
**SUPREME COURT
OF THE
STATE OF CONNECTICUT**

JUDICIAL DISTRICT OF HARTFORD

S.C. 19954

STATE OF CONNECTICUT

V.

TAUREN WILLIAMS-BEY

**BRIEF OF THE STATE OF CONNECTICUT BOARD OF PARDONS AND PAROLES
AS AMICUS CURIAE
WITH ATTACHED APPENDIX**

*FOR THE AMICUS CURIAE
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AND PAROLES:*

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STATEMENT OF ISSUES

“1. Under the Connecticut constitution, article first, §§ 8 and 9, are all juveniles entitled to a sentencing proceeding at which the court expressly considers the youth related factors required by the United States constitution for cases involving juveniles who have been sentenced to life imprisonment without the possibility of release? See *Miller v. Alabama*, 567 U.S. 460, 132 S.Ct. 2455, 183 L.Ed.2d 407 (2012)?

“2. If the answer to the first question is in the affirmative and a sentencing court does not comply with the sentencing requirements under the Connecticut constitution, does parole eligibility under General Statutes § 54–125a (f) adequately remedy any state constitutional violation?”

State v. Williams-Bey, 326 Conn. 920, 169 A.3d 793 (2017).

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INTEREST OF THE AMICUS CURIAE¹

As the independent state agency responsible for and charged under Conn. Gen. Stat. § 54-125a(f) with administering the parole process for eligible individuals convicted of crimes committed as juveniles, the Board of Pardons and Paroles (hereinafter the "Board") has an interest in the second certified question in this appeal. In particular, the Board has an interest in (1) explaining for the Court the ways in which parole hearings conducted pursuant to Conn. Gen. Stat. § 54-125a(f) distinctly differ from regular parole hearings; and (2) clarifying the role that actuarial science plays, and the impact that it has, in the unique § 54-125a(f) parole hearing process. The Board does not have a position on the merits of this appeal or on either party's arguments concerning the constitutional adequacy of Conn. Gen. Stat. § 54-125a(f) hearings.

STATEMENT OF THE PROCEEDINGS AND FACTS

Defendant Williams-Bey, as a person convicted of murder as an accessory, would not be eligible for parole were it not for the fact that he was under the age of eighteen when he committed his crime. See Conn. Gen Stat. § 54-125a(b)(1). Following the U.S. Supreme Court's decision in *Miller v. Alabama*, 567 U.S. 460 (2012), Williams-Bey filed a motion to correct an illegal sentence. On July 29, 2014, the trial court denied his motion and, subsequently, denied a motion to reconsider. The Appellate Court affirmed on the ground that resentencing was not required under the Connecticut Constitution or the Eighth

¹ Pursuant to Conn. Practice Book § 67-7, the undersigned counsel respectfully represents that: (1) no portion of this brief was written by counsel for a party to this appeal; (2) neither any party to this appeal nor counsel for any party contributed to the cost of the preparation or submission of the brief; and (3) no person or entity other than the amicus curiae, its members or its counsel, contributed to the cost of the preparation or submission of this brief.

Amendment to the U.S. Constitution because Williams-Bey had become eligible for parole based on the Connecticut General Assembly's enactment of Public Act 15-84, later codified as Conn. Gen. Stat. § 54-125a(f). The Appellate Court affirmed this position after remand from this Court. *State v. Williams-Bey*, 167 Conn. App. 744 (2016), modified in part after reconsideration 173 Conn. App. 63 (2017). This Court granted the defendant's petition for certification to appeal and certified two questions. *State v. Williams-Bey*, 326 Conn. 920 (2017). The Board submits this brief only with regard to the second certified question.

DISCUSSION

I. THE PAROLE PROCESS UNDER SUBSECTION (f) OF §54-125a IS VERY DIFFERENT FROM THE TRADITIONAL DISCRETIONARY PAROLE PROCESS

The parole process that the Board administers under § 54-125a(f)(1) is unique and substantially focused on the specific characteristics of the offender. This process, including the hearings that the Board provides to persons meeting the statutory criteria, sometimes referred to as “15-84 hearings,” is unlike the more traditional discretionary parole process conducted pursuant to Conn. Gen. Stat. § 54-125a(a) in three significant respects. First, applicants have the benefit of legal counsel. Second, the manner in which the Board assesses parole suitability is tailored specifically to address the developmental characteristics of youth and their diminished culpability as articulated in *Miller/Graham/Riley/Montgomery*. Third, all § 54-125a(f) hearings proceed and are

conducted in a manner vastly different from the more traditional discretionary parole hearing, and focus on the factors set forth in *Miller/Graham/Riley/Montgomery*.²

A. Role of Counsel

Conn. Gen. Stat. § 54-125a(f) provides for legal counsel for parole applicants who qualify for release under this subsection. After the Board notifies the Office of the Chief Public Defender (OCPD), among others, twelve months prior to a § 54-125a(f) hearing date, the OCPD assigns counsel for the parole applicant pursuant to Conn. Gen. Stat. § 51-296. At all hearings held pursuant to § 54-125a(f) to date, assigned counsel have been physically present and have actively participated on behalf of their clients.

