UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

HENRY HILL, JEMAL TIPTON, DAMION TODD, BOBBY HINES, KEVIN BOYD, BOSIE SMITH, JENNIFER PRUITT, MATTHEW BENTLEY, KEITH MAXEY, GIOVANNI CASPER, JEAN CARLOS CINTRON, NICOLE DUPURE and DONTEZ TILLMAN,

Plaintiffs,

v.

RICK SNYDER, in his Official Capacity as Governor of the State of Michigan, DANIEL H. HEYNS, in his Official Capacity as Director, Michigan Department of Corrections, and TOMAS COMBS, in his Official Capacity as Chair, Michigan Parole Board, jointly and severally,

Defendants.

File No. 10-cv-14568

HON. JOHN CORBETT O'MEARA
MAG. JUDGE R. STEVEN WHELAN

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PLAINTIFFS' REPLY BRIEF IN COMPLIANCE WITH THIS COURT'S ORDER OF JANUARY 30, 2013

NOW COME Plaintiffs, by and through their counsel, and submit the following briefing pursuant to this Court's January 30, 2013 Order and Opinion Granting in Part and Denying in Part Plaintiffs' Motion for Summary Judgment and Denying Defendants' Cross-Motion for Summary Judgment. (Dkt. 62)

I. The Court possesses equitable authority to order the relief necessary to ensure that all Michigan prisoners serving a mandatory life sentence for an offense committed as a juvenile will be given a meaningful and realistic opportunity for release.

The Court found in its Order that "*Miller* and *Graham* require providing a fair and meaningful possibility of parole to each and every Michigan prisoner who was sentenced to life for a crime committed as a juvenile." (Dkt. 62, Order at 6.) While not styled as a motion for reconsideration, Defendants in their Supplemental Brief essentially assert that this Court lacks the authority to grant the relief contemplated by its Order. They contend that Plaintiffs' claim for relief is not ripe, that this Court must leave any remedy to the State, and that the Order applies only to the five Plaintiffs in this suit. The Court should reject each of these contentions.

A. Plaintiffs' claim for relief is ripe.

The crux of this case has always been that Michigan's statutory scheme for juveniles convicted of first-degree murder constitutes a "current and continuing failure to afford Plaintiffs a meaningful opportunity for release upon demonstrating their maturity and rehabilitation." (Dkt. 44, Am. Compl. ¶ 198; *see also id.* ¶¶ 10-11, 50, 136, 144, 158, 167, 173, 181, 183, 199-200.) Nonetheless, Defendants assert that this Court cannot take any action beyond declaring M.C.L. § 731.234(6) unconstitutional because Plaintiffs' claim for equitable relief will not ripen until Plaintiffs become eligible for parole. (Dkt. 73, Defs.' Br. at 4, 6-7.)

Defendants' position misapprehends ripeness. The ripeness doctrine is intended only to prevent federal courts "from entangling themselves in abstract disagreements" between parties.

Abbott Labs. v. Gardner, 387 U.S. 136, 148 (1967). Unlike *Los Angeles v. Lyons*, 461 U.S. 95 (1993), upon which Defendants primarily rely, Plaintiffs present a concrete claim that does not require the Court to speculate as to what procedures the State will apply to them. These procedures are already spelled out by statute and administrative regulation. *See In re Navy Chaplaincy v. U.S. Navy*, 697 F.3d 1171, 1176-77 (D.C. Cir. 2012) (distinguishing *Lyons* where plaintiffs challenged specific policies and procedures because "the prospect of future injury becomes significantly less speculative"). Plaintiffs' claim for relief is therefore not "hypothetical" or "conjectural"; it is premised on the fact that they are now, and will continue to be, denied a meaningful opportunity for release, and it is ripe for review. *Nat'l Rifle Ass'n of Am. v. Magaw*, 132 F.3d 272, 287 (6th Cir. 1997).

To hold otherwise would allow Defendants to create an untenable "Catch-22" for anyone who seeks a meaningful opportunity for release under *Graham* and *Miller*. Under Defendants' view of ripeness, presumably a juvenile must serve many years in prison before bringing a claim that he is being denied a meaningful opportunity for release. However, Defendants have also taken the position that such persons are barred by the statute of limitations from bringing § 1983 challenges to Michigan's statutory scheme. Under Defendants' theory, no one could bring an Eighth Amendment claim under *Graham* and *Miller*; they would always be either too early or too late. Constitutional rights must not turn on such gamesmanship.

B. The Court should not defer to the State on an appropriate remedy when the State refuses to act.

Defendants rely on language from *Graham* to suggest that the State must be granted the first opportunity to implement the "requirement to provide a realistic opportunity for parole." (Defs.' Br. at 6.) This dictum, to the extent it is relevant, can only be a prudential consideration. The Supreme Court did not intend what Defendants suggest, namely, an unprecedented and

potentially limitless form of immunity from a federal court remedying a patently unconstitutional statutory scheme unless and until the State first acts. Defendants have not only failed to offer a proposal for compliance with *Graham* and *Miller*; theyhave stated their belief that no changes to the existing scheme are required by *Graham* and *Miller*. (Defs.' Br. at 6.) Faced with such resistance, this Court can and must say what *Graham* and *Miller* require.

