

IN THE SUPREME COURT OF IOWA

Julio Bonilla,
Petitioner-Appellant,

v.

Iowa Board of Parole,
Respondent-Appellee.

*APPEAL FROM THE IOWA DISTRICT COURT
FOR POLK COUNTY
HONORABLE DOUGLAS F. STASKAL*

FINAL REPLY BRIEF OF APPELLANT

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STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

1. **Whether Bonilla exhausted administrative remedies.**

Authorities

Iowa Admin. Code R. 2015-15.1 (17A) (2015)

Riley v. Boxa, 542 N.W.2d 519 (Iowa 1996).

2. **Whether Bonilla's as-applied constitutional claims have been preserved for appeal.**

Authorities

Record cites only.

3. **Whether Bonilla has standing?**

Authorities

Iowa Code § 17A.10 (19) (a)

Graham v. Florida, 560 U.S. 48 (2010)

State v. Sweet, 879 N.W.2d 811 (Iowa 2016)

Greiman v. Hodges, 79 F.Supp.3d 933 (S.D. Iowa 2015)

Diatchenko v. Dist. Atty. for Suffolk Dist., 27 N.W.3d 349 (Mass. 2015)

4. **Whether existing Board procedures deprive Bonilla of a realistic and meaningful opportunity for release on parole, his right to counsel, and due process.**

State v. Propps, 897 N.W.2d 91 (Iowa 2017)

Montgomery v. Louisiana, 136 S.Ct. 718 (2016)

Graham v. Florida, 560 U.S. 48 (2010)

J.D.B. v. North Carolina, 564 U.S. 261 (2011)

State v. Sweet, 879 N.W.2d 811 (Iowa 2016)

ARGUMENT

In this appeal, Bonilla seeks constitutionally compliant parole-review procedures. The Iowa Board of Parole (“Board”) and the court below rejected Bonilla’s claims and in its response, the Board seeks to avoid this Court’s review of those rulings on procedural and substantive grounds. The Board’s arguments are meritless. The Court should reject them and address the question left unanswered in *State v. Louisell*: whether current procedures provide parole-eligible juveniles, like Bonilla, with a realistic and meaningful opportunity for release on parole based on their demonstrated maturity and rehabilitation. 865 N.W. 590, 602 (Iowa 2015).

As the record reflects, Bonilla’s appeal is procedurally proper. Bonilla has exhausted available administrative remedies to challenge existing parole procedures as the Board applied them during his review and as the Board applies them to other similarly situated juvenile offenders. Bonilla also has properly preserved error for this appeal on these as-applied and facial challenges to the procedures. And, because Bonilla has suffered—and continues

to suffer—ongoing and redressable injury because of the Board’s failure to consider Bonilla’s claims, Bonilla has standing to challenge the constitutionality of the procedures.

The Board’s substantive arguments also lack merit. The Board concedes, as it must, that the U.S. and Iowa Constitutions require that parole procedures provide parole-eligible juveniles like Bonilla with a realistic and meaningful opportunity to obtain release based on their demonstrated maturity and rehabilitation; but it argues that existing procedures are valid and constitutionally compliant for parole-eligible adult and juvenile offenders. Yet the Board’s recitation of the validity of the current rules, without assessing them in light of now firmly established constitutional restrictions on the punishment of children, does not justify the constitutionality of Iowa’s existing parole procedures as they relate to juveniles. *Graham v. Florida*, 560 U.S. 48, 76 (2010) (“An offender's age is relevant to the Eighth Amendment, and criminal procedure laws that fail to take defendants’ youthfulness into account at all would be flawed.”)

I. Bonilla exhausted administrative remedies.

The Board argues that Bonilla’s appeal is based solely on the “Board’s failure to enter a ruling on his nine procedural motions,” and that because of this, Bonilla did not exhaust administrative remedies that were available to address that failure. Appellee Br. 27-28. The Board’s argument mischaracterizes the nature of Bonilla’s appeal. As the record reflects, and the Board concedes, Bonilla has exhausted administrative remedies to challenge agency action that denied—and continues to deny—him the nine procedural and substantive safeguards he sought and that Bonilla asserts are necessary to ensure his constitutionally protected right to a parole review process that provides him with a realistic and meaningful opportunity to obtain release based upon his demonstrated maturity and rehabilitation.

