

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

BLAIR J. GREIMAN,

Plaintiff,

vs.

JASON CARLSTROM, in his Official
Capacity as Chair of the Iowa Board
of Parole, the IOWA BOARD OF
PAROLE, JOHN R. BALDWIN,
in his Official Capacity as Director of
the Iowa Department of Corrections,
and the IOWA DEPARTMENT OF
CORRECTIONS, jointly and severally,

Defendants.

No. _____

**PETITION FOR DECLARATORY
AND INJUNCTIVE RELIEF**

The Plaintiff, Blair Greiman, by and through Counsel, and for his Petition for Declaratory and Injunctive Relief pursuant to Iowa R. Civ. P. 1.1101 against the Defendants, states as follows:

INTRODUCTION

1. This action for declaratory and injunctive relief is brought for violation of the Plaintiff's rights guaranteed under Amendments VIII and XIV of the United States Constitution, pursuant to 42 U.S.C. § 1983, and Article I, sections 17 and 9, of the Iowa Constitution.

2. Plaintiff is an individual who was charged and tried as an adult for a crime committed when he was under the age of eighteen, punished by a mandatory adult sentence of life imprisonment, and is currently being detained without a meaningful opportunity for release.

3. Plaintiff seeks a declaration that policies and practices of the Iowa Board of Parole and the Iowa Department of Corrections deny Mr. Greiman a meaningful opportunity for release, thus violating the Eighth and Fourteenth Amendments of the United States Constitution and Article I, sections 17 and 9 of the Iowa Constitution.

4. Plaintiff does not, in this action, challenge his judgment or conviction and does not seek, in this matter, to invalidate his life sentence; rather, Plaintiff seeks this court's order that the Iowa Board of Parole and the Department of Corrections shall afford him, as a juvenile offender sentenced to life with the possibility of parole, a meaningful opportunity to obtain release based on his youth at the time of the offense and his demonstrated rehabilitation and maturity.

JURISDICTION

5. This court has concurrent jurisdiction over the federal constitutional claims under 42 U.S.C. § 1983. *Howlett v. Rose*, 496 U.S. 356 (1990). This court has jurisdiction over the state constitutional claims under Iowa Code § 602.6101 (2013).

PARTIES

6. Blair Greiman is an inmate at Anamosa State Penitentiary located in Jones County, Iowa. His address is 406 North High Street, Anamosa, IA 52205.

7. Jason Carlstrom is Chair of the Iowa Board of Parole located in Polk County, Iowa. His address is 510 E 12th Street, Suite 3, Des Moines, IA 50319. The Iowa Board of Parole is a state agency responsible for the administration of parole decisions including those concerning the Plaintiff. Iowa Code § 904A.4 (2013).

8. John Baldwin is Director of the Iowa Department of Corrections located in Polk County, Iowa. His address is 510 East 12th Street, Des Moines, Iowa 50319. The Iowa Department of Corrections is a state agency responsible for the administration of state correctional facilities, including the Anamosa State Penitentiary. Iowa Code § 904.103 (2013).

VENUE

9. Venue is proper in this court under Iowa Code § 616.3(2) as the Defendants are headquartered in, and primarily conduct their business from, and took the actions complained of herein in, Polk County, Iowa, and as Plaintiff is incarcerated in the State.

BACKGROUND FACTUAL ALLEGATIONS

10. Juvenile offenders, as compared to adults, have lessened culpability and are less deserving of the harshest punishments available. They lack maturity and have an underdeveloped sense of responsibility, making them more vulnerable or susceptible to negative influences and outside pressures.

11. On October 4, 1982, in Criminal No. OTOC014446 (Cerro Gordo Co.), following a jury trial, Mr. Greiman was sentenced to life without parole for 1st degree kidnapping (Iowa Code §§ 710.1(3) and 710.2). At the time of the offense, Mr. Greiman was 16 years old.

12. In the State of Iowa, kidnapping in the first degree is a class “A” felony. Iowa Code § 710.2. Life without parole was then the mandatory sentence for all those convicted of class “A” felonies. Iowa Code § 902.1.

