<sup>329</sup> To the contrary, it appears Vanderhorst went long periods without pursuing the  
5 assistance of any self-help programs, and, even at the parole hearings in 2015, Vanderhorst remained  
6 unable to articulate what he learned from the classes he had participated in. Similarly, although  
7 Vanderhorst’s age weighed in favor of a suitability finding, an inmate’s age does not, in itself, establish  
8 suitability or that the inmate no longer poses a risk of danger.<sup>330</sup> Similarly, while Vanderhorst often had  
9 clear release plans, he continued to minimize or deny much of his antisocial behavior, which indicated  
10 a continued propensity for criminal conduct. In light of these circumstances, it is unlikely the panel  
11 would have concluded that, on balance, these positive factors outweighed the overwhelming evidence  
12 “tending to indicate” Vanderhorst remained unsuitable for parole.<sup>331</sup>

13       The question before the CalVCB is not whether the panel *could* have reached a different  
14 decision at one of Vanderhorst’s many parole hearings or *might* have balanced the factors in a manner  
15 that supported a finding of suitability. The question the CalVCB must resolve is only whether it is more  
16 likely than not, based on the evidence provided, that Vanderhorst would have been deemed suitable  
17 for parole had he not been convicted of the Ellis Street crimes. However, when the evidence is viewed  
18 in the context of the suitability and unsuitability factors, the Ellis Street convictions do not appear to tip  
19 the scales one way or the other. Instead, a review of the suitability factors only as they apply to  
20 Vanderhorst’s valid convictions for the Terra Vista and Fell Street crimes indicates the panel, more  
21 likely than not, would have found Vanderhorst unsuitable for parole even if he had not been convicted  
22 of, or denied his involvement in, the Ellis Street crimes. At a minimum, the evidence fails to  
23 demonstrate that the panel likely would have found Vanderhorst suitable for parole absent the Ellis

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25 <sup>329</sup> *In re Criscione* (2009) 180 Cal.App.4th 1446, 1459.

26 <sup>330</sup> *In re Shaputis* 53 Cal.4th at p. 1259 (finding 71-year-old inmate still lacked insight sufficient to be  
found suitable for parole).

27 <sup>331</sup> *In re Lawrence* (2008) 44 Cal.4th 1181, 1212 (holding the existence of suitability factors does not  
28 dictate the panel’s assessment; the panel’s inquiry is whether the evidence indicates current  
dangerousness).

1 Street crimes.

2 Therefore, while Vanderhorst invites CalVCB to speculate that he may have been granted  
3 parole had he not suffered the erroneous Ellis Street convictions, the CalVCB is not authorized to  
4 render a decision based on speculation or assumptions. The record here establishes Vanderhorst  
5 failed to accept responsibility for his history of antisocial behavior, express remorse for or acknowledge  
6 the impact his behavior had on the many victims of his crimes, or address the causative factors that  
7 led to his antisocial behavior. Without even considering the Ellis Street crimes, Vanderhorst's other  
8 crimes were "especially heinous, atrocious, or cruel," and he had a history of assaultive behavior at a  
9 young age. He did not have a significant period of positive participation in programs addressing his  
10 substance abuse or antisocial behavior, and continued, for many years, to engage in additional  
11 misconduct throughout his incarceration.

12 In light of these circumstances, Vanderhorst has failed to prove he, more likely than not, would  
13 have been found suitable for parole had he not been convicted of the Ellis Street crimes. While the  
14 panel *could* have opted to find Vanderhorst was suitable for parole, it did not, and its determination is  
15 amply supported by the broad discretion it is afforded to weigh the suitability and unsuitability factors  
16 when assessing whether an inmate continues to pose an unreasonable risk of danger. Vanderhorst,  
17 therefore, has failed to prove by a preponderance that he would have been granted parole but for his  
18 erroneous convictions for the Ellis Street crimes.

19 **IV. Vanderhorst Failed to Establish He was More Likely Than Not Denied Parole Based on the**  
20 **Ellis Street Convictions.**

21 Vanderhorst's primary contention is that the panel repeatedly found him unsuitable for parole  
22 based on his failure to take responsibility for the Ellis Street crimes. In support of this contention,  
23 Vanderhorst provided partial transcripts from parole hearings, a declaration and testimony from a  
24 parole law expert, and argument; however, none of these, taken separately or viewed together,  
25 support finding that Vanderhorst was, more likely than not, denied parole based on the Ellis Street  
26 convictions.

27 As a preliminary matter, the CalVCB notes the panel is not permitted to deny parole based  
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1 solely on an inmate's denial of a crime.<sup>332</sup> Second, Vanderhorst did not provide complete transcripts of  
2 the panel's reasons for denying parole.<sup>333</sup> As a result, Vanderhorst has failed to establish the panel  
3 relied on the Ellis Street crimes in reaching its decisions. Moreover, the only transcript that did include  
4 a complete copy of the reasons the panel denied parole, from the 2001 hearing, undermines his  
5 position. At that hearing, the panel denied parole for various reasons, unrelated to the Ellis Street  
6 crimes, including: the heinous nature of the Fell Street murder, Vanderhorst's criminal history, history  
7 of rules violations, continued substance abuse, failure to benefit from prior legal interventions, failure to  
8 sufficiently participate in self-help programs and vocational training, and continued reports indicating  
9 he would pose a "moderate degree" of threat if released. The panel noted, in particular, Vanderhorst's  
10 failure to understand the causative factors that led to the Fell Street crimes and his culpability for that  
11 crime.

