

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION**

No. 5:10-ct-2272-BO

SHAUN ANTONIO HAYDEN,)	
)	
Plaintiff,)	FIRST AMENDED
)	COMPLAINT
)	
PAUL G. BUTLER,)	
)	
Defendant.)	

INTRODUCTION

1. This action for declaratory and injunctive relief is brought under 42 U.S.C. § 1983.

Plaintiff Shaun Hayden is an individual who was charged and tried as an adult for crimes committed when he was a juvenile of fifteen years of age. Mr. Hayden was punished by an adult sentence of life imprisonment, and he is currently detained without a meaningful opportunity for parole in violation of the Eighth and Fourteenth Amendments.

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

3. Nevertheless, under North Carolina law, juveniles may be charged, tried, and sentenced as if they were adults without consideration of their juvenile status, including their reduced culpability and unique capacity for change and rehabilitation as compared to adults.

4. Whenever juveniles are sentenced to life imprisonment—one of the harshest available punishments—the U.S. Constitution requires that they be granted a meaningful opportunity for parole so that they may have the chance to demonstrate their increased maturity and rehabilitation.
5. Plaintiff does not challenge his judgment of conviction and does not seek to invalidate his life sentence; rather Plaintiff seeks an order that the N.C. Post-Release Supervision and Parole Commission afford him, as a person sentenced to life imprisonment for offenses committed before he was eighteen years old, a meaningful opportunity to obtain release based on real, non-arbitrary criteria that bear upon his degree of maturity and rehabilitation.

JURISDICTION

6. Jurisdiction is conferred on this Court by 28 U.S.C. § 1331, which authorizes federal courts to decide cases concerning federal questions, and by 28 U.S.C. § 1343(a), which authorizes federal courts to hear civil rights cases, and 28 U.S.C. § 2201, the Declaratory Judgment Act.

VENUE

7. Venue is proper in this Court, as the N.C. Post-Release Supervision and Parole Commission is located in Raleigh, North Carolina (Wake County), and Plaintiff is incarcerated at Lumberton Correctional Institution, in Lumberton, North Carolina (Robeson County), both of which are within the Eastern District of North Carolina

PARTIES

8. Plaintiff Shaun A. Hayden was charged, convicted, and sentenced as an adult to a life sentence in Iredell County, North Carolina, for acts he committed when he was a fifteen-

year-old child. Plaintiff Hayden is currently in the custody of the N.C. Division of Adult Correction. He is imprisoned at the Lumberton Correctional Institution in Robeson County, North Carolina. He has served over 30 years in adult prison, and is eligible for parole.

9. Defendant Paul G. Butler is the chair of the N.C. Post-Release Supervision and Parole Commission, located in Raleigh, North Carolina. Defendant Butler, along with his co-commissioners, exercises discretionary authority to release parole-eligible offenders from prison. Mr. Butler is sued in his official capacity.

FACTS

Punishment of Juveniles in North Carolina

10. North Carolina is the only state in the United States that automatically treats all sixteen- and seventeen-year-olds as adults in the criminal justice system.
11. Since 1919, even fourteen- and fifteen-year-olds charged with felonies in North Carolina may be transferred to superior court for treatment as though they were adult offenders. *See* 1919 N.C. Sess. Laws 247 (current version at N.C.G.S. § 7B-2200). In some cases, transfer is mandatory.
12. As of 1994, the minimum age of transfer out of the juvenile justice system was reduced to thirteen years. *See* N.C.G.S. § 7A-608 (1994).
13. North Carolina's practice of treating children as young as thirteen as adults is at odds with the American Bar Association standards relating to juvenile delinquency, which recommends eighteen as the upper age limit of juvenile court jurisdiction.

14. This practice also conflicts with international standards, including the United Nations Convention on the Rights of the Child, which recommends eighteen as the dividing line between juvenile and adult criminal jurisdiction.
15. Though the State of North Carolina regularly prosecutes children as though they were adults, the State also recognizes a child's relative lack of maturity and responsibility based on age in other areas of the law—by prohibiting juveniles from voting or registering to vote, entering into valid contracts, serving on juries, joining the armed forces, smoking tobacco, marrying without parental consent, leaving school, working full-time, or applying for a driver's license without first undergoing youth-specific driver education classes.
16. Scientific and medical experts agree that the vast majority of youth who commit antisocial acts in their adolescence grow out of this behavior upon maturity.
17. As recognized by scientific and medical experts, the American Bar Association, the United Nations, many U.S. states, and the U.S. Supreme Court, Mr. Hayden, as a fifteen-year-old juvenile offender, was more vulnerable to adult influences and susceptible to peer pressure than an adult offender.
18. As recognized by scientific and medical experts, the American Bar Association, the United Nations, many U.S. states, and the U.S. Supreme Court, Mr. Hayden, as a fifteen-year-old juvenile offender, was more likely to act impetuously without regard for consequences as compared to an adult offender.
19. As recognized by scientific and medical experts, the American Bar Association, the United Nations, many U.S. states, and the U.S. Supreme Court, Mr. Hayden, as a fifteen-

year-old juvenile offender, has a greater capacity for change, growth, and rehabilitation as compared to an adult offender.

