

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

<p>JULIO BONILLA, Petitioner, vs. IOWA BOARD OF PAROLE, Respondent.</p>	<p>Civil Case No. _____</p> <p>PETITION FOR JUDICIAL REVIEW OF AGENCY ACTION PURSUANT TO IOWA CODE §17A.19</p>
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COMES NOW Petitioner, Julio Bonilla, and by and through his attorneys Rita Bettis, Joseph Fraioli, and Angela Campbell, respectfully states the following for his Petition for Judicial Review of Agency Action:

INTRODUCTION: CHALLENGED AGENCY ACTION

Petitioner files this action, pursuant to Iowa Code §17A.19 (2015), seeking judicial review of action taken by the Iowa Board of Parole (“Board”). In 2005, Petitioner was convicted of Kidnapping in the First Degree for a crime committed in 2002, when he was only sixteen years old. Petitioner was sentenced to life incarceration without the possibility of parole (“LWOP”).

Following the elimination of mandatory LWOP for juvenile offenders convicted of non-homicide offenses in *Graham v. Florida*, 132 S.Ct. 2455 (2010), and *Bonilla v. State*, 791 N.W.2d 697 (Iowa 2010), applying

Graham retroactively to Petitioner, Petitioner was resentenced in 2011 to life incarceration *with* the possibility of parole. To date, Petitioner has served over a decade in prison. Throughout his term of incarceration, Petitioner has had success in rehabilitating and has had minimal recent disciplinary issues. Petitioner has also participated in programming, such as the “Alternative to Violence” program, where he serves as a group facilitator. Petitioner desires to enroll in additional programming, but has not been able to.

The Board has granted Petitioner some procedures not required by current Board regulations, such as permitting counsel to assist at parole proceedings (albeit pro bono, and not at state expense). However, there is no guarantee such a procedure will be provided in future proceedings; and further, that procedure was itself deficient, and there remain various additional constitutional deficiencies in the current parole review procedure for juvenile offenders that deprived Petitioner of a meaningful opportunity for release.

Importantly, this Petition does not advance the right of Petitioner or any particular inmate to actually be paroled, nor does it ask the Court to find the Board erred in denying release in this case. Rather, it seeks constitutionally necessary changes in the process that the Board uses to evaluate inmates who were convicted as children.

As recent developments in cruel and unusual punishment case law in both federal and Iowa courts make clear, juveniles are constitutionally different from adults. Inmates convicted as juveniles require not only individualized sentencing procedures at the front end, but also additional protections and procedures at the back end surrounding the parole process, including access to rehabilitative programs while incarcerated that are required to be completed for parole, to ensure their right to a “meaningful opportunity for release.” State legislatures across the country are beginning to enact parole reforms in the wake of these case developments to ensure that parole procedures are constitutionally adequate. These reforms reflect the “evolving standards of decency that mark the progress of a maturing society.” *Atkins v. Virginia*, 536 U.S. 304 (2002); *Trop v. Dulles*, 356 U.S. 86, 101 (1958). In Iowa, however, parole procedures for juvenile offenders remain unchanged.

In its most recent decision on juvenile sentencing, the Iowa Supreme Court in *State v. Sweet* held that LWOP for juvenile offenders constitutes cruel and unusual punishment under article 1, section 17 of the Iowa Constitution. *State v. Sweet*, 879 N.W.2d 811, 839 (Iowa 2016). In so doing, the Court recognized that “[t]here is . . . plenty of time to make . . . determinations later for juvenile offenders” whether they have reached a

level of maturity and rehabilitation warranting parole, and that “[t]he parole board will be better able to discern whether the offender is irreparably corrupt after time has passed, *after opportunities for maturation and rehabilitation have been provided, and after a record of success or failure in the rehabilitative process is available.*” *Id.* at 838–39 (emphasis added).

In light of the required protections afforded juvenile offenders under article 1, sections 9, 10, and 17 of the Iowa Constitution and the Eighth and Fourteenth Amendments to the U.S. Constitution, Petitioner filed nine separate motions on June 17, 2016, each pertaining to a separate procedural protection which has been denied but which is necessary to to ensure him a meaningful opportunity for release. The Board refused to consider any of the nine motions raised by Petitioner prior to his paper file review. The Petitioner appealed to the Board, and the Board issued its final agency action on August 24, 2016 denying Petitioner’s appeal. Thus, the Board’s parole procedures, and regulations implementing those procedures, remain constitutionally inadequate under article 1, sections 9, 10, and 17 of the Iowa Constitution and the Eighth and Fourteenth Amendments to the U.S. Constitution.