12 Despite this, Vanderhorst asks the CalVCB to infer the panel denied Vanderhorst's requests for  
13 parole based on references to the Ellis Street crimes in the partial transcripts provided. However, the  
14 panel had almost unlimited discretion to weigh the factors in the manner it deemed fit and determine  
15 the importance "attached to any circumstance or combination of circumstances."<sup>334</sup> Regardless,  
16 Carbone contends he knows how the panel weighed the factors in Vanderhorst's case. He repeatedly  
17 asserts "Vanderhorst was denied parole ... for his denial of his 1974 rape conviction." He states, for  
18 example, "[t]here is no mistaking that Vanderhorst was denied parole for failing to accept responsibility  
19 for" the Ellis Street rape.<sup>335</sup> Despite admitting this is "not an exact science," Carbone concluded "to a  
20 degree of factual and legal certainty" that Vanderhorst was repeatedly denied parole "because of his  
21 denial, lack of an acceptance of responsibility, and a lack of remorse for the" Ellis Street rape and  
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23  
24 <sup>332</sup> Pen. Code, § 5011; Cal. Code Regs., tit. 15, § 2236.

25 <sup>333</sup> Vanderhorst did not provide transcripts of the panels' reasons for denying parole at the 1980, 1981,  
26 1984, 1985, 1987, 1990, 1992, 1995, or 2009 hearings. As for the remaining hearings, Vanderhorst  
27 provided only one page from the panels' multi-page explanations for its denial. Notably, the decisions  
28 were three pages in 1986, 12 pages in 2012, nine pages in 2015, and 13 pages in 2018.

<sup>334</sup> *In re Rosenkrantz* (2002) 29 Cal.4th 616, 626, 655; Cal. Code Regs., tit. 15, § 2801, subd. (b).

<sup>335</sup> App. at p. 108.

1 robbery.<sup>336</sup> However, Carbone's opinions appear to be based on speculation, statements taken out of  
2 context, and an exaggerated or mistaken understanding of the testimony.

3 **A. The Transcripts Provided from Vanderhorst's Parole Hearings Fail to Establish**  
4 **Vanderhorst was Denied Parole as a Result of the Ellis Street Convictions.**

5 In support of his claim that he was denied parole based on the Ellis Street convictions,  
6 Vanderhorst provided the reporter's transcripts from some of the parole hearings he attended during his  
7 incarceration. With the exception of the 2001 hearing, Vanderhorst omitted all or part of the transcripts  
8 containing the panel's explanation for its decision to deny Vanderhorst's request for parole.<sup>337</sup> The  
9 transcript of the panel's reasons for denying parole at the 2001 hearing were based on numerous  
10 circumstances unrelated to Vanderhorst's convictions for, or denial of, the Ellis Street crimes.  
11 Consequently, the transcripts provided do not support Vanderhorst's claim he was denied parole based  
12 on the Ellis Street convictions.

13 1. **Conduct of Parole Hearings and the Panel's Issuance of a Decision.**

14 Parole suitability determinations are made by the panel of commissioners who preside over a  
15 particular parole hearing.<sup>338</sup> In advance of the hearing, the panel reviews various documents. These  
16 documents include summaries of the inmate's criminal history, the life crime, the inmate's conduct  
17 during confinement, and the decision from the most recent parole hearing, as well as copies of  
18 comprehensive risk assessments (e.g., psychological evaluations), the transcript from the most recent  
19 parole hearing, and any other progress reports, letters of support, or other documents submitted by  
20 CDCR or the inmate for consideration at the hearing.<sup>339</sup>

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23 <sup>336</sup> App. at p. 113.

24 <sup>337</sup> After a parole hearing, the panel issues written decision sheets summarizing the reasons for its  
25 decision to deny parole. Vanderhorst did not provide the written decision sheets from any of the many  
26 parole hearings he attended during his incarceration.

27 <sup>338</sup> Pen. Code, §§ 3041, subd. (a), 3041.5, subd. (c), 3041.7.

28 <sup>339</sup> In addition to information inmates independently obtain from supporters, inmates can also select and  
submit additional documents for the panel's consideration from their CDCR file, which contains even  
more information about their criminal history, institutional conduct, assessments, and prior parole  
hearings.

1 At the parole hearing, the panel recites information from the materials it considered and asks  
2 the inmate questions. The inmate, who is represented by counsel, is not required to answer the panel's  
3 questions or discuss the facts of the underlying crime, and their attorney is entitled to make objections  
4 throughout the hearing. After the panel is finished asking questions and discussing the facts relevant to  
5 the statutorily prescribed suitability and unsuitability factors, the inmate is invited to make a statement  
6 on their own behalf. The panel and inmate also have the right to call other witnesses to testify. Lastly,  
7 the parties are afforded an opportunity to present closing statements. The district attorney speaks first,  
8 followed by the inmate's attorney, and then the inmate. If a victim, a victim's next of kin, or a victim's  
9 representative is present and wishes to make a statement, their statement is made last.

10 The panel then privately deliberates before orally announcing its decision to grant or deny  
11 parole and the reasons for its decision. The panel then also prepares a written "decision sheet"  
12 summarizing the reasons for its decision and the statements, documents, and recommendations it  
13 relied on.