20. Mr. Hayden, as a fifteen-year-old juvenile offender, has a constitutional right to a meaningful opportunity to demonstrate his maturity and rehabilitation and thereby obtain parole release.

North Carolina's Sentencing & Parole Framework

21. The State of North Carolina vests the N.C. Post-Release Supervision and Parole Commission (the "Commission") with sole, discretionary authority to make decisions regarding parole. N.C.G.S. § 143B-720(a).
22. The Commission consists of four full-time members, appointed by the Governor to four-year terms. N.C.G.S. § 143B-721(a)-(a2).
23. One of the members is designated by the Governor to serve as chair. *Id.*
24. In North Carolina, certain felony offenders sentenced to life imprisonment for crimes that occurred prior to September 30, 1994, may be considered for parole after 20 years in prison. This group includes Mr. Hayden.
25. In 1994, North Carolina eliminated the possibility of parole for felony offenders sentenced to life imprisonment under the Structured Sentencing Act (for crimes that occurred after September 30, 1994).
26. However, the U.S. Supreme Court decisions in *Graham v. Florida*, 130 S.Ct. 2011 (2010), and *Miller v. Alabama*, 567 U.S. ___ (2012), brought back the possibility of parole for juvenile offenders sentenced to life imprisonment, including for crimes that occurred after September 30, 1994.

27. Because North Carolina's Structured Sentencing Act mandated a sentence of life without the possibility of parole for certain offenses, North Carolina enacted N.C.G.S. § 15A-1340.19A *et seq.* in response to *Miller v. Alabama*. That law provides that juveniles convicted of those offenses may be sentenced to life with the possibility of parole after 25 years.
28. Regardless of whether an offender was sentenced before or after September 30, 1994, North Carolina statutes proscribe no criteria by which the Commission must evaluate an offender's suitability for parole.
29. North Carolina statutes empower the Commission "to set up and establish rules and regulations in accordance with which prisoners eligible for parole consideration may have their cases reviewed." N.C.G.S. § 148-57.
30. However, the Commission has published no "rules and regulations" governing how prisoners eligible for parole consideration may have their cases reviewed.
31. North Carolina statutes further empower the Commission to create a plan whereby it "determines parole eligibility." *Id.*
32. However, the Commission has published no "plan" whereby it "determines parole eligibility."
33. The Commission is not required by any statute, regulation, or rule to take into account any particular criteria, evidence, or standards in making its unreviewable parole decision.
34. The Commission's decision-making authority is unbounded and is not subject to appeal.
35. The Commission members do not meet with any offenders prior to making its decisions regarding parole.

36. The Commission members do not meet together about any offenders prior to making its decisions regarding parole.
37. The Commission members do not hold any hearings about any offenders prior to making its decisions regarding parole.
38. North Carolina's parole regime grants unfettered discretion to the N.C. Parole and Post-Release Supervision Commission to make unreviewable parole decisions behind closed doors on the basis of any reason or no reason.
39. North Carolina's parole regime utterly fails to take into consideration whether Mr. Hayden's actions, committed as a juvenile, were a result of transient immaturity and whether he has been rehabilitated.
40. There is no legitimate penological justification for imposing a life sentence on Mr. Hayden, a juvenile offender, without affording him a meaningful opportunity for release wherein he may show his increased maturity and rehabilitation. Such a denial fails to serve any of the recognized objectives of punishment.

Shaun Hayden's Term of Imprisonment

41. Mr. Hayden was born on October 6, 1966.
42. On April 29, 1982, May 23, 1982, and August 21, 1982, Mr. Hayden was fifteen years of age. On these dates, he committed multiple violent felonies.
43. On March 16, 1983, at the age of sixteen years, Plaintiff Hayden pled guilty to First Degree Burglary; Attempted Rape; Assault With a Deadly Weapon With Intent to Kill Inflicting Serious Injury Not Resulting in Death; First Degree Sexual Offense; Breaking and Entering; Larceny; Second Degree Sexual Offense; Attempted Second Degree Rape; and First Degree Rape.

