

**IN THE IOWA DISTRICT COURT IN AND FOR POLK COUNTY**

<b>CHRISTINE LOCKHEART,</b>	:	
<b>Petitioner,</b>	:	<b>NO. CVCV052692</b>
<b>v.</b>	:	
<b>IOWA BOARD OF PAROLE,</b>	:	
<b>Respondent.</b>	<b>— : —</b>	
<b>JULIO BONILLA,</b>	:	
<b>Petitioner,</b>	:	<b>NO. CVCV052693</b>
<b>v.</b>	:	
<b>IOWA BOARD OF PAROLE,</b>	:	
<b>Respondent.</b>	<b>— : —</b>	

**RULING ON MOTION TO DISMISS**

The above cases, consolidated because of common issues for purposes of considering a motion to dismiss filed by Respondent, Iowa Board of Parole, came on for hearing before the undersigned on the 15<sup>th</sup> day of November, 2016. Petitioners (Lockheart and Bonilla) appeared by counsel, Joseph Fraioli, Rita Bettis and Angela Campbell, and Respondent (Board) appeared by Assistant Attorney General John Lundquist.

Both Petitioners were sentenced to terms of life in prison for offenses committed when they were under the age of eighteen. Lockheart was convicted of first degree murder when she was 17 years of age. Bonilla was convicted of first degree kidnapping when he was 16 years of age. Following the United States Supreme Court's rejection of

mandatory life sentences without parole for juvenile offenders, both Petitioners were resentenced to life in prison *with* the possibility of parole.<sup>1</sup>

Petitions filed in each of the cases challenge the procedures used by the Iowa Board of Parole in considering whether to grant parole to inmates who were originally incarcerated as juveniles. Petitioners assert they do not challenge a denial of parole in their individual cases but rather challenge, from a due process standpoint, the process that was followed. The Petitioners raise nine specific ways in which the process followed by the Board denies them of due process related to the parole hearings: 1. Denial of court appointed counsel, 2. Denial of independent psychological evaluation, 3. Denial of an in-person hearing, 4. Denial of opportunity to present evidence of rehabilitation, 5. Denial of advanced access to information relied upon by the Board, 6. Denial of opportunity to challenge information relied upon, 7. Denial of consideration of mitigating factors, 8. Denial of access to treatment and programming, and 9. Denial of procedures to assure future meaningful review.

The Board seeks dismissal of both Petitions on the ground neither Petitioner has alleged substantial rights were affected and any claimed error is therefore harmless. As to Lockheart the Board also seeks dismissal on the principle of issue preclusion. In particular, the Board alleges Lockheart unsuccessfully raised and litigated the same claims she now raises, in a previous judicial review action.

A court considering a motion to dismiss must accept as true the facts alleged in the pleading sought to be dismissed.<sup>2</sup> A motion to dismiss should be granted only when it appears “to a certainty” that the claimant would not be entitled to prevail under any

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<sup>1</sup> *Miller v. Alabama*, 132 S.Ct. 2455 (2012), applied retroactively in Iowa, *State v. Ragland*, 836 N.W.2d 107 (Iowa 2013)

<sup>2</sup> *Albrecht v. General Motors Corp.*, 648 N.W.2d 87, 89 (Iowa 2002).

state of facts that could be proved in support of the claims asserted.<sup>3</sup> In making that determination, the allegations contained in the claim are construed in a light most favorable to the claimant.<sup>4</sup> A motion to dismiss attacks the claim as alleged in the pleadings; it is not appropriate to consider “facts” alleged by the moving party.<sup>5</sup>

The Petitions now before the Court seek judicial review under the Iowa Administrative Procedure Act<sup>6</sup> (IAPA), of action taken by the Iowa Board of Parole in connection with its consideration of whether the Petitioners were appropriate candidates for parole pursuant to the provisions of Iowa Code Chapter 906. The judicial review provisions of the IAPA have been determined to apply to a revocation of parole by the Board.<sup>7</sup> In reaching this conclusion the Court concluded the Board is an “agency”, a parole revocation proceeding is a “contested case” and a parole revocation is an “agency action”. A similar conclusion must be reached with respect to decisions the Board makes following a parole hearing to determine eligibility for parole.