14 2. Vanderhorst Failed to Prove the Panel Found Him Unsuitable for Parole based on  
15 the Ellis Street Convictions.

16 Vanderhorst did not provide a copy of the panel's written decision sheet for any of the many  
17 parole hearings he attended throughout his incarceration. Instead, with the exception of the 2001 parole  
18 hearing, he provided only selected portions of the transcripts from some of the parole hearings he  
19 attended. Many of the selected transcripts entirely omit the pages reflecting the panel's reasons for  
20 denying Vanderhorst's request for parole. To be specific, Vanderhorst provided partial transcripts from  
21 12 different parole hearings.<sup>340</sup> The transcripts from eight of those hearings did not include any part of  
22 the panel's reasons for denying parole: the 1981, 1984, 1986, 1987, 1990, 1992, 1995, 2009<sup>341</sup>  
23 hearings. As a result, Vanderhorst failed to provide *any* evidence of the reason he was denied parole at  
24

25  
26 <sup>340</sup> This does not include the 2005 hearing, as only the cover sheet for the transcript from the 2005  
27 hearing was provided.

28 <sup>341</sup> The transcript from the 2009 hearing included only introductory comments made *before* the panel  
announced the reasons for its decision to deny parole.

1 those hearings, and the preponderance standard cannot be satisfied by mere speculation about things  
2 that might have been said or conclusions that might have been made.

3 The four partial transcripts provided from the 1985, 2012, 2015, and 2018 hearings are equally  
4 unpersuasive. The transcript of the panel's 1985 decision begins with its discussion of the third reason  
5 for its decision to deny parole.<sup>342</sup> The transcript from the 2012 hearing included only the last page of the  
6 panel's ten-page explanation for its decision. The transcript from the 2015 hearing includes one page of  
7 the panel's nine-page explanation of the reasons for denying Vanderhorst parole. The transcript from  
8 the 2018 hearing, included only the last page of the panel's 13-page explanation of the reasons for its  
9 decision to deny parole. It is possible the omitted pages support Vanderhorst's position that he was  
10 denied parole based on the Ellis Street convictions; however, neither their omission nor their absence  
11 supports such an inference. Inferences cannot be based on mere speculation or conjecture.<sup>343</sup>

12 Inferences must be based on the evidence, and the evidence provided here does not support a  
13 conclusion the panel denied parole based on the Ellis Street convictions. None of the decision pages  
14 expressly included focus on Vanderhorst's convictions for or denial of the Ellis Street crimes. One of the  
15 three reasons for denying Vanderhorst parole at the time of the 1985 hearing was that he lacked a  
16 history of positive psychological evaluations. It is unknown what the panel cited in the other nine pages  
17 of its decision, but, on the one page provided from the 2012 hearing, the panel relied on the "heinous"  
18 nature of Allen's murder and Vanderhorst's continued criminal conduct throughout his incarceration. On  
19 the one page provided from the 2015 hearing, the panel cited Vanderhorst's lack of insight into his  
20 criminal conduct and substance abuse. On the single page provided from the panel's 2018 decision,  
21 the panel cited several concerns: Vanderhorst's credibility, history of substance abuse, substance  
22 abuse and criminal conduct during his incarceration, his comparatively short period of rehabilitation,  
23 and his criminal thinking and unstable history. Therefore, even though the panel also noted concerns  
24 about Vanderhorst's credibility and inconsistent statements, the partial transcripts provided do not  
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26 <sup>342</sup> Specifically, the panel noted Vanderhorst's psychological evaluation was "mostly" positive, but he  
27 did not have a history of positive evaluations.

28 <sup>343</sup> Evid. Code, § 600, subd. (b) (an inference is a deduction of fact that may logically and reasonably be  
drawn from another fact or group of facts found or otherwise established in the action).

1 support finding Vanderhorst was denied parole based on the Ellis Street crimes. To the contrary, these  
2 partial transcripts suggest the panel had several reasons for finding Vanderhorst remained unsuitable  
3 for parole.

4 This conclusion is confirmed by the only complete transcript Vanderhorst provided. At the 2001  
5 hearing, the panel recited several reasons for its decision to deny parole: Allen's murder was committed  
6 in an especially cruel manner, which demonstrated callous disregard for human suffering, Vanderhorst  
7 pleaded to three other crimes that he denied committing, Vanderhorst's long criminal history and the  
8 escalating pattern established by his continued substance abuse and misconduct during his  
9 confinement, Vanderhorst's failure to profit from prior legal interventions, Vanderhorst's failure to  
10 sufficiently participate in self-help programs (including N.A.), the psychological evaluations expressing  
11 concern about the relationship between Vanderhorst's substance abuse and criminal behavior,  
12 Vanderhorst's need for more vocational training, the psychologist's conclusion Vanderhorst continued  
13 to pose a "moderate" threat, and Vanderhorst's need to more fully understand the causative factors that  
14 led to his criminal conduct and culpability in those crimes. Thus, the only transcript that did include a  
15 complete transcript of the panel's reasons for denying parole also did not support finding the panel  
16 denied Vanderhorst's request for parole based on the Ellis Street crimes. Instead, there were numerous  
17 reasons, unrelated to the Ellis Street crimes, which supported finding Vanderhorst remained unsuitable  
18 for parole.