In contrast, a parole applicant has no right to counsel during the traditional discretionary parole hearing process under Conn. Gen. Stat. § 54-125a(a). See *Holup v. Gates*, 544 F.2d 82, 85 (2nd Cir. 1976). "The purpose of the hearing in the Connecticut system is to enable the members personally to speak with and observe the inmate, to determine his attitude towards his crime, readiness for parole and the like. The members feel that this can best be achieved by hearing the inmate's own words, unguided by the presence or promptings of counsel." *Holup v. Gates*, 544 F.2d 82, 84 (2d Cir. 1976).

B. The Decision-Making Framework for § 54-125a(f) Cases is Unique

Unlike in traditional parole hearings, the Board is required to consider a list of specific factors when determining suitability for release under § 54-125a(f)(4)(C). These factors include but are not limited to age and circumstances of such person as of the date of the commission of the crime or crimes, such person's efforts to overcome substance

² *Miller v. Alabama*, 567 U.S. 460 (2012); *Graham v. Florida*, 560 U.S. 48 (2010); *State v. Riley*, 315 Conn. 637 (2015); *Montgomery v. Louisiana*, ___ U.S. ___, 136 S.Ct. 718 (2016).

abuse, addiction, trauma, lack of education or obstacles that such person may have faced as a child or youth. Although the Board is not precluded from considering these factors in a traditional hearing, the statutory requirements shift the panel's decision-making calculus, giving greater weight to the *Miller* factors regarding the transient nature of youth.

Additionally, during the subsection (f) process, Board members often review a wealth of information beyond that included in court transcripts, Pre-Sentence Investigation (PSI) Reports, and reports containing the results of risk assessment instruments. This increase in the type and amount of material received and reviewed is likely a result of the more active role played by both the state's attorney and applicant's counsel in the process. Counsel for a parole applicant may submit a range of material for consideration. This may include, but is not limited to, expert reports regarding the juvenile's birth, home life, and/or family upbringing, including lack of education or obstacles faced as a child or youth.³ In addition, the Board receives information related to the offender's contributions to the welfare of other people through commitment to education or to programs, such as the offender's efforts to overcome substance abuse and addiction. The Board welcomes reports and testimony from experts in psychology or other related academic and scientific fields of study. Although there is some overlap, the type of information received is often related to the applicant's age during the commission of the crime and would therefore not be routinely considered during a traditional parole release process. Finally and importantly,

³ [http://www.ct.gov/bopp/lib/bopp/BoPP Annual Report 2016-2017 for DAS Digest.pdf](http://www.ct.gov/bopp/lib/bopp/BoPP%20Annual%20Report%202016-2017%20for%20DAS%20Digest.pdf) at 6, stating in relevant part that the Board "shall give great weight to the diminished culpabilities of juveniles as compared to adults, the hallmark features of youth, and any subsequent growth and maturity that has been displayed when considering an offender for suitability."

the Board considers the “characteristics inherent to youth” as an important mitigating factor when determining whether to grant or deny parole under § 54-125a(f).

C. § 54-125a(f) Parole Hearings Are Conducted in a Different Manner

Parole hearings conducted pursuant to § 54-125a(f) can also be distinguished from traditional parole hearings in manner, length, nature, and tone.⁴ First, traditional discretionary parole hearings are almost always conducted remotely, with the offender appearing by video teleconference, without counsel, and a panel of board members sitting at the Board's office in Waterbury, Connecticut. By conducting in-person hearings, the members of the Board can receive additional evidence and documents at the time of the hearing, and allow for assigned counsel and witnesses to be presented on behalf of the applicant. Additionally, the Board can personally speak with and observe the applicant to assess his attitude towards his crime, readiness for parole and determine whether he has demonstrated increased maturity since the date of the crime.

