

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

JULIO BONILLA,

Petitioner,

vs.

IOWA BOARD OF PAROLE,

Respondent.

Civil Case No. CVCV052692

PETITIONER'S
REPLY BRIEF
ON JUDICIAL REVIEW

COMES NOW Petitioner Julio Bonilla, by and through his undersigned counsel, and submits this Reply Brief on the Merits in his 17A Judicial Review Action:

ARGUMENT

A. Respondent Misstates the Nature of this Case.

At the outset, it should be noted that the Respondent's brief misstates the nature of Bonilla's claim in an important way. Respondent summarizes Bonilla's brief as arguing "that the Board's declination to rule upon nine procedural motions [Bonilla] logged prior to the Board's July 2016 parole review of his case amounted to a failure to provide him a 'meaningful opportunity' for parole release." Resp't's Br. at 2. Yet Bonilla does not contend that he was denied a meaningful opportunity for release because of the Board's refusal to rule on the nine motions. Whether they were denied by formal ruling or denied by failing to provide the requested relief and refusing to rule on the motions, as here, the net result is a denial of the safeguards. It's that denial at issue in this case. Indeed, had the Board provided the nine requested safeguards and never ruled on the motions, or had it ruled on the motions but still

failed to provide the requested safeguards, this action would be unaffected.¹ Rather, Bonilla asserts that a parole review system lacking the procedural and substantive safeguards laid out in those motions fails to provide the due process required under the U.S. and State constitutions and clarified in the *Miller-Graham-Ragland-Null* and *Louisell* line of cases. *See general* Pet'r's Br. While Respondent asserts that "many of the procedural accommodations Bonilla sought were already subsumed within existing Board policies and procedures," Resp. Br. at 7, at the end of the day, the Board provided Bonilla with none of the safeguards he sought: he was not appointed counsel at state expense; he was not granted access to an independent psychological evaluation; he was not granted an in-person parole hearing; he was not given the ability to present such evidence at the parole hearing; he was not given access to all Board and DOC information considered or the ability to contest it; he was not granted the request to exclude from the Board's consideration all disciplinary or behavioral information that had not been subject to a formal adjudication.

B. Respondent's Citation of Rules is Irrelevant to this Case.

In the section entitled "Parole in Iowa," Respondent summarizes the rules that govern the Board's current parole review procedures. Resp't's Br. at 3-6. While this statement of current regulations is correct, it is irrelevant. Bonilla does not assert that the Board failed to comply with its own rules. Instead, Bonilla asserts that the rules and practices are constitutionally infirm when

¹ The Board admits that it doesn't even have a procedure to rule on requests for the nine safeguards sought in this case. Res't's Br. at 6-7. ("Ms. Campbell was notified that the Board would not formally rule upon the motions because parole release deliberations are not adversarial proceedings subject to typical courtroom motion practice.") *See also IES Utilities Inc. v. Iowa Dept. of Rev. and Fin.*, 545 N.W.2d 536 (Iowa 1996) (Under the IAPA, exhaustion of internal administrative procedures is not required when, as here, a petitioner asserts an adequate administrative remedy does not exist).

it comes to ensuring that juvenile offenders sentenced to life with the possibility of parole have a meaningful opportunity to obtain release. Pet'r's Br. at 3-4.

For example, the Respondent notes that, under 205 Iowa Administrative Code r. 8.6(1), parole review “may be based solely upon an examination of an inmate’s case file.” Resp’t’s Br. at 4. This is a correct statement of the rule, yet the existence of the rule in no way proves that the rule is constitutional as applied to juvenile offenders. Bonilla asserts that a parole review process for juvenile offenders “based solely upon an examination of an inmate’s case file” would violate his right to be free from cruel and unusual punishment because it would not provide him with the “meaningful opportunity” for release articulated in the *Miller-Graham-Ragland-Null* line of cases.