19 The transcripts provided either fail to establish why Vanderhorst was denied parole or, in the  
20 alternative, indicate there were numerous reasons, unrelated to the Ellis Street crimes, the panel found  
21 Vanderhorst remained unsuitable for parole. This conclusion is further consistent with the panel's  
22 obligation to weigh various factors in reaching its decision on whether an inmate continues to pose a  
23 risk of dangerousness to the public and therefore remains unsuitable for parole. Consequently, neither  
24 the omitted, partial, or one complete transcript provided here establish the panel, more likely than not,  
25 denied Vanderhorst's requests for parole based on his convictions for or denial of the Ellis Street  
26 convictions.

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1           **B. Carbone's Assessment of Vanderhorst's Case Lacks Credibility.**

2           Vanderhorst heavily relies on Carbone's testimony that Vanderhorst was repeatedly and  
3 "undeniably" unsuitable for parole because he denied committing the Ellis Street crimes. However,  
4 Carbone's claims are based on his assumptions about how much weight the panel assigned to various  
5 factors it considered. Carbone determines that the panel was more influenced by Vanderhorst's denial  
6 of and convictions for the Ellis Street crimes than any of the other evidence it had regarding  
7 Vanderhorst's suitability or unsuitability for parole. According to Carbone, the panel was preoccupied  
8 with the Ellis Street crimes despite characterizing the Fell Street murder as a particularly heinous  
9 crime. He ignores that Vanderhorst also denied the Terra Vista robbery, despite that crime being a  
10 significant escalation: from purse snatching to the robbery and assault of eight victims during an armed  
11 home invasion. He attributed the panel's finding Vanderhorst lacked insight into Vanderhorst's denial  
12 of the Ellis Street crimes, notwithstanding the plethora of reasons for finding Vanderhorst lacked  
13 insight into his criminal conduct.<sup>344</sup>

14           However, the weight the panel assigned to the Ellis Street crimes was solely within the  
15 discretion of the panel and cannot now be known or accurately computed based solely on a reading of  
16 the incomplete transcripts provided. Even a reviewing court is not permitted to decide *which* evidence  
17 at a parole hearing was most convincing. Instead, the courts have consistently recognized that "the  
18 precise manner" in which the evidence and specified factors "are considered and balanced lies within  
19 the discretion of the" panel. To make this even more complex, the courts recognize that the panel's  
20 decision is not predicated on static factors. "It is not the existence or nonexistence of suitability or  
21 unsuitability factors that forms the crux of the parole decision; the significant circumstance is how those  
22 factors interrelate to support a conclusion of current dangerousness to the public."<sup>345</sup> The record here  
23 simply does not show how the panel balanced the evidence before it, weighed the factors, or assessed  
24 the way they interrelate with each other and came up with an unsuitability finding that was, more likely  
25 than not, based on Vanderhorst's denial of the Ellis Street crimes.

26  
27 <sup>344</sup> See Cal. Code Regs., tit. 15, § 2281, subd. (c)(1) (noting crimes involving multiple victims may be  
considered particularly heinous, atrocious, or cruel).

28 <sup>345</sup> *In re Lawrence* (2008) 44 Cal.4th 1181, 1212; *In re Rozzo* (2009) 172 Cal.App.4th 40, 57.



1 As a result, although Carbone seems to suggest he can intuit the panel's reasoning, he simply  
2 cannot actually know, or accurately assess, how much weight the panel gave the Ellis Street crimes or  
3 Vanderhorst's continued claims of innocence when it rendered its decision. While the panel *may* have  
4 weighed the evidence in the manner proposed by Carbone, neither Carbone's assessment, nor the  
5 transcripts provided, support finding the panel actually did weigh the evidence in the manner proposed  
6 by Carbone. To the contrary, at each of the hearings, the panel mentioned Vanderhorst's other  
7 convictions, which suggests parole was not denied based only on the Ellis Street convictions. In 1980,  
8 the panel confirmed Vanderhorst knew Carter was armed when they entered the Fell Street flat. In  
9 1981, the panel noted Vanderhorst tended to "minimize or deny his offenses" and had substance  
10 abuse issues. At the 1984 hearing, the panel asked Vanderhorst about the Fell Street murder and  
11 quoted the psychological evaluation, which indicated Vanderhorst had made no significant changes,  
12 and none should be expected.

13 When asked about the Fell Street murder in 1985, Vanderhorst told the panel he was only  
14 guilty because he was present. In 1986, Vanderhorst was asked, specifically, about the Terra Vista  
15 crimes. In 1987, the panel asked Vanderhorst about the Fell Street murder and confirmed he denied  
16 both the Ellis Street *and* Terra Vista crimes. In 1990, the panel noted that much of what Vanderhorst  
17 said about the Fell Street murder was consistently contradicted. In 1992, Vanderhorst maintained he  
18 was only guilty of the Fell Street murder because he was "there" when the murder occurred. In 1995,  
19 the panel asked Vanderhorst about *both* the Ellis Street and the Terra Vista crimes. In 2001, the panel  
20 found Vanderhorst unsuitable for parole, noting the heinous nature of the Fell Street murder and  
21 Vanderhorst's criminal history.