13. On May 17, 2010, the Supreme Court of the United States ruled that “[t]he Constitution prohibits the imposition of a life without parole sentence on a juvenile offender who did not commit homicide.” *Graham v. Florida*, 130 S.Ct. 2011, 2034 (2010). The Court held that the imposition of the sentence of life without parole on juveniles for a non-homicide offense violates the Eighth Amendment’s prohibition of cruel and unusual punishment. *Graham*, 130 S.Ct. at 2030.

14. Under *Graham*, “the State must. . . give [juvenile defendants convicted of non-homicide crimes] some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation.” Mr. Greiman is entitled to such an opportunity.

15. Subsequent to *Graham*, on December 17, 2010 the Iowa Supreme Court considered how *Graham* affected Iowa’s sentencing laws as applied to juveniles convicted of non-homicide offenses. *Bonilla v. State*, 791 N.W.2d 697 (Iowa 2010). The Court found that the portions of Iowa’s sentencing laws that barred non-homicide class “A” felons from parole consideration to be unconstitutional as applied to juveniles. *Bonilla*, 791 N.W.2d at 701.

16. The Iowa legislature amended its sentencing laws in July, 2011 to account for these new constitutional developments. Iowa Code Ann. §902.1(2)(West 2013). The amended statute mandates that an individual cannot be sentenced to life without parole for a crime committed while the individual was a minor, with the exception of first-degree murder, and that such an individual is eligible for parole after serving the statutory minimum term of twenty-five years. *See* Section 902.1(2) effective July 27, 2011 (see Senate File 533, Section 147 (West 2011)). *Id.*

17. Mr. Greiman filed a Motion to Correct Illegal Sentence on October 15, 2010 in the Cerro Gordo County District Court of Iowa.

18. On February 20, 2012, Judge Carroll of the Cerro Gordo County District Court of Iowa vacated Mr. Greiman's original sentence of life without the possibility of parole on the grounds that the sentence was unconstitutional under both federal and Iowa law. Judge Carroll then resentenced Mr. Greiman to life *with* eligibility for parole.

19. The amended sentence mandates that Mr. Greiman is now eligible for parole having long-since served the statutory minimum term of twenty-five years. *See* Section 902.1(2) effective July 27, 2011 (see Senate File 533, Section 147 (West 2011)); *State v. Null*, 836 N.W.2d 41 (Iowa 2013).

GENERAL FACTUAL ALLEGATIONS

20. On June 26, 2012 the Parole Board reviewed Mr. Greiman's case and summarily denied his parole, failing to take into account his youth and demonstrated maturity and rehabilitation as required under the new constitutional and statutory mandates.

21. The Board's reason for its decision to deny Mr. Greiman was that "In view of the seriousness of the crime for which you were convicted, the Board believes that a parole at this time would not be in the best interest of society."

22. In September 2012, the Parole Board reviewed Mr. Greiman's case again and summarily denied his parole. Mr. Greiman filed a timely appeal of the Parole Board's September 2012 decision and was denied parole for a third time in November 2012.

23. In his appeal of the September 2012 decision, Mr. Greiman requested that the Board make a decision in light of the constitutional mandates that non-homicide juvenile offenders be given a reasonable opportunity for release based on demonstrated maturity and rehabilitation.

24. The Parole Board refused to give Mr. Greiman such an opportunity. Each time Mr. Greiman applied for and was denied parole, the reason for the decision to deny parole was the seriousness of offense. No other grounds were considered.

25. Under *Graham* and *Miller*, a juvenile offender must be given “some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation.” Mr. Greiman’s constitutional rights were violated, as no meaningful opportunity can be granted where the only consideration at a parole hearing is the severity of the offense.

26. Mr. Greiman has been an exemplary inmate for over 30 years. He has had only one minor disciplinary infraction in the last 30 years, become a master woodworker during that time, and published “Ezra’s Walk,” a novel inspired by his experiences in prison.

27. The board’s current policies, however, fail to take into account Mr. Greiman’s youth at the time of his offense and his demonstrated maturity and development.

28. In addition to the Board’s failure to consider more than the severity of the offense, it is currently the Board’s policy that before Mr. Greiman can be released on parole, he must receive sex offender services, due to the nature of his crime.

29. Mr. Greiman attempted to enroll but was denied because of a Department of Corrections’ policy that limits an inmate’s eligibility to receive sex offender services to those inmates with less than two years before their date of discharge.