Respondent further argues that “many of the accommodations Bonilla sought were already subsumed within existing Board policies and procedures.” Resp’t’s Br. at 7. To be clear, the constitutional shortcomings of the procedures in place in 2016 have not been adequately addressed by amending the rules. Since the Iowa Supreme Court’s decision in *Louisell*, the rules governing the Board’s review process have only changed in two minor ways as potentially relevant to this case, neither of which cure the constitutional flaws asserted by Bonilla here. The first change merely clarified that under 205—14(902) only inmates serving life sentences *without the possibility of parole* are eligible for work release or parole, where before the “without the possibility of parole” language did not exist. Iowa Admin. Code r. 205—14(902); Iowa Admin. Bulletin, ARC 3297C, Item 30, available at <https://www.legis.iowa.gov/docs/aco/arc/3297C.pdf>. Indeed, even before that change in the rule, the Board had reviewed juvenile offenders who had been resentenced to life with parole following the *Miller-Graham-Ragland-Null* line of cases—again, in a manner Petitioner alleges is constitutionally inadequate. The rule simply codified the

Board's practice. The second amended rule, Iowa Admin. Code r. 205—8.6(4) (906), likewise ensured that inmates convicted as minors of Class A and B felonies should be reviewed for parole annually. *Id.*; Iowa Admin. Bulletin, ARC 3297C, Item 18, *available at* <https://www.legis.iowa.gov/docs/aco/arc/3297C.pdf>. That also merely codified the Board's existing practice for juvenile offenders, and is not one of the bases of the Petitioner's challenge in this case. While both of these amendments were constitutionally necessary, they are not sufficient to cure the current unconstitutionality of the Board's procedures. For example, as Respondent correctly states, the rules provide "no inmate has a mandatory right to an in-person parole hearing." Resp. Br. at 4.² But that's beside the point. In this case, Petitioner seeks special safeguards for juvenile offenders *not provided to adult offenders* based on the factors set forth in the *Miller-Graham-Ragland-Null* jurisprudence.

C. Respondent Improperly Attempts to Re-litigate Arguments Regarding Exhaustion That Have Already Been Ruled Upon and Properly Denied at the Motion to Dismiss Stage.

Much of Respondent's brief of is spent attempting to re-litigate issues already decided by this court in its Ruling on the Respondent's Motion to Dismiss. For instance, the Board seeks to assure this court that, even if all of the requested procedures had been followed, no harm was done because Bonilla would still have not been paroled. See Resp't's Br. at 8-10. However, Bonilla has never claimed that he was entitled to parole as a matter of right. *See* Pet. at 2 ("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

² Respondent cites Iowa Code section 906.5. Resp't's Br. at 4. But nothing in section 906.5 prohibits granting juvenile offenders an in-person hearing. Iowa Code § 906.5.

constitutionally necessary changes in the process that the Board uses to evaluate inmates who were convicted as children.”); See also Pet’r’s Br. at 3. In any case, that argument puts the cart before the horse. Respondent has no way of actually knowing that, had the safeguards Bonilla sought been afforded to him, he would have had the same result. Indeed, Bonilla asserts that the constitutional deficiencies are such that by definition the result will always be infirm. Ruling on Mot. to Dismiss (Jan. 5, 2017) at 2. But more to the point, Respondent has already made these arguments, Mot. to Dismiss (Oct. 6, 2016) at 3-5; Petitioner has refuted them, Resistance to Mot. to Dismiss (Oct. 17, 2016) at 4-12 (discussing, *inter alia*, the appropriate standard when assessing prejudicial harm in the context of the denial of structural error and reviewing the *Greiman* order denying the Board’s motion to dismiss in that case, rejecting the Board’s like attempt to narrow his claims as merely seeking parole and not reform of the parole system itself), and the Court has ruled in Petitioner’s favor. Ruling on Mot. to Dismiss (Jan. 5, 2017) at 3-4. Instead, as this court has already recognized, Petitioner is arguing that neither he, “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.” *Id.* What’s more, as Petitioner has made clear throughout this litigation, the harms asserted are both *past, concrete, and ongoing*. See Resistance to Mot. to Dismiss (Oct. 17, 2016). Unless and until the safeguards are provided, which has simply not occurred, the constitutional injuries are ripe and not moot.

In another red herring, the Respondent notes that Bonilla did not have counsel at his 2017 hearing, “despite being notified of the scheduling of Bonilla’s July 2017 case review,” Respondent seems to imply that Bonilla failed to preserve the current claim. Again, Respondent has mischaracterized the nature of this challenge. As is made clear throughout this case,

Bonilla's counsel in this action have never represented him with the purpose of obtaining his immediate parole in any particular parole proceeding or during any of his parole reviews; rather, the scope of this representation and the case at hand here challenges the lack of nine specific procedural and substantive safeguards in the parole system that Bonilla has been subject to as constitutionally infirm because that denial of those safeguards deprived him of a meaningful opportunity for release.