22 In 2009, the panel noted Vanderhorst denied *both* the Ellis Street and Terra Vista crimes, but it  
23 had to accept he was convicted of those crimes. In 2012, the panel relied, at least in part, on  
24 Vanderhorst's continued criminal behavior during his incarceration. In 2015, the panel noted  
25 Vanderhorst told a psychologist, during a recent assessment, that he shot Allen and raped Gail but  
26 later recanted. Vanderhorst did not identify John as one of the people victimized during the Fell Street  
27 murder, despite being identified as one of John's attackers. In 2018, the panel expressed concerns  
28 about Vanderhorst's credibility, noting Vanderhorst "had a history of changing his explanation of the

1 crimes,” including his explanation of the Fell Street murder. Although the panel at each hearing  
2 considered the Ellis Street crimes, as it was required to, the transcripts do not support Carbone’s claim  
3 that the panels afforded Vanderhorst’s denial of the Ellis Street crimes more weight than the other  
4 factors and considerations relevant to their determination of whether Vanderhorst was suitable for  
5 parole.

6 Moreover, Carbone’s opinions appear to be based on speculation, statements taken out of  
7 context, and an exaggerated or mistaken understanding of the transcripts. For example, citing the  
8 transcripts from the 1980 hearing, Carbone alleges that, “[i]n denying his parole, the commissioners  
9 reasoned, ‘this is not a hearing for the finding of factual innocence, and we have to accept the fact that  
10 he is guilty.’”<sup>346</sup> However, the quoted comment was actually made during an exchange with  
11 Vanderhorst and his counsel, not when the panel announced the reasons for its finding of unsuitability.  
12 Carbone presumes the panel presiding over the 1981 hearing inferred Vanderhorst harbored a “pattern  
13 of criminogenic thinking” based on his denial of the Ellis Street rape. However, he is relying on the  
14 panel’s reference to a statement made in the psychological evaluation, referencing Vanderhorst’s  
15 attitude towards and tendency to “minimize or deny his offenses,” generally, not just the Ellis Street  
16 crimes.<sup>347</sup>

17 Carbone asserted the Ellis Street rape was “relevant” to the 1984 finding of unsuitability  
18 because the panel was “incredulous” about Vanderhorst’s denial of the Ellis Street rape; however, the  
19 panel was actually required to treat the Ellis Street rape, along with all of Vanderhorst’s other  
20 convictions, as relevant. The panel must consider all relevant evidence, including the nature of the  
21 commitment offenses and Vanderhorst’s attitude towards them.<sup>348</sup> Carbone speculates that  
22 generalized statements from the 1984 and 1985 hearings about Vanderhorst’s “denial” and “attitude of  
23 blame,” evidenced the panel’s reliance on Vanderhorst’s denial of the Ellis Street rape and robbery.<sup>349</sup>  
24 Yet, Carbone fails to reconcile this claim with reports detailing Vanderhorst’s long-standing pattern of

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25 <sup>346</sup> App. at p. 108.

26 <sup>347</sup> App. at p. 108.

27 <sup>348</sup> Cal. Code Regs., tit. 15, § 2281, subds. (b)-(c).

28 <sup>349</sup> App. at p. 109.

1 minimizing his criminal activity, denying his involvement, and blaming others for his circumstances,  
2 behavior that dated back to Vanderhorst standing by while a young woman was kidnapped and raped.  
3 Carbone notes the panel asked Vanderhorst why he would plead guilty to crimes he did not commit at  
4 the 1980, 1981, 1984, 1985, 1990, and 1992 parole board hearings, and, based on these exchanges,  
5 infers the panel contravened the statutory prohibition against finding an inmate unsuitable based on  
6 their refusal to admit guilt. However, this inference is not supported by any evidence.

7 At times, Carbone attributed the panel's statements to the Ellis Street crimes, despite the panel  
8 also referencing Vanderhorst's convictions for the Terra Vista and Fell Street crimes. For example, at  
9 the 1987 hearing, Vanderhorst said the police report incorrectly indicated he was identified as the man  
10 who knocked on the door at both Ellis Street and Terra Vista. According to Carbone, this exchange  
11 "framed Vanderhorst as a convicted, unrepentant rapist who chose to wrongfully blame [a] praise-  
12 worthy law enforcement officer." However, Carbone failed to acknowledge that the panel was asking  
13 about both the Ellis Street *and Terra Vista* crimes, which Vanderhorst also denied committing. When  
14 asked about this oversight at the hearing, Carbone dismissed the possibility the panels relied on  
15 Vanderhorst's denial of the Terra Vista crimes, citing concerns unique to the denial of a "stranger  
16 rape," despite the transcripts indicating the panel was interested in *both* the Ellis Street *and* Terra Vista  
17 crimes.

18 Carbone said that, in 1990, Vanderhorst was denied parole after the panel again asked him  
19 why he pleaded guilty to crimes he did not commit, "specifically referring to the 1974 robbery/rape."  
20 However, Carbone cites an exchange related to both the Fell Street murder and the Ellis Street crimes,  
21 and, after this exchange, the transcript jumps to the panel's comment that Vanderhorst's guilty plea  
22 reflected negatively on Vanderhorst's current claim he did not commit the "robberies," e.g., the Ellis  
23 Street *and* Terra Vista crimes.<sup>350</sup> Carbone concludes his critique of the 1990 hearing by saying: "In  
24 denying parole, the panel noted 'lack of insight' as a primary concern." However, he cites to a page  
25 taken out of context, which in actuality appears to be referencing Vanderhorst's substance abuse  
26 issues: "I understand your position with regard to drug use and other things, but look at the clinicians  
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28 <sup>350</sup> App. at pp. 110-111, 202-203.