Bonilla sought these constitutionally required safeguards by way of nine separate motions filed with the Board, but the Board denied them by not even considering them. App. 235-409. The Board notified Bonilla’s counsel that it “consider[ed] the constitutional issues raised in those motions to be presented to the

Board for exhaustion purposes.” App. 410. Bonilla exhausted the internal agency appeal process set out in Iowa Admin. Code R. 2015-15.1 (17A) (2015) by timely appealing “the Board’s refusal to consider and/or denial of the Motions.” App. 411; 412-13. In response, the Board issued its final agency action upholding its denial of the nine motions as moot. App. 422. Finally, Bonilla filed his Petition for Judicial Review, appealing the Board’s denial of the nine safeguards on grounds that they were necessary to ensure him of a constitutionally-compliant parole review process. App. 16; 18. Thus, the Bonilla fully exhausted available administrative remedies.

Finally, the exception to the exhaustion requirement for inadequate remedies applies in this case. Exhaustion of internal administrative procedures is not required under the Iowa Administrative Procedures Act (“IAPA”) “when the administrative remedy is inadequate or its pursuit would be fruitless.” *Riley v. Boxa*, 542 N.W.2d 519 (Iowa 1996). The record in this case reflects that there are no adequate procedures for the Board to provide Bonilla with the relief he seeks, Appellee Br. 22-23; App. 410,

which the Board concedes: “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.” Appellee Br. 20.

Because the Board concedes—and the record reflects—that Bonilla has exhausted all available administrative remedies, and because existing administrative remedies are in any case inadequate to provide the relief he seeks, Bonilla can maintain this appeal.

II. Bonilla preserved error for appeal.

The Board argues that Bonilla has failed to preserve error on his challenge to the constitutionality of the Board’s procedures as applied to him, arguing that Bonilla was required to file a Rule 1.904 motion to expand the district court’s denial and dismissal of his Petition for Judicial Review. Appellee Br. 27-28. But no expansion of the district court’s ruling was required, because the district court ruled against Bonilla on the merits of his as-applied and facial constitutional challenges to the procedures governing his parole review.

The district court framed the question resulting in its ruling on Bonilla’s as-applied challenge as follows: “Does the recent constitutional jurisprudence regarding sentencing of juvenile offenders require the Board to follow the specific procedures Bonilla requested in his motions?” App. 183. The district court also reaffirmed its earlier decision that Bonilla had standing to challenge the Board’s denial of the nine safeguards in his case and as to all similarly situated juveniles. App. 182-83. Finally, the district court’s summation of its ruling addresses both Bonilla’s as-applied and facial challenge. App. 193 (“In conclusion, there is no authority compelling the concluding that the matters requested *in Bonilla’s nine motions* to the Board are constitutionally mandated *and* there is no basis *on this record* to conclude that the current statutory and regulatory parole system in Iowa, *on its face*, denies juvenile offenders a meaningful opportunity for release.”) (emphasis added). Therefore, the district court did not limit Bonilla’s claims to a facial *or* an as-applied challenge to the constitutionality of the Board’s procedures. Accordingly, Bonilla preserved error on both his facial and as-applied claims.

III. Bonilla has standing to maintain this appeal.

The Board argues that Bonilla does not have standing to maintain his appeal because Bonilla does not challenge the Board's decision to deny him release on parole, and the error it committed was therefore "harmless." Appellee Br. 65-68. But Bonilla has suffered and continues to suffer an ongoing and redressable injury under the U.S. and Iowa Constitutions: denial of his constitutional right to a parole review process that provides him with a realistic and meaningful opportunity for release on parole based on his demonstrated maturity and rehabilitation. See Iowa Code § 17A.19(10)(a) (2018). This is an injury which he suffers regardless of whether he is ever released on parole.