30. Inmates serving life sentences with parole are therefore ineligible for the sex offender services required for parole eligibility under the current Department of Corrections’ policy because they lack a defined date of discharge.

31. Mr. Greiman, who has a life sentence with eligibility for parole, is effectively placed in the same situation as he was previously—a juvenile offender serving life sentences *without* eligibility for parole.

32. The Department of Corrections has failed to put in place any policies and procedures to ensure that Mr. Greiman is provided a reasonable opportunity for release based on demonstrated maturity and rehabilitation.

CAUSES OF ACTION

FIRST CAUSE OF ACTION (CRUEL AND UNUSUAL PUNISHMENT – FEDERAL CONSTITUTION)

33. Plaintiff incorporates by reference paragraphs 1 through 32 above as if set forth fully herein.

34. Defendants' current and continuing failure to afford Plaintiff a meaningful opportunity for release upon consideration of his age at the time of the offence and the subsequent demonstration of maturity and rehabilitation constitutes punishment with no legitimate penological justification, and as such constitutes cruel and unusual punishment in violation of the Eighth Amendment to the United States Constitution as incorporated by the Fourteenth Amendment and enforceable through 42 U.S.C. § 1983.

35. Iowa's parole scheme, which denies Plaintiff a meaningful opportunity for release, violates the Eighth Amendment by failing to recognize the difference in moral culpability between adults and juveniles and by requiring completion of sex offender services that Mr. Greiman is ineligible to obtain.

36. The Iowa Department of Corrections' policy that prohibits Mr. Greiman from obtaining sex offender services until two years before his date of discharge denies Plaintiff a meaningful opportunity for release in violation of the Eighth Amendment.

37. Iowa's parole scheme and the Iowa Department of Corrections' policies, which deny Mr. Greiman a meaningful opportunity for release, result in juveniles serving longer sentences than adults for the same offense, in violation of the Eighth Amendment to the United States Constitution.

38. The Iowa Department of Corrections' policy that Mr. Greiman obtain sex offender services that he is unable to obtain before being made eligible for parole, and the Parole Board's failure to consider more

than the severity of the offense when considering a juvenile offender for parole eligibility, are unconstitutional as applied to Mr. Greiman.

**SECOND CAUSE OF ACTION
(CRUEL AND UNUSUAL PUNISHMENT – STATE CONSTITUTION)**

39. Plaintiff incorporates by reference paragraphs 1 through 32 above as if set forth fully herein.

40. Defendants' current and continuing failure to afford Plaintiff a meaningful opportunity for release upon consideration of his age at the time of the offence and the subsequent demonstration of his maturity and rehabilitation constitutes punishment with no legitimate penological justification, and as such constitutes cruel and unusual punishment in violation of Article I, section 17, of the Constitution of the State of Iowa.

41. Iowa's parole scheme, which denies Plaintiff a meaningful opportunity for release, violates section 17 by failing to recognize the difference in moral culpability between adults and juveniles and by requiring completion of sex offender services that Mr. Greiman is ineligible to obtain.

42. The Iowa Department of Corrections' policy that prohibits Mr. Greiman from obtaining sex offender services until two years before his date of discharge denies Plaintiff a meaningful opportunity for release in violation of section 17.

43. Iowa's parole scheme and the Iowa Department of Corrections' policies, which deny Mr. Greiman a meaningful opportunity for release, result in juveniles serving longer sentences than adults for the same offense, in violation of section 17.

44. The Iowa Department of Corrections' policy that Mr. Greiman obtain sex offender services he is unable to obtain before being made eligible for parole, and the Parole Board's failure to consider more than the severity of the offense when considering a juvenile offender for parole eligibility, are unconstitutional as applied to Mr. Greiman.

**THIRD CAUSE OF ACTION
(DUE PROCESS – FEDERAL CONSTITUTION)**

45. Plaintiff incorporates by reference paragraphs 1 through 32 above as if set forth fully herein.

46. Defendants' current and continuing failure to afford Plaintiff a meaningful opportunity to present evidence of his youth at the time of the offense and of his demonstrated growth, maturity, and rehabilitation constitutes a denial of procedural due process of law in violation of the Fourteenth Amendment to the United States Constitution as enforceable through 42 U.S.C. § 1983.