JURISDICTION AND VENUE

1. The Court has jurisdiction to resolve this matter pursuant to Iowa Code section 17A.19 (judicial review of agency action). *See Frazee v. Iowa Bd. of Parole*, 248 N.W.2d 80, 82 (Iowa 1976) (holding that the Iowa Board of Parole is an “agency” for purposes of section 17A, and further holding that parole revocation decisions constitute “agency action”); *Johnson v. Dep’t of Corrections*, 635 N.W.2d 487, 489 (Iowa Ct. App. 2001) (holding that the denial of parole and utilizing the Iowa Department of Corrections’ internal parole procedures are necessary exhaustive remedies before filing a petition for judicial review section 17A); *see also Miller v. Fayram*, No. C12–0064–LRR, 2013 WL 440977, at *3 (N.D. Iowa, Feb. 5, 2013) (refusing to consider petitioner’s claims against the Board of Parole challenging the inadequacy of paper-file reviews for failure to exhaust administrative remedies under section 17A, and citing several Iowa cases in support of its conclusion). Specifically, Petitioner has exhausted all adequate administrative remedies and is adversely affected by final agency action. Iowa Code § 17A.19(1).
2. Venue in Polk County District Court is proper pursuant to Iowa Code section 17A.19(2).

ALLEGATIONS & GROUNDS ON WHICH RELIEF IS SOUGHT

3. The Respondent agency is the Iowa Board of Parole, established by Iowa Code section 904A.1.
4. The duties of the Board consist of, among other things, interviewing inmates for the purpose of making parole and work release determinations and evaluating parole and work release programs. Iowa Code § 904A.4.
5. Evolving United States Supreme Court and Iowa Supreme Court case law have recognized greater protections under the Eighth Amendment to the United States Constitution and article 1, section 17 of the Iowa Constitution, respectively, for juveniles convicted of crimes. *See, e.g., Graham v. Florida*, 560 U.S. 48, 75 (2012) (“What the State must do . . . is give defendants like Graham some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation.”); *Miller v. Alabama*, 132 S.Ct. 2455, 2469 (2012) (same); *State v. Null*, 836 N.W.2d 41, 71 (Iowa 2013) (“The prospect of geriatric release, if one is to be afforded the opportunity for release at all, does not provide a ‘meaningful opportunity’ to demonstrate the ‘maturity and rehabilitation’ required to obtain release and reenter society . . .”).

6. In *State v. Louisell*, the Iowa Supreme Court reiterated “that under both the United States Constitution and the Iowa Constitution, juveniles convicted of crimes must be afforded a ‘meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation’—if a sentencing judge, exercising discretion, determines parole should be available.” 865 N.W.2d 590, 602 (Iowa 2015). “To be sure,” the court continued, “a meaningful opportunity must be realistic.” *Id.*
7. In the most recent decision on this issue, the United States Supreme Court in *Montgomery v. Louisiana* acknowledged that parole, like sentencing, falls within the ambit of the Eighth Amendment for juvenile offenders. 136 S.Ct. 718, 736 (2016). “Allowing those offenders to be considered for parole ensures that juveniles whose crimes reflected only transient immaturity—and who have since matured—will not be forced to serve a disproportionate sentence in violation of the Eighth Amendment.” *Id.* The Court linked the mandates of *Miller* not only to the mandatory nature of the sentence, but to the expected *length* of that sentence; the actual time served must not be “disproportionate” to both the offender and the extent to which they have demonstrated maturity and rehabilitation. *See id.* In

State v. Sweet, issued in May 2016, the Iowa Supreme Court recognized the “likely impossible” task before district courts when life without parole was preserved as a sentencing option for juveniles—determining at an initial sentencing hearing, while the offender is still so young, whether he or she might be incapable of rehabilitation. 879 N.W.2d 811, 836–37 (Iowa 2016). The Court explained that even a trial and sentencing structure for juvenile offenders that tracks the current framework utilized in the death penalty context is insufficient because “the trial court simply will not have adequate information and the risk of error is unacceptably high.” *Id.* at 837. Rather, the Court continued, “[t]here is . . . plenty of time to make such determinations later for juvenile offenders . . . who are sentenced to life in prison.” *Id.* at 838.

8. Importantly, in *Sweet* the Court directed the Board of Parole to accept this responsibility instead of the district courts: “The parole board will be better able to discern whether the offender is irreparably corrupt after time has passed, after opportunities for maturation and rehabilitation have been provided, and after a record of success or failure in the rehabilitative process is available.” *Id.* at 839.

9. The resulting legal mandate of these cases require that the Board, in carrying out its duties, must do so in a way that does not deprive juvenile offenders of their right for those parole considerations to be *meaningful* as required by the United States Constitution and article I, sections 9, 10, and 17 of the Iowa Constitution.
10. On June 17, 2016, Petitioner filed nine motions before the Board, as follows:
 - (1) motion for the appointment of counsel;
 - (2) motion for an independent psychological evaluation;
 - (3) motion for an in-person parole review hearing;
 - (4) motion to present evidence of rehabilitation;
 - (5) motion for access to all information to be used by the Board in making its decision and to challenge such information;
 - (6) motion to exclude any information in support of continued incarceration that is not verifiable and was not subjected to a factfinding procedure at the time it was obtained;
 - (7) motion for the proper consideration of mitigating factors;
 - (8) motion for access to treatment and programming; and
 - (9) motion for procedures to ensure future meaningful review in the event of denial.