Iowa Code section 17A.10 (19) (a) establishes standing requirements in this matter. It provides that: "the court shall reverse, modify, or grant other appropriate relief from agency action . . . if it determines that substantial rights of the person seeking judicial relief have been prejudiced" by, among other things, agency action that is "unconstitutional on its face or as applied." *Id.* Bonilla has standing to maintain this appeal because

the Board's unconstitutional action has caused him constitutional injury. Bonilla suffered and continues to suffer harm to his constitutional rights resulting from the Board's failure to consider and failure to provide the nine safeguards he sought during his parole review process, which resulted in violations of his own and other parole-eligible juvenile offenders' constitutional right to a review process that afforded them a realistic and meaningful opportunity to be released on parole. Therefore, to maintain his appeal, Bonilla does not have to claim a constitutional right that the Board release him, as the Board argues; only that the existing parole procedures deprive him of a realistic and meaningful opportunity to be released based on his demonstrated maturity and rehabilitation: "A State is not required to guarantee eventual freedom to a juvenile offender convicted of a nonhomicide crime. What the State must do, however, is give defendants like Graham some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation." *Graham*, 560 U.S. at 75. *See also State v. Sweet*, 879 N.W.2d 811, 839 (Iowa 2016). By depriving Bonilla of a realistic and meaningful *opportunity for*

release, the Board subjects Bonilla to disproportionate punishment and violates the U.S. and Iowa Constitution. And because the Board has deprived and continues to deprive Bonilla of safeguards required to protect his constitutional rights, he has standing to challenge the Board's actions under § 17A.19(10).

The Board's arguments that Bonilla lacks standing have been rejected by the Federal District Court for the Southern District of Iowa. *See Greiman v. Hodges*, 79 F.Supp.3d 933 (S.D. Iowa 2015). In *Greiman*, the plaintiff argued that Iowa's parole procedures denied him due process. *Id.* at 944–45. The Board there—as they do here—mischaracterized Greiman's claim as a right to be released on parole. In denying the state's motion to dismiss, the court clarified Greiman's *actual* claim:

While Defendant is no doubt correct that Plaintiff ultimately “wants a parole,” Plaintiff's claims in this action are in actuality much broader. Plaintiff is not, as Defendant seems to presume, claiming that Defendants applied fair and appropriate parole policies to him and reached the wrong conclusion on whether to grant parole. Rather, Plaintiff asserts that *Graham* guarantees him a “meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation,” and that Defendants' existing procedures and policies deprive him of the “meaningful opportunity” to which he is entitled.

Id. at 945. The court concluded that Greiman’s factual allegations were sufficient to survive dismissal because the denial of a meaningful parole review is itself a cognizable harm. *Id.* See also *Diatchenko v. Dist. Atty. for Suffolk Dist.*, 27 N.W.3d 349, 354–56 (Mass. 2015) (considering Diatchenko’s constitutional due process claims regardless of the fact that he did not also challenge the resulting parole review decision not to release him).

For the same reasons, the district court in this case denied the Board’s motion to dismiss on standing grounds. App. 65; App. 65 n.4. The challenged agency action has caused past and ongoing injury to Bonilla’s constitutional rights to a realistic and meaningful opportunity for release on parole, due process, and right to counsel. Accordingly, Bonilla has standing to maintain this appeal under Iowa Code section 17A.19(10).

IV. Existing Board procedures deprive Bonilla of a realistic and meaningful opportunity for release on parole, due process, and the right to counsel.

The Board concedes that parole procedures must provide Bonilla with a realistic and meaningful opportunity to obtain release based on his demonstrated maturity and rehabilitation.

Appellee Br. 31. The Board even concedes that the safeguards Bonilla seeks constitute “best practices,” Appellee Br. 29. However, it argues that none of them are constitutionally required, and that existing procedures governing adult offenders are valid and constitutionally sufficient to protect parole-eligible juveniles. Appellee. Br. 29; 32-33; 62-65.