1 that we're [*sic*] saying, ... they have concern with regard to your lack of insight, your propensity to use  
2 drugs."<sup>351</sup>

3         These issues are compounded by Vanderhorst's choice to provide only selected portions of the  
4 transcripts, omitting important or relevant exchanges. For example, Carbone alleges that, at the 1992  
5 hearing, the panel asked Vanderhorst "about comments in psychological notes that he may have had a  
6 sexual preoccupation and whether he had a psychosexual problem." Both of which Vanderhorst  
7 apparently denied. However, Vanderhorst did not provide the referenced portion of the transcript, nor  
8 the cited psychological evaluation, and, consequently, the CalVCB does not know what the notes were  
9 made in reference to, e.g., Vanderhorst's prior sustained rape finding, sexual issues arising during his  
10 incarceration, or the Ellis Street rape. As a result, very little weight can be afforded Carbone's  
11 conclusion that Vanderhorst's denials during this exchange left Vanderhorst "vulnerable to criticism  
12 that denial of his criminal proclivities would stunt [his] rehabilitation," as Vanderhorst did not provide  
13 transcripts to afford context or support for Carbone's conclusion.

14         Carbone observes that in 1995, Vanderhorst was asked why he denied committing the  
15 "robberies and rape," despite being identified as one of the perpetrators in the Ellis Street and Terra  
16 Vista crimes. Carbone seems to be suggesting that the panel is focused on the Ellis Street rape,  
17 despite their repeated reference to the robberies, plural, which indicates the panel was asking about  
18 both the Ellis Street *and* Terra Vista crimes. Then, in 2001, the panel said Vanderhorst "need[ed] more  
19 time to gain that programming. He needs to more fully participate in self-help and therapy  
20 programming and N.A. in particular," which Carbone attributed to Vanderhorst's denial of the Ellis  
21 Street rape. Carbone overlooks that the conversation about Vanderhorst's need for additional  
22 programming was actually voiced after the panel noted he sustained an additional sentence following  
23 his 1992 conviction for trafficking cocaine and appeared to need a "longer period of observation,  
24 evaluation, and treatment."<sup>352</sup>

25         Carbone opines Vanderhorst was found unsuitable for parole in 2009 based on Vanderhorst's  
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27 <sup>351</sup> App. at p. 207.

28 <sup>352</sup> Hrg. Exh. 7 at p. 49.

1 “lack of remorse ... for the rape as well as his general denial.”<sup>353</sup> However, in support of his claim,  
2 Carbone cites a comment the panel made *before* it announced the considerations “*which weigh[ed]*  
3 *heavily against suitability*.”<sup>354</sup> Notably, the transcripts of the considerations the panel found “weighed  
4 heavily against suitability” were not provided.<sup>355</sup> Instead, the transcript abruptly ends after the panel  
5 acknowledges Vanderhorst’s denial of the Ellis Street and Terra Vista crimes and advises Vanderhorst  
6 it is unable to retry the case, which Carbone indicated is a boilerplate advisement.

7 Carbone highlighted that, in 2012, the panel observed, for the first time, that Vanderhorst  
8 exhibited “signs of emerging remorse for the murder conviction” but nonetheless found Vanderhorst  
9 unsuitable for parole, suggesting Vanderhorst’s circumstances were otherwise supportive of a  
10 suitability finding.<sup>356</sup> However, at that hearing, Vanderhorst told the panel: “whether I tell you I pulled  
11 the trigger, if I didn’t pull the trigger, the time is going to be the same.” Thus, Vanderhorst was, again,  
12 focused on blaming others instead of accepting responsibility for his crimes and incarceration. Based  
13 on comments by the panel and District Attorney’s Office, Carbone attributes the panel’s 2015 finding of  
14 unsuitability to the Ellis Street rape, noting the panel relied on Vanderhorst’s lack of insight and need to  
15 focus on “internal, not external factors.”<sup>357</sup> However, only one page from the multi-page decision is  
16 provided and Carbone references the portion of that page, which appears to be focused on  
17 Vanderhorst’s criminality and substance abuse, not his insight into the crimes he denied committing.<sup>358</sup>  
18 Carbone observes that, in 2018, Vanderhorst changed his story, and instead tried admitting to the Ellis  
19 Street and Terra Vista crimes to obtain parole, but he then criticizes the panel’s finding of unsuitability  
20 based, in part, on Vanderhorst’s lack of credibility and inconsistencies.<sup>359</sup>

21 Carbone’s assessment focuses on references to the Ellis Street crimes at the expense of a  
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23 <sup>353</sup> App. at p. 111.

24 <sup>354</sup> App. at p. 238.

25 <sup>355</sup> App. at p. 238.

26 <sup>356</sup> App. at p. 112.

27 <sup>357</sup> App. at pp. 112, 253-254.

28 <sup>358</sup> App. at p. 258.

<sup>359</sup> App. at p. 271.