Petitioner's requests made through these motions comprise the minimum necessary procedural protections and safeguards required under the Eighth and Fourteenth Amendments to the United States Constitution and article 1, sections 9, 10, and 17 of the Iowa Constitution to provide him a meaningful opportunity for release and to ensure that his term of incarceration is not unconstitutionally disproportionate in light of his demonstrated rehabilitation.

11. At the July 28, 2016 paper file review, the Board stated that there was no motion practice before the Board within the context of parole release deliberations, and subsequently refused to consider all nine of the pending motions. The motions were instead logged and considered by the Board as correspondence supporting Petitioner's release. The Board's refusal to consider the motions was confirmed by actions and statements of the Assistant Attorney General representing the Board following the paper file review.
12. Petitioner subsequently appealed the Board's refusal to consider the motions pursuant to Iowa Administrative Code Rule 205-15.1(17A) (2015) to the Board. Therein, Petitioner sought relief on the grounds that the Board's refusal to consider his motions was:

- In violation of article 1, sections 9, 10, and 17 of the Iowa Constitution and the Eighth and Fourteenth Amendments to the United States Constitution;
 - made upon unlawful procedure;
 - affected by other error of law;
 - unsupported by evidence or based on incorrect or incomplete information which, if correct or complete, might have resulted in a different action; and
 - otherwise unreasonable, arbitrary, or capricious, an abuse of discretion, and a clearly unwarranted exercise of decision.
13. On August 24, 2016, the Board entered an Appeal Response, wherein the Board indicated that “parole eligibility reviews are not adversarial proceedings and the Board does not engage in motion practice during such reviews.” Appeal Response, August 24, 2016. The Board took no further action with respect to the motions.
14. Petitioner seeks relief on the grounds that the Board’s refusal to consider, and therefore, refusal to grant Petitioner’s nine motions is:
- a. unconstitutional on its face or as applied to Petitioner or is based upon a provision of law that is unconstitutional on its face or as applied to Petitioner; Iowa Code § 17A.19(10)(a);

- b. based upon an erroneous interpretation of a provision of law whose interpretation has not clearly been vested by a provision of law in the discretion of the agency; Iowa Code § 17A.19(10)(c);
 - c. based upon a procedure or decision-making process prohibited by law or was taken without following the prescribed procedure or decision-making process; Iowa Code § 17A.19(10)(d);
 - d. the product of a decision-making process in which the agency did not consider a relevant and important matter relating to the propriety or desirability of the action in question that a rational decision maker in similar circumstances would have considered prior to taking that action; Iowa Code § 17A.19(10)(j); and
 - e. otherwise unreasonable, arbitrary, capricious, or an abuse of discretion; Iowa Code § 17A.19(10)(n).
15. No deference is appropriate to the Board by this Court on the substantive question of whether each of Petitioner's nine motions must have been granted pursuant to his constitutional right to be free from cruel and unusual punishment, and for which, because he was a child at the time of his offense, a meaningful opportunity for release upon demonstrated rehabilitation is required. *See Gartner v. Iowa Dept. of Public Health*, 830 N.W.2d 335 (Iowa 2013); *NextEra*

Energy Resources, LLC v. Iowa Utilities Bd., 815 N.W.2d 30 (Iowa 2012).

RELIEF SOUGHT

WHEREFORE, Petitioner Julio Bonilla prays for the following relief.

16. A declaratory ruling that:
 - a. the requested procedural rights identified in the nine motions filed before the Board constitute the minimum necessary procedural rights guaranteed to juvenile offenders eligible for parole, including Petitioner, under article 1, sections 9, 10, and 17 of the Iowa Constitution and the Eighth and Fourteenth Amendments to the United States Constitution to ensure such inmates a meaningful opportunity for parole;
 - b. the Board's failure to provide Petitioner with the procedural rights requested in his nine motions filed before the Board denied him of a meaningful opportunity for release as required by article 1, section 17 of the Iowa Constitution and the Eighth Amendment to the United States Constitution; and
 - c. that any Board rules, regulations, or policies that conflict with or fail to provide for these rights are likewise unconstitutional under

section 1, sections 9, 10, and 17 of the Iowa Constitution and the Eighth and Fourteenth Amendments to the United States Constitution as applied to juvenile offenders.

17. An order remanding this matter back to the Board and requiring that the Board provide Petitioner with the procedural rights requested in the motions filed before the Board.
18. The costs of this suit, including attorneys' fees; and
19. Such other and further relief as this Court may deem just and proper.

Respectfully submitted,

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Date: September 14, 2016