Beating a dead horse, the Respondent implies that Bonilla waived his cause of action by not appealing the Board's decisions in 2016 or 2017. Resp't's Br. at 9, 10. Further, in a footnote Respondent asserts that Bonilla failed to preserve any of the issues for judicial review because he failed "to seek review of any one of his individual parole denials." Resp't's Br. at 11, n. 1. Again, without waiving any arguments Bonilla may wish to raise in any future cases, Bonilla has never contended that he was entitled to parole as a matter of right in this administrative review action, or that the Board made an improper decision by denying him parole in any specific year. That's simply not at issue yet, because instead, here Bonilla argues that the parole review procedures are constitutionally insufficient to guarantee him a meaningful opportunity for release. If Bonilla's rights were violated during any parole review procedure, a subsequent parole review would not somehow remedy the previous violation nor moot out his claim. Indeed, the results of that finding would be absurd and represent a profound waste of judicial and party resources, requiring Bonilla to file an additional case yearly involving parties and alleging the identical constitutional violations during the pendency of a case *already* doing that. Nothing in our Iowa's Code, rules of civil procedure, or case law requires him to do so.

D. Respondent Is In Error in Stating the Iowa Supreme Court has Upheld Iowa’s Parole Process for Juvenile Offenders as Providing a “Meaningful Opportunity” for Release Under the Iowa Constitution.

Throughout its brief, Respondent cites *State v. Propps*, 897 N.W.2d 91 (Iowa 2017), for its assertion that the current review procedures are constitutional. For example, after acknowledging that the Iowa Constitution requires that juvenile offenders receive a meaningful opportunity for a parole release, Respondent cites *Propps* for the legal proposition that the “present statutory framework governing parole reviews in Iowa meets that bar. *See Propps*, 897 N.W.2d at 102.”. Resp’t’s Br. at 19. But *Propps* does not stand for this conclusion.

In *Propps*, the Iowa Supreme Court considered an appeal by a juvenile convicted of four counts of willful injury causing serious injury. *Propps*, 897 N.W.2d at 94. The district court sentenced him to four consecutive ten-year sentences after determining that he was not eligible for probation or a deferred judgment under Iowa Code section 907.3. *Id.* On appeal, *Propps* argued that section 907.3 constituted cruel and unusual punishment because it denied him an individualized sentencing hearing and the possibility of being placed immediately on probation without a term of confinement. *Id.* at 94. (“He argues that the mandatory nature of the prison sentence is unconstitutional given the Iowa Constitution and our precedents in the area of juvenile sentencing.”)

Propps did not challenge the constitutionality of the Board’s parole review procedures, nor did the Iowa Supreme Court consider whether the current procedures are adequate. Instead, the court merely held that “*Propps*’ immediate *eligibility* for parole, upon the parameters outlined in section 906.5, is both realistic and meaningful.” *Id.* at 101 (emphasis added). This is not the same as the Court holding that the parole review system in Iowa for juvenile offenders is in fact “realistic and meaningful.” In fact, citing *Louisell*, the Court in *Propps* reiterated that “the factors

utilized by the parole board to determine parole eligibility do not account for the mitigating attributes of youth that are constitutionally required sentencing considerations.” *Id.* at 102 (internal citation omitted).

E. Respondent Also Misstates Eighth Amendment Jurisprudence.

As it did with *Propps*, the Respondent incorrectly reads several federal cases to support its assertion that the current review scheme is valid under the U.S. Constitution. For instance, the Respondent cites *Montgomery v. Louisiana*, 1336 S.Ct. 718, 736 as supporting the premise that “the mere act of allowing juvenile offenders to ‘to be considered for parole’ satisfies *Miller*’s “meaningful opportunity for release” requirement. *See* Resp’t’s Br. at 13. That is not the holding of that case. Instead, like *Propps*, *Montgomery v. Louisiana* considers that constitutionality of a district court sentence. *See Montgomery*, 1336 S.Ct. at 725 (“This is another case in a series of decisions involving the sentencing of offenders who were juveniles when their crimes were committed.”). The Supreme Court’s holding in *Montgomery* was that the *Miller* requirement for an individualized sentencing be applied retroactively to juvenile offenders sentenced to life without the possibility for parole before the *Miller* decision. *Id.* at 736. The Supreme Court did not even consider Louisiana’s parole review process, let alone did the court hold that the process was constitutional. *See Id.* Instead, it merely held that a sentence that made the offender eligible for parole satisfied the *Miller* requirements for an individualized sentencing. *See Id.* at 736. Of course, the U.S. Supreme Court did not consider the Iowa Constitution’s requirement for juvenile offenders to receive a meaningful opportunity of release in *Miller*.