Second, traditional discretionary parole hearings are often quite short, perhaps lasting only fifteen minutes to a half hour. Parole hearings under subsection (f), by contrast, are lengthy and involve the participation of counsel, as well as expert witnesses, if assigned counsel chooses to present them.

Third, at a subsection (f) hearing, the Board allows counsel for the applicant and the state's attorney to speak to the panel and present information at the hearing. The Board

⁴ A search of the term “parole” on the Connecticut Network site (<http://www.ctn.state.ct.us>) results in links to video recordings of § 54-125a(f) hearings. These recordings include video and audio of counsel speaking on behalf of their clients during these hearings. See Board Policy Number III.06, attached, App. A-001.

allows counsel for the applicant to present such additional evidence as may be appropriate. Because the hearings are non-adversarial administrative proceedings, this evidence is presented without confrontation or cross-examination by the state's attorney. The state's attorney is permitted, however, to present the state's position with regard to the parole application.⁵ Assigned counsel are free to present information that may controvert the state attorney's position or explain perceived inaccuracies in the Board's risk assessment reports or any other documents submitted to the Board.

Assigned counsel also has an opportunity to present a wide variety of evidence concerning the mitigating factors of the applicant's youthful age at the time of the crime, and the hallmark features of youth, brain science and adolescent development. Counsel for the applicant can, and almost always do, present evidence concerning "whether such person has demonstrated remorse and increased maturity since the date of the commission of the crime or crimes, such person's contributions to the welfare of other persons through service, such person's efforts to overcome substance abuse, addiction, trauma, lack of education or obstacles that such person may have faced as a child or youth in the adult correctional system, the opportunities for rehabilitation in the adult correctional system and the overall degree of such person's rehabilitation considering the nature and circumstances of the crime or crimes." Conn. Gen. Stat. § 54-125a (f)(4)(C).

Hearings under § 54-125a(f), commenced in June 1, 2016.⁶ There were twenty-two hearings held from June through December, 2016, and ten applicants were favorably

⁵ For example, on July 10, 2017, the Board held a hearing for Inmate Lucilo Cifuentes, who was sentenced as a juvenile offender. <https://ct-n.com/ctnplayer.asp?odID=14285>.

⁶ <http://www.ct.gov/bopp/cwp/view.asp?a=4330&q=589986>; App. A-006

granted parole. In 2017, there were thirty hearings held pursuant to subsection (f), and eighteen applicants were voted favorably and granted parole. Thus, there has been an overall grant rate of approximately 54% of all applicants who had a hearing from June 1, 2016 to December 31, 2017. Defendant is scheduled for January, 2019. See App. A-010.

II. **ACTUARIAL RISK INSTRUMENTS INFORM THE BOARD'S SUITABILITY DECISION, BUT THE IMPACT OF THOSE INSTRUMENTS ON THE OUTCOME VARIES**

The Board is statutorily required under subsection (f)(3) to use "validated risk assessment and needs assessment tools and its risk-based structured decision making" process in making decisions regarding parole for persons eligible under §54-125a(f). Although assessment tools inform the Board's decision-making, the Board is not required to use any particular risk assessment instrument and may exercise discretion in determining the weight to be given an assessment's results. The Board's decisions in § 54-125a(f) cases are informed by the Statewide Collaborative Offender Risk Evaluation System (SCORES).⁷ The SCORES is a series of actuarial risk and needs assessment instruments administered and utilized by both the Board and the Department of Correction.⁸ Actuarial risk assessment instruments indicate the likelihood that a given individual will reoffend based on research and validated statistical models from groups of offenders with similar

<http://www.ct.gov/bopp/cwp/view.asp?a=4330&q=600496>; App. A-007

⁷ <http://www.ct.gov/bopp/cwp/view.asp?a=4344&q=510364>; App. A-009

⁸ SCORES is based on the Ohio Risk Assessment System, originated at the University of Cincinnati.

characteristics.⁹ SCORES was originally developed in the context of traditional parole release decision-making. The Board worked with the Department of Correction and Judicial Branch Court Support Services Division to develop the SCORES pursuant to Conn. Gen. Stat. §18-81z. Today, the Board uses SCORES and its actuarial instruments to inform almost all parole release decision-making. The use of actuarial risk and needs assessment is not a distinguishing feature of the §54-125a(f) process. The risk assessment instruments, included in the SCORES, have been validated. Validation refers to the testing of an actuarial instrument's predictive accuracy on the population for which it is intended to be applied. Validation ensures that a given instrument is effective not just for post-conviction populations in general, but also specifically for the population that will be considered.¹⁰