44. The Superior Court consolidated Mr. Hayden's offenses for judgment, and Mr. Hayden was sentenced to life imprisonment.
45. The North Carolina prison system offers inmates a variety of educational, vocational, and self-improvement courses.
46. Since entering prison, Mr. Hayden has successfully completed the following courses:
- a. General Education Degree (GED)
 - b. Woodworking
 - c. Carpentry
 - d. Plumbing
 - e. Small Engines Repair
 - f. Brick Masonry
 - g. Block Masonry
 - h. Electrical Welding
 - i. Gas Welding
 - j. Basic Electricity
 - k. Advanced Sewing
 - l. Body Fender Repair
 - m. Cooking
 - n. Drug Alcohol Recovery Program (Levels I, II, and III)
 - o. Sex Offender Accountability and Responsibility Program (SOAR)
 - p. Human Resources Development
 - q. Air Conditioning, Heating, & Refrigeration

47. The North Carolina prison maintains a tiered disciplinary system, with Class A disciplinary offenses being the most serious, and Class D disciplinary offenses the least serious.
48. While in prison, Mr. Hayden has not committed any Class A disciplinary offense since 1996, a period of over 17 years, nor has he committed any Class B disciplinary offense since 2000, a period of over 13 years. Over the last three years, Mr. Hayden has been entirely infraction-free.
49. As of 2002, Mr. Hayden has been eligible for parole.
50. Each year since 2002, with the exception of 2009, Mr. Hayden has received a *pro forma* denial letter from the Commission.
51. In 2009, he received no letter at all.
52. As a result, Mr. Hayden wrote to the Commission complaining that he had not received a denial letter.
53. In a letter dated January 26, 2010, Parole Case Analyst Karen L. Gregory responded to Mr. Hayden's letter. Ms. Gregory's letter purported to include a copy of the Commission's 2009 denial letter.
54. The purported 2009 denial letter is dated March 17, 2009, and lists "Anthony E. Rand" as Commission Chairman.
55. Mr. Rand did not assume the post of Commission Chairman until January 2010.
56. Mr. Hayden has never been informed what criteria or guidelines (if any) the Commission has taken into consideration in denying him parole twelve times.
57. Mr. Hayden has never been informed what evidence (if any) the Commission has reviewed in denying him parole twelve times.

58. Mr. Hayden has never been interviewed by the Commission.
59. Mr. Hayden has never been given any list of expectations that he should strive to meet prior to his next parole review.
60. Mr. Hayden has never been given any opportunity to demonstrate his increased maturity or his rehabilitation to the Commission.
61. Mr. Hayden has never been given a “meaningful opportunity” to obtain parole release.

CAUSES OF ACTION

FIRST CAUSE OF ACTION EIGHTH AMENDMENT: CRUEL & UNUSUAL PUNISHMENT

62. Plaintiff incorporates by reference paragraphs 1 through 61 above as if set forth fully herein.
63. Defendant’s current and continuing failure to afford Plaintiff, a juvenile offender, a meaningful opportunity for release upon demonstrating his 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 U.S. Constitution as incorporated by the Fourteenth Amendment and enforceable through 42 U.S.C. § 1983.

SECOND CAUSE OF ACTION FOURTEENTH AMENDMENT: DUE PROCESS

64. Plaintiff incorporates by reference paragraphs 1 through 63 above as if set forth fully herein.
65. Defendant’s current and continuing failure to afford Plaintiff, a juvenile offender, a meaningful opportunity for release upon demonstrating his growth, maturity, and

rehabilitation, constitutes a denial of due process of law in violation of the Fourteenth Amendment to the U.S. Constitution as enforceable through 42 U.S.C. § 1983.

WHEREFORE, Plaintiff prays for a judgment against Defendant and requests that this Court:

- a. Issue a declaratory judgment that the continued incarceration of Plaintiff without affording him a meaningful opportunity to obtain release by demonstrating his maturity and rehabilitation, violates Plaintiff's rights guaranteed by the U.S. Constitution and statutory law;
- b. Order Defendants to provide Plaintiff with a meaningful opportunity to obtain release by demonstrating his maturity and rehabilitation;
- c. Retain jurisdiction over this action until such time as the Court is satisfied that the unlawful laws, policies, practices, rules, acts, and omissions complained of herein have been satisfactorily rectified;
- d. Award Plaintiff attorney fees and costs;
- e. Award such other relief as seems just and proper.

Respectfully submitted,

September 9, 2013

/s/ Elizabeth G Simpson
Elizabeth G. Simpson
N.C. Bar # 41596
Mary S. Pollard
N.C. Bar #20081
Attorneys for Plaintiff
N.C. Prisoner Legal Services
P.O. Box 25397
Raleigh NC 27611
919-856-2200
919-856-2223 (fax)
esimpson@ncpls.org

CERTIFICATE OF SERVICE

I hereby certify that on September 9, 2013, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following:

Mary Carla Hollis
N.C. Department of Justice
P.O. Box 629
Raleigh, NC 27602
919-716-6573
Fax: 919-716-0001
Email: mchollis@ncdoj.gov

/s/ Elizabeth G Simpson
Elizabeth G. Simpson, N.C. Bar # 41596
Attorneys for Plaintiff
N.C. Prisoner Legal Services
P.O. Box 25397
Raleigh NC 27611
919-856-2200
919-856-2223 (fax)
esimpson@ncpls.org