1 more accurate and thorough explanation of how the panel employed the suitability and unsuitability  
2 factors at each hearing. While the panel likely did, and in fact was required to, consider Vanderhorst's  
3 denial of the Ellis Street crimes, Carbone's assertions do not provide a credible basis for concluding  
4 that, absent the Ellis Street convictions, Vanderhorst would have been released on parole. While the  
5 panel *may* have afforded Vanderhorst's denial of the Ellis Street convictions the weight and meaning  
6 assigned by Carbone, Carbone's anecdotal assessment and generalized statements do not establish,  
7 by a preponderance of the evidence, Vanderhorst would have been paroled but for the Ellis Street  
8 convictions. To the contrary, the passages relied on by Carbone evidence a systemic concern about  
9 Vanderhorst's suitability for parole based on his valid convictions, erroneous convictions, his criminal  
10 history, and his continued institutional misconduct and substance abuse.

11 Finally, it bears noting, Carbone did not provide any studies, case law, or legal analysis to  
12 support his assessment of Vanderhorst's case and made sweeping generalizations that failed to  
13 account for the many variables at issue when considering an inmate's release on parole. He did not,  
14 for example, address, analyze, or discuss the growing body of case law regarding the effect a claim of  
15 innocence has on an inmate's credibility and how a claim of innocence informs the panel's decision.  
16 Instead, his assessments appeared to center on broad generalizations about how he believes the  
17 panel perceives certain information. Yet, he did not allege he had any first-hand knowledge to support  
18 these claims. He did not suggest he conducted a study of cases to reach these general conclusions,  
19 interviewed prior commissioners to obtain insider information about their perceptions of an inmate's  
20 claims of innocence, nor did he refer to scientific studies conducted by qualified professionals, which  
21 support his position. He similarly did not address, without prompting from the hearing officer at the  
22 hearing, that Vanderhorst denied more than just the Ellis Street crimes and, even then, declined to  
23 concede the panel would have also considered Vanderhorst's denial of the Terra Vista crime, which  
24 was a significant and violent crime in its own right.

25 It also bears noting, Carbone failed completely to acknowledge that, even if Vanderhorst was  
26 granted parole, that determination would have been subject to review by the Board of Parole Hearings  
27 and Governor. Instead, his silence indicates an assumption that these reviews would not have yielded  
28 a decision modifying or reversing the panel's grant of parole. Despite having extensive experience in

1 parole law and representing inmates at parole hearings, Carbone's credibility, and consequently his  
2 assessment of Vanderhorst's case must further be questioned in light of his failure to account for many  
3 varied and subjective factors taken into consideration when making the challenging prediction the  
4 panel is charged with making: whether the inmate would pose a risk of danger to society if released on  
5 parole.

6 Therefore, while his assessment of Vanderhorst's case lacks credibility because it is based on  
7 a misunderstanding of the transcripts, statements taken out of context, or an exaggerated assessment  
8 of comments that do not support his claims, his assessment also lacks credibility based on his failure  
9 to account for the legal implications of his claims, well-settled case law governing the panel's  
10 assessment of an inmate who claims to be innocent, any existing scientific or case studies that support  
11 his claims, and the many relevant variables he was likely aware of but failed to either consider or  
12 acknowledge.

13 **C. The Duration of Vanderhorst's Incarceration Does Not Support an Inference that, But**  
14 **For the Ellis Street Crimes, He Would Have Been Released on Parole.**

15 Carbone repeatedly claimed the duration of Vanderhorst's sentence supported an inference he  
16 was denied parole based on the Ellis Street convictions because the sentence he served was longer  
17 than the sentence served by other inmates. At the outset, it is worth noting, no evidence was provided  
18 in support of this conclusion. For example, no studies were provided to establish the average sentence  
19 for inmates with similar backgrounds and behavior. Carbone and Vanderhorst contend that the  
20 average "lifer" serves either 15, 18, 21, or 23 years. However, no support was provided for this claim  
21 beyond a CDCR report indicating inmates serving a life sentence served an average of 23 years based  
22 on a study of inmates released between 2016 and 2018.

23 Neither Vanderhorst nor Carbone tied these statistics to Vanderhorst's claim. For example, no  
24 evidence was provided to support a finding that, but for the Ellis Street convictions, Vanderhorst was  
25 the type of inmate who would have served the average sentence. While Carbone made a conclusory  
26 assertion that, absent the Ellis Street crimes, Vanderhorst would have been "more" in the category of  
27 an "average lifer," no evidence was provided to support such a conclusion. For instance, Carbone did  
28 not provide any evidence to support a finding that, absent his convictions for the Ellis Street crimes,

1 Vanderhorst actually was an average lifer, who would have been found suitable after an “average”  
2 prison term. He did not provide statistics, studies, or other evidence establishing the average lifer had  
3 convictions and a criminal history akin to Vanderhorst, Antisocial Personality Disorder, a history of  
4 substance abuse, and several years of institutional misconduct, including an intervening felony  
5 conviction. Consequently, the evidence does not support an inference that Vanderhorst served a  
6 longer sentence than other similar inmates as a result of his convictions for the Ellis Street crimes.

7 More importantly, however, this argument fails as a matter of law. The length of an inmate’s  
8 incarceration is not a basis for finding an inmate suitable for parole, even when the duration of an  
9 inmate’s incarceration exceeds the terms generally served by other individuals who were convicted of  
10 similar offenses.<sup>360</sup> In fact, Penal Code section 3041 formerly provided that release dates should be  
11 set in a manner that provided uniform terms for offenses of similar gravity and magnitude, however,  
12 that provision has since been removed.<sup>361</sup> Case law has similarly recognized that parole suitability  
13 determinations must be based on an assessment of an inmate’s current dangerousness, not the  
14 duration of their incarceration or severity of one inmate’s offense when compared to another.<sup>362</sup>

15 The length of his incarceration, therefore, does not support an inference Vanderhorst would  
16 have been free from custody but for his erroneous convictions for the Ellis Street crimes.