A. Existing parole procedures are constitutionally deficient.

In support of its arguments that the existing parole procedures are constitutional, the Board argues that this Court has *already* “deemed ‘both realistic and meaningful’” the parole procedures established in Iowa Code section 906.5 as they relate to juvenile offenders. Appellee Br. 32. The Board cites *Propps* for the position that the “present regulatory framework governing parole reviews in Iowa meets that bar by providing regularly scheduled, individually tailored reviews for each parole eligible juvenile offender.” Appellee Br. 51 (citing *State v. Propps*, 897 N.W.2d 91, 102 (Iowa 2017)). But *Propps* did not challenge the constitutionality of the Board’s parole review procedures, nor consider whether the current procedures are adequate for parole-

eligible juveniles, like Bonilla. *Propps* holds that “Propps’ immediate *eligibility* for parole, upon the parameters outlined in section 906.5, is both realistic and meaningful.” *Id.* at 101 (emphasis added). Therefore, *Propps* did not decide whether the parole review procedures in Iowa for juveniles are “realistic and meaningful.” Indeed, citing *Louisell*, *Propps* suggested that the current procedures may be unconstitutional: “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). This is precisely the question Bonilla raises in this appeal: whether current procedures deprive parole-eligible juveniles of a realistic and meaningful opportunity for release on parole based on their demonstrated maturity and rehabilitation.

B. Parole procedures must provide parole-eligible juveniles with a realistic and meaningful opportunity for release.

The Board also argues that “the mere act of allowing juvenile offenders ‘to be considered for parole’” satisfies *Miller*’s “‘meaningful opportunity to obtain release’” requirement. Appellee

Br. 30-31; 33-36. In support, the Board cites *Montgomery*. *Id.* at 30. But *Montgomery*'s holding is that *Miller*'s individualized-sentencing requirement for juvenile offenders must be applied retroactively. *Montgomery*, 136 S.Ct. at 736. The Court did not consider Louisiana's system of parole, let alone the constitutionality of its parole procedures. *Id.* In fact, *Montgomery* supports Bonilla's claims—not the Board's—that state parole and sentencing procedures for children are governed by the Eighth Amendment. *Id.* at 736 (“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.”) *Montgomery* links *Miller*'s mandate not only to the mandatory nature of the sentence, but also 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. *Id.* See also *Graham*, 560 U.S. at 76 (“An offender's age is relevant to the Eighth Amendment, and criminal procedure laws that fail to take

defendants' youthfulness into account at all would be flawed.") *See generally J.D.B. v. North Carolina*, 564 U.S. 261 (2011). This Court did the same in *Sweet*, recognizing the constitutional significance of the Board in providing parole-eligible juveniles with a meaningful opportunity for release based on their maturity and rehabilitation. 879 N.W.2d at 836–37, 838.

Thus, the mere establishment of a system of parole does not meet constitutional requirements; rather the procedures by which that system operates must provide parole-eligible juveniles with a realistic and meaningful opportunity to obtain their release based on demonstrated maturity and rehabilitation.

C. Existing parole procedures are insufficient to protect Bonilla's constitutional rights.

The Board devotes the bulk of its response brief arguing that its current parole procedures are valid as applied to Bonilla and other parole-eligible juveniles. *See* Appellee Br. 18, 27, 29, 45-62. Although the Board is correct that it complied with its existing parole procedures, its arguments are irrelevant. Bonilla does not claim that the Board failed to comply with its own rules, but rather that the rules and practices are constitutionally infirm as

applied to him and other parole-eligible juveniles punished with paroleable-life sentences because they do not provide them with a realistic and meaningful opportunity to be released on parole based on their demonstrated maturity and rehabilitation.¹ In its response, the Board recognizes that the nine safeguards Bonilla seeks to protect his constitutional rights are “best practices” for juvenile offenders, Appellee Br. 29, but ignores Bonilla’s and amici’s arguments on their constitutional significance. *See* Appellant Br. 48-90; JSP Br. 23-41; JLC Br. 11-27.

The Board, for example, argues 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.” *Id.* at 17. Likewise, it argues that “no statutory authority exists under Iowa law for the provision of legal counsel or independent experts at state expense during a parole interview or case file review.” *Id.* at 55.

¹ Bonilla’s arguments that the Board’s existing parole procedures are constitutionally deficient are detailed in his opening brief and supported in briefs by amici Juvenile Law Center (“JLC”) and Juvenile Sentencing Project (“JSP”). *See* Appellant Br. 48-90; JLC Br. 11-27; JSP Br. 12-43.

But the Board's recitation of the current rules, without assessing them in light of the relevant constitutional requirements, does not justify their constitutionality as they relate to review procedures for parole-eligible juveniles.