47. The Iowa Department of Corrections' procedural requirement that Mr. Greiman complete or receive sex offender services that he is disqualified from obtaining before being made eligible for parole, and the Parole Board's failure to consider more than the severity of the offense when considering a juvenile offender for parole eligibility, constitutes a violation of Plaintiff's rights under the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

48. The Iowa Department of Corrections' requirement that Mr. Greiman complete sex offender services he is unable to obtain before being made eligible for parole, and the Parole Board's failure to consider more than the severity of the offense when considering a juvenile offender for parole eligibility, are unconstitutional as applied to Mr. Greiman and deny him the procedural due process right to demonstrate his maturity and rehabilitation.

**FOURTH CAUSE OF ACTION
(DUE PROCESS – STATE CONSTITUTION)**

49. Plaintiff incorporates by reference paragraphs 1 through 32 above as if set forth fully herein.

50. Defendants' current and continuing failure to afford Plaintiff a meaningful opportunity to present evidence of his youth at the time of the offense and of his demonstrated growth, maturity, and rehabilitation constitutes a denial of procedural due process of law in violation of Article I, section 9, of the Constitution of the State of Iowa.

51. The Iowa Department of Corrections' procedural requirement that Mr. Greiman, before being made eligible for parole, must complete sex offender treatment which he is disqualified from obtaining and the Parole Board's failure to consider more than the severity of the offense when considering a juvenile offender for parole eligibility, constitutes a violation of Plaintiff's rights under section 9.

52. The Iowa Department of Corrections' requirement that Mr. Greiman complete sex offender treatment that he is unable to obtain before being made eligible for parole, and the Parole Board's failure to consider more than the severity of the offense when considering a juvenile offender for parole eligibility, are unconstitutional as applied to Mr. Greiman and deny him the procedural due process right to demonstrate his maturity and rehabilitation.

RELIEF REQUESTED

WHEREFORE, Mr. Greiman respectfully requests that this court:

a. Issue a declaratory judgment that the continued incarceration of Plaintiff without affording him a meaningful opportunity to obtain release, based on his juvenile offender status and demonstrated maturity and rehabilitation, violates Plaintiff's rights guaranteed by the Constitutions of the United States and the State of Iowa;

b. Order the Department of Corrections to provide Plaintiff with a meaningful opportunity to obtain release by allowing Plaintiff to obtain sex offender services needed to become parole eligible.

c. Order the Parole Board to provide Plaintiff with a meaningful opportunity to obtain release by requiring the Parole Board to consider Mr. Greiman's youth and its attendant characteristics, in light of his demonstrated maturity and rehabilitation, when making parole eligibility determinations;

d. Order Parole Board to provide Plaintiff with a meaningful opportunity to obtain release by requiring the Parole Board to develop and implement policies and procedures that will ensure the age of the offender at the time of the offense is given due consideration in parole eligibility hearings, as well as the offender's demonstrated maturity and rehabilitation.

e. In particular, order the Parole Board: 1) to "recognize that because 'children are constitutionally different from adults,' they ordinarily cannot be held to the same standard of culpability as adults." 2) to "recognize that '[j]uveniles are more capable of change than are

adults’ and that as a result, ‘their actions are less likely to be evidence of irretrievably depraved character, ’” 3) to “go beyond a mere recitation of the nature of the crime, which the Supreme Court has cautioned cannot overwhelm the analysis,” and provide specific findings of fact as to why the general rules that youth have lessened culpability and a greater capacity for change do not warrant parole of a juvenile offender, and 4) to recognize that “the typical characteristics of youth, which include immaturity, impetuosity, and poor risk assessment, are to be regarded as mitigating, not aggravating factors” in parole eligibility determinations. *See State v. Null*, 836 N.W.2d 41, 74-75 (Iowa 2013).

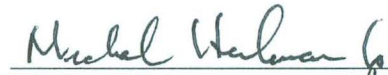
f. Retain jurisdiction over this action until such time as the Court is satisfied that the unlawful policies and practices, rules, acts and omissions complained of herein have been satisfactorily rectified.

g. Award Plaintiff court costs and fees;

h. Award such other and further relief as seems just and proper.



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