What the *Montgomery* opinion is notable for, as applied to this case, is that in it, the United States Supreme Court 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* the same year, the Iowa Supreme Court implicitly recognized the importance of the role of the Board of Parole in affording a meaningful opportunity for release as well. 879 N.W.2d 811, 836–37, 838 (Iowa 2016) (“There is . . . plenty of time to make such determinations later for juvenile offenders . . . who are sentenced to life in prison.”)

F. Respondent fails to Adequately Address Bonilla’s Substantive Claims.

The procedural arguments that the Board has raised have already been litigated. The board’s arguments regarding Bonilla’s substantive claims are minimal, and largely amount to pointing out the ability of some juvenile offenders to obtain parole even given the lack of procedural safeguards in place. Resp’t’s Br. at 26-27. Excepting the two juvenile offenders who were paroled to hospice, 6 of 38 offenders have been paroled, and thus 32 of 38, or 84 percent, have not been. Those numbers are hardly impressive, but more to the point, they simply don’t justify the denial of the safeguards that Bonilla has sought, which, as detailed more fully in his Brief in chief, represent evolving standards of decency under cruel and unusual punishment jurisprudence as merely a baseline assurance of a meaningful parole process for juvenile offenders under the Iowa Constitution.

When discussing the potential constitutional protections that a court appointed attorney would provide, Respondent notes that, because Bonilla was represented by counsel in his 2016 hearing, he “was not prejudiced by the lack of state subsidized legal assistance.” Resp’t’s Br. at 23. As an initial matter, and as discussed more fully above, Bonilla was not represented on the merits of his parole claim in 2016 by an attorney, court appointed or otherwise, as this case has always been about the denial of constitutional safeguards to ensure a meaningful opportunity for parole, and not whether any particular offender should be paroled. As the Respondent correctly notes, Bonilla was also not represented by counsel, court appointed or otherwise, during his 2017 parole review hearing. *See* Resp’t’s Br. at 9 (“counsel for Bonilla did not appear at the [2017] review nor were any additional written materials submitted in advance.”). This is precisely Bonilla’s point: without a right to court appointed counsel, there is no assurance that Bonilla or any other juvenile offender will ever have an attorney to assist him in future reviews.

When discussing the validity of using generic notes and behavioral notes, the Respondent acknowledges that an attorney can help mitigate the potential harms of relying on these sources: “Other interested persons, including legal counsel, may assist or provide written statements and documents of their own to the Board at any time as well.” Resp’t’s Br. at 22. But without a right to court appointed counsel, these assurances are only available to inmates who can afford an attorney, which does not include Bonilla, who cannot afford to hire an attorney to represent him on the merits of his parole case. *See* Pet’rs Br. at 18-19. (R. at 497.)

Again, while seeking to assure this court that Bonilla was treated fairly, the Board argues that any procedural problems can be smoothed over by the fact that “counsel has been invited to address the Board in support of their clients.” Resp’t’s Br. at 27. Of course, the Respondent also asserts that this invitation is not required by the Iowa Constitution and could be withdrawn at any

time. Even if it stands, the invitation only assists those inmates who are able to afford a privately hired attorney.

All of Respondent's remaining arguments are addressed in Petitioner's Brief on Judicial Review.

CONCLUSION

For the reasons set forth above and in its brief on judicial review, as well as the Court's order denying Respondent's motion to dismiss, and in Petitioner's brief resisting that motion, Petitioner respectfully requests that the Court enter a declaratory ruling that the procedural and substantive rights he sought before the Board constitute the minimum necessary 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 U.S. Constitution to ensure such inmates a meaningful opportunity for parole, that the Board's failure to provide them to Petitioner therefore denied him of a meaningful opportunity; and 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 U.S. Constitution as applied to juvenile offenders, challenged under Iowa Code section 17A.19(10)(a), as well as the four other bases for challenge asserted under section 17A.19.

Petitioner respectfully seeks an order remanding this matter back to the Board and requiring that the Board provide Petitioner with the nine rights requested in the motions filed before the Board.

Petitioner also respectfully asks this Court to award him the costs of this suit, including reasonable attorneys' fees; and such other and further relief as this Court may deem just and proper.

Respectfully submitted,

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