17 **D. Vanderhorst Failed to Address the Governor’s Role in Granting Parole.**

18 Even if an inmate is granted parole by the panel following their parole hearing, inmates are not  
19 released for a period of time, which Carbone estimated to be about 155 days.<sup>363</sup> During that time, the  
20 Governor’s Office performs its own review and has the option to reverse the panel’s decision and thus  
21

22 \_\_\_\_\_  
23 <sup>360</sup> Cal. Code Regs., tit. 15, § 2281, subd. (a); see also *In re Mims* (2012) 203 Cal.App.4th 478, 487  
24 (“[r]egardless of the length of time served, a life prisoner shall be ... denied parole if in the judgment of  
the panel the prisoner will pose an unreasonable risk of danger to society if released from prison”).

25 <sup>361</sup> Pen. Code, § 3041, subd. (a); See 2013 Cal. Legis. Serv. Ch. 312 (S.B. 260) (adding requirement  
26 for consideration of uniform terms); 2015 Cal. Legis. Serv. Ch. 470 (S.B. 230) (removing requirement  
for consideration of uniform terms).

27 <sup>362</sup> *In re Lawrence* (2008) 44 Cal.4th 1181, 1221; *In re Dannenberg* (2005) 34 Cal.4th 1061, 1070.

28 <sup>363</sup> Although Carbone estimated inmates are released about 155 days after they are granted parole, he  
provided no support for this assertion.



1 prevent the inmate from being released.<sup>364</sup>

2 According to statistical data from the Board of Parole Hearings, in 2016, the panel granted  
3 parole in approximately 30% of cases, and the governor reversed approximately 13.5 percent of those  
4 cases, meaning only 16.5% of parole hearings actually resulted in release. Even Carbone conceded  
5 that parole is “rarely” granted. Yet, in this claim, Vanderhorst asks the CalVCB to conclude that, but for  
6 his erroneous convictions, at one of his parole hearings, the panel would have granted Vanderhorst  
7 parole, the Governor would have approved of the grant of parole, and that Vanderhorst’s release date  
8 should then be calculated by adding 155 days to the days Vanderhorst contends he would have been  
9 granted parole.

10 Yet, Vanderhorst fails to provide any support for a finding the Governor would have supported a  
11 finding he was suitable for release. His arguments fail, altogether, to account for the role of the  
12 Governor’s review, and he makes no showing, whatsoever, that even if he was granted parole, the  
13 Governor would have upheld the grant of release. Consequently, Vanderhorst has also failed to  
14 establish that, even if he was one of the “rare” inmates who obtained parole at one of his parole  
15 hearings, the grant of parole would have been affirmed by the Governor’s Office.

16 In other words, Vanderhorst’s argument requests the CalVCB make several inferential leaps  
17 that are not supported by the evidence provided.

18 **V. But For His Erroneous Rape Conviction, Vanderhorst Would Have Been Released on**  
19 **February 5, 2020.**

20 It is undisputed that Vanderhorst was not released on February 5, 2020, because of his  
21 erroneous conviction for the Ellis Street rape. It is also undisputed that this hold was lifted on February  
22 6, 2020, and Vanderhorst was released that same day. The record therefore establishes, including both  
23 the partial day the hold was placed and the day of Vanderhorst’s release, Vanderhorst spent two  
24 additional days in custody as the result of his erroneous convictions: February 5 and 6, 2020. During  
25 that time, Vanderhorst would have been free from custody but for his erroneous convictions for the Ellis  
26 Street crimes. Vanderhorst is therefore entitled to compensation in the amount of \$280, which includes  
27 \_\_\_\_\_

28 <sup>364</sup> See generally *In re Rosenkrantz* (2002) 29 Cal.4th 616, 626, 651-652.

1 \$140 for each day he would have been free from custody but for his erroneous convictions, e.g., for  
2 February 5 and 6, 2020.

### 3 **Conclusion**

4 The CalVCB agrees with the Attorney General's Office that no compensation is  
5 available for the term of imprisonment attributable to his conviction for the Fell Street murder and that  
6 Vanderhorst's arguments he would have been released on parole but for his erroneous convictions are  
7 too speculative to make the required showing by a preponderance of the evidence. However, the  
8 CalVCB finds Vanderhorst has established he was erroneously imprisoned for two days, February 5  
9 and 6, 2020, as the result of a hold stemming from his conviction for the Ellis Street rape. The CalVCB  
10 therefore recommends Vanderhorst be compensated in the amount of \$280, which includes \$140 for  
11 each day of imprisonment solely attributable to the erroneous Ellis Street convictions.

12 Accordingly, the undersigned hearing officer recommends the CalVCB approve payment to  
13 Vanderhorst in the amount of \$280 as indemnification for the injury he sustained through his erroneous  
14 convictions for the Ellis Street robbery and rape in San Francisco Superior Court case number  
15 2514631 based on the two days of imprisonment solely attributable to his erroneous convictions, if  
16 sufficient funds are available upon appropriation by the Legislature.

17  
18 Date: February 5, 2025

*Kristen Sellers* on behalf of  
Caitlin Christian, Hearing Officer  
California Victim Compensation Board