Moreover, in justifying denying appointed counsel to Bonilla during his parole reviews, the Board argues that counsel has been invited to address the Board in support of their clients. *Id.* But, as the district court recognized, counsel in this matter only represent Bonilla in his constitutional challenge to existing parole procedures, specifically not in arguing for his immediate release on parole. *Id.* at 56; App. 7, 65. And even if it stands, the invitation only assists those parole-eligible juveniles who can afford a privately hired attorney; that does not include Bonilla, who is indigent. Appellant Br. 50; App. 731.

The Board argues also that the current parole review procedures are functioning without assistance of counsel and that many unrepresented juveniles are being paroled as a result. Appellee Br. 62-63. Since Bonilla brought this action, the Board claims to have released 10 of 40 parole-eligible juveniles, including

two who were released to hospice and subsequently died. *Id.* at 63 n.6. But these statistics do not undermine Bonilla's and amici's arguments on the need for appointed counsel during the parole review process. *See* JLC Br. 37 n.7. Of the six parole-eligible juveniles who were assisted by counsel (Christine Lockheart, Yvette Louisell, Jeffrey Ragland, Blair Greiman, and Ruth Ann Veal), four (or 60 percent), have been paroled (all except Bonilla and Ruth Ann Veal, who is represented by the Equal Justice Initiative). By contrast, of the thirty-four remaining parole-eligible juveniles who have *not* had the assistance of counsel, the Board has only granted paroles to four of them (or 12 percent). While the sample size is small, those parole-eligible juvenile offenders assisted by counsel were five times more likely to have been paroled than those without the counsel's assistance.

The Board also does not address Bonilla's and amici's arguments regarding the heightened liberty interest juvenile offenders have in a parole review process that is both realistic and meaningful. Appellee Br. 56; JLC Br. 15-18. And the Board itself even appears to recognize the importance of appointed counsel to

mitigate procedural deficiencies in the existing system. For example, the Board acknowledges that counsel can alleviate potential problems arising from reliance on generic notes. Appellee Br. 22. But without a right to court-appointed counsel, these assurances are only available to individuals, which do not include Bonilla, who can afford an attorney. App. 731. Likewise, the Board justifies its procedures aimed at ensuring the reliability of materials the Board considers in weighing its decisions on who it will release by claiming to allow parole-eligible juveniles to review and respond to information. *Id.* 51, 52. But without counsel, juveniles do not have the ability to effectively respond to such information. *See* JSP Br. 25. The Board also ignores the indispensable nature of counsel, asserting that juveniles may seek to modify their parole-release plans and treatment recommendations if they disagree with the Board's findings. Appellee Br. 53-54. But without counsel's assistance, parole-eligible juveniles will not know whether or how to make such modifications.

The Board also fails to address Bonilla's arguments on the constitutional significance of an independent mental health evaluation as part of the parole review process. *See also* JSP Br. 31-33. The Board states that "offenders such as Bonilla are repeatedly evaluated by mental health professionals," *id* at 57, without addressing Bonilla's arguments that current evaluations are neither independent nor specialized. *Id.* at 57-58. Nor does the Board respond to Bonilla's related argument that current evaluations are substantively inadequate because they do not consider properly constitutionally significant psychological factors such as Bonilla's age at the time of his offense and his subsequent development, maturity and his experience growing up in prison. *Id.* at 57-58; App. 738-745.

In sum, the Board's existing parole procedures do not ensure that parole-eligible juveniles are provided with a realistic and meaningful opportunity for release on parole based upon their demonstrated maturity and rehabilitation. Thus the procedures are constitutionally infirm and as a result, the Board has

subjected and continues to subject Bonilla to disproportionate punishment in violation of the U.S. and Iowa Constitutions.

CONCLUSION

For the reasons set forth above and in its brief in chief, Bonilla respectfully requests that the Court enter a declaratory ruling that the nine safeguards he sought before the Board are constitutionally required and that any Board rules, regulations, or policies that conflict with or fail to provide for these safeguards are unconstitutional as applied to all similarly situated parole-eligible juveniles. Bonilla also seeks an order remanding this matter back to the Board and requiring the Board to provide Bonilla with the nine safeguards as part of his parole review process.

Respectfully submitted,

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