Although § 54-125a(f)(3) mandates that the Board use risk assessment instruments, it neither requires nor precludes the Board from using a given actuarial assessment instrument. If a more suitable instrument is developed, or if the Board determines that another instrument is more suitable for decision-making under § 54-125a(f), the statute does not prohibit its use. In addition, § 54-125a(f)(3) does not assign any particular weight to the results of actuarial assessment instruments, allowing the Board to exercise discretion when considering what weight to give the results. Finally, the Board provides assigned counsel with the results of assessment instruments taken into consideration prior to any subsection (f) hearing, and allows assigned counsel to present any evidence they wish to

⁹ <http://nationalparoleresourcecenter.org/action-guide-use-of-valid-actuarial-assessments-of-risks-and-needs/defining-terms.htm>

¹⁰ <http://nationalparoleresourcecenter.org/action-guide-use-of-valid-actuarial-assessments-of-risks-and-needs/selecting-and-validating-an-assessment-instrument.htm>

present concerning their views on the reliability or validity of such risk assessment instruments, as well what weight, if any, should be given to such results.

As discussed above, risk assessment instruments may help inform the Board's decision, but the weight to be given to such assessments can be disputed by the applicant's counsel, if appropriate. The risk assessment instruments are not considered to be outcome dispositive and are considered along with many other factors.

Moreover, Board members have been given training in the use and limitations of such risk assessment tools and are aware of the limitations of the Board's current risk assessment instruments,¹¹ which impacts the weight given to these objective indicators. Board members have considered, and continue to consider, the diminished culpability of youth—a mitigating factor—when rendering decisions. Board members have received training regarding juvenile brain development and constitutional issues and requirements related to the mitigating factors of youth, as set forth in *Miller v. Alabama*, 567 U.S. 460 (2012) and its progeny. For example, on February 26th, 2016, the Board conducted an agency-wide training for the Board entitled, “The Supreme Court and Adolescent Development: Implications for Parole in the Post-*Miller* Era.”¹² Also in 2017, Board members attended a joint training/presentation on Juvenile Sex Offenders. The

¹¹ See <http://www.ct.gov/bopp/lib/bopp/SDM.pdf>

¹² Extensive training was held for the Board. In addition to training the BOPP staff, the Public Defenders' Office, States Attorney's Office, Department of Correction and the Office of the Victim Advocate were invited to attend training on adolescent brain development as well as risk and need assessments.

http://das.ct.gov/Digest/Digest_2016/Pardons%20and%20Paroles,%20Connecticut%20Board%20of.pdf

presentation was conducted by Dr. Fabian Selah, an Assistant Clinical Professor of Psychiatry at Harvard Medical School.¹³

Board members are qualified by education, training and experience in juvenile and criminal justice, community corrections, parole and mental health services for offenders. Conn. Gen. Stat. § 54-124a(a). They receive formal annual training in a variety of issues, including risk assessment, case management and reentry strategies. Conn. Gen. Stat. §54-124a(l)(3). The Board has devoted and is committed to continuing education and training related to the unique issues presented by §54-125a(f).

CONCLUSION


The Board submits this amicus brief to explain the Board's procedures for considering parole applications pursuant to §54-125a(f) with the hope that this discussion is helpful to the Court in determining the issues before it.

¹³ See <http://fabiansalehmd.com/> Dr. Saleh is a Diplomate of the American Board of Psychiatry and Neurology in the Specialty of Psychiatry and in the Subspecialty of Forensic Psychiatry. He is also fellowship trained in Child & Adolescent Psychiatry and Motivated Behaviors.

Respectfully submitted,

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CERTIFICATION

The following certification satisfies the requirements of both paper and electronic filing. The undersigned attorney hereby certifies, pursuant to Connecticut Rule of Appellate Procedure § 67-2, that:

- (1) The electronically submitted brief and appendix was delivered electronically to the last known email address of each counsel of record for whom an email address was provided; and
- (2) The electronically submitted brief and appendix and the filed paper brief and appendix have been redacted or do not contain any names or other personal identifying information that is prohibited from disclosure by rule, statute, court order, or case law; and
- (3) A copy of the brief and appendix was sent to each counsel of record and to any trial judge who rendered a decision that is the subject matter of the appeal, in compliance with Section 62-7; and
- (4) The brief and appendix filed with the appellate clerk are true copies of the brief and appendix that were submitted electronically; and
- (5) The brief complies with all provisions of this rule; and
- (6) A copy of the brief and appendix was sent to the following this 19th day of March, 2018:

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