In the context of a judicial review hearing, the “court may affirm the agency action or remand to the agency for further proceedings. The court shall reverse, modify, or grant other appropriate relief from agency action . . . if it determines that substantial rights of the person . . . have been prejudiced . . .”<sup>8</sup> Such court action is warranted for a variety of enumerated reasons including the agency action is unconstitutional, the agency action is based upon a procedure or process prohibited by law or the agency failed to consider a relevant or important matter related to its action.<sup>9</sup>

In support of its motion to dismiss the Board stresses the fact that Petitioners “unequivocally state that [they are] not challenging the outcome of any particular parole

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<sup>3</sup> *Haupt v. Miller*, 514 N.W.2d 905, 911 (Iowa 1994). *Haugland v. Schmidt*, 349 N.W.2d 121, 123 (Iowa 1984).

<sup>4</sup> *Id.*

<sup>5</sup> *Robbins v. Heritage Acres*, 578 N.W.2d 262, 264 (Iowa App. 1998).

<sup>6</sup> Iowa Code Chpt. 17A

<sup>7</sup> *Frazer v. Iowa Bd. of Parole*, 248 N.W.2d 80, 83 (Iowa 1976)

<sup>8</sup> Iowa Code §17A.19(10)

<sup>9</sup> Iowa Code §17A.19(10) (a), (d) & (j)

release deliberation conducted by the Board through [their] present petition”.<sup>10</sup> The Board argues this admission by Petitioners means, as a matter of law, they have not had “substantial rights prejudiced”.

The Board suggests the procedures actually followed by the Board resulted in an “appropriate” decision. While Petitioners certainly allege they are not claiming error by the Board as to their individual situations, Petitioners are effectively arguing neither they, nor any other similarly situated prisoner, is given a fair opportunity to have their case properly and constitutionally considered by the Board of Parole, because of the process followed by the Board of Parole. Thus, while neither Petitioner claims any specific error in the process as it was applied to them at a particular parole hearing, both Petitioners claim the process itself is improper and results in inappropriate decisions.

As noted above, agency action may be challenged in District Court if it is unconstitutional, if it is based upon a procedure or process prohibited by law or if the agency failed to consider a relevant or important matter related to its action.<sup>11</sup> Petitioners in the instant proceeding allege the action of the Board is infirm on each of these grounds. When viewed in a light most favorable to Petitioners, and accepting as true the facts alleged in the Petitions, the Court is unable to conclude “to a certainty” that Petitioners would not be entitled to prevail under any state of facts that could be proved. Accordingly, the motion to dismiss filed by the Board must be overruled on that basis.

The Board also alleges, as to Lockheart, principles of res judicata bar the pending petition. As noted by the Board, on May 7, 2014 Lockheart filed a Petition for Judicial Review, seeking a review of the Board’s decision on April 10, 2014 to deny her

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<sup>10</sup> In the motion to dismiss the Board cites to Lockheart’s Petition, p. 3 (and Bonilla’s Petition, p.2), wherein Petitioners each state: “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.”

<sup>11</sup> Iowa Code §17A.19(10) (a), (d) & (j)

parole.<sup>12</sup> In framing the issue presented for review in that case Lockheart urged the “process utilized” by the Board was unconstitutional. While Lockheart included, as problems with the process, the denial of counsel and independent expert review, in her prior Petition she did not specifically include each of the nine problems she now asserts make the process followed by the Board unconstitutional.

Collateral estoppel, or issue preclusion, does not apply unless the issues raised in the prior proceeding are “identical” to the issues raised in the subsequent proceeding.<sup>13</sup> While some of the issues now being raised by Lockheart were raised in the previous administrative review proceeding, it is clear Lockheart is not now raising issues “identical” to the issues previously raised. Accordingly, principles of issue preclusion, or collateral estoppel, do not apply to bar Lockheart’s claim.

For the foregoing reasons, the Board’s motion to dismiss must be denied.

**IT IS THEREFORE ORDERED** the Motions to Dismiss each of the above entitled Petitions, filed by the Respondent, Iowa Board of Parole, are hereby denied.

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<sup>12</sup> Polk Co. No. CVCV047612

<sup>13</sup> *Winnebago Industries, Inc. v. Haverly*, 727 N.W.2d 567, 572 (Iowa 2006)



State of Iowa Courts

**Type:** OTHER ORDER

**Case Number** CVCV052692  
**Case Title** CHRISTINE LOCKHEART VS IOWA BOARD OF PAROLE

So Ordered

A handwritten signature in black ink, appearing to read "Brad McCall".

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Brad McCall, District Court Judge,  
Fifth Judicial District of Iowa