C. The Court's Order applies to all juveniles serving mandatory life sentences, not just five Plaintiffs.

Citing generalized "principles of sovereignty and immunity from federal court jurisdiction," Defendants assert that the Court's Order and any subsequent remedy "applies only to these Plaintiffs." (Defs.' Br. at 4.) A review of this Court's January 30, 2013, opinion reveals that this Court did not intend to limit the effect of its ruling to five plaintiffs. In finding *Miller* retroactive, the Court states that "[t]o hold otherwise would allow the state to impose unconstitutional punishment on some persons but not others, an intolerable miscarriage of justice." (*Id.* at 4.) As to relief, the Court states that "compliance with *Miller* and *Graham* requires providing a fair and meaningful possibility of parole to each and every Michigan prisoner who was sentenced to life for a crime committed as a juvenile."[1] (*Id.* at 6.)

The language above reflects that the Court has granted summary judgment regarding the way in which Michigan treats *all juveniles* serving mandatory life. Defendants are thus obligated to provide *all juveniles* being punished unconstitutionally a meaningful and realistic opportunity for release. This Court possesses broad equitable power to implement changes to the parole system that are necessary to ensure that all juveniles which Defendants subject to an

[1] Further, the Court's opinion states in bold: "**Michigan's Parole Statute Is Unconstitutional as Applied to Juveniles**." (Dkt. 62 at 2.) It then finds that Michigan's statutory scheme for sentencing juveniles convicted of first-degree murder "is clearly unconstitutional under *Miller*." (*Id.* at 2-3.)

unconstitutional statute receive a meaningful and realistic opportunity for release. *Associated Gen. Contractors v. City of Columbus*, 172 F.3d 411, 417 (6th Cir. 1999) ("Article III equity jurisdiction is . . . broad enough to authorize a federal court, once it has found a constitutional violation by a state or local governmental entity, to administer intricate and expansive remedial orders."). The Court should exercise that power.[2]

II. Plaintiffs' requested relief is necessary to ensure that youth are given a meaningful and realistic opportunity for release as required by the Eighth Amendment.

Defendants next argue that the specific reforms advocated by Plaintiffs are unauthorized, excessive, inappropriate and unnecessary. But Defendants offer no evidence to rebut the numerous affidavits and authorities submitted by Plaintiffs (Dkt. 67), which demonstrate that the current adult parole system would not provide juveniles with a meaningful and realistic opportunity for release. Defendants also offer no alternative proposal. The Court should order the relief requested by Plaintiffs because such relief is constitutionally required and appropriate.

A. The judicial veto allows the State to arbitrarily deprive a juvenile of any opportunity to demonstrate maturity and rehabilitation.

Defendants' contention that Plaintiffs did not challenge M.C.L. § 791.234(8)(c) in their complaint is meritless. Plaintiffs challenged Defendants' failure to afford them a "meaningful opportunity for release upon demonstrating their maturity and rehabilitation." (Dkt. 44, Am. Compl. ¶ 198.) The judicial veto stands as an impermissible barrier to having the meaningful opportunity guaranteed by *Graham* and *Miller*. Rather than operating as a "check and balance on the Parole Board's discretion," as Defendants suggest, (Defs.' Br. at 9), the judicial veto prevents the Parole Board from exercising any discretion at all by barring a parolable lifer from

[2] In light of Defendants' position raised in their response brief, Plaintiffs have filed a concurrent Motion for a Ruling on the Scope of this Court's Order.

even receiving a public hearing to demonstrate his suitability for release. This Court should enjoin the Parole Board from denying a hearing where a judge has interposed an arbitrary objection pursuant to M.C.L. § 791.234(8)(c).

B. The Parole Board's current guidelines and procedures do not provide youth with a meaningful opportunity for release.

Defendants provide a list of factors that the Parole Board is permitted to take into consideration when granting or denying parole, then assert in conclusory fashion that these factors "necessarily" encompass the *Miller* requirement that a juvenile's age and its attendant circumstances play a mitigating role in his punishment. (Defs.' Br. at 12-14.) Defendants never address Plaintiffs' central points that these factors only come into play if an individual is granted a parole hearing and that many of these factors make juvenile status a detriment to release, thereby undermining *Miller*'s holding that youth-related factors must be given a mitigating effect. (Pls.' Br. at 8-10.)

Furthermore, Plaintiffs' unrebutted evidence demonstrates that parole guidelines referenced by Defendants are not even used for lifers, and the current parole review process does not provide the Parole Board with enough information to meaningfully consider the *Miller* factors. (Stapleton Affidavit, Dkt. 67-4, ¶¶ 8, 25.) As none of the criteria listed by Defendants are used in determining whether to grant a prisoner a parole hearing in the first place, the vast majority of parolable lifers simply receive a "no interest" designation based on no identified criteria. This process thus depriving them of a hearing at which the *Miller* factors might be appropriately considered and where they would be given an opportunity to demonstrate their maturity and rehabilitation. (Pls.' Br. at 6-7.) Defendants also put forward no evidence to contradict the courts' uncontested finding in the *Foster-Bey* litigation that the Parole Board

maintains a "life means life" policy and that the Board focuses myopically on the seriousness of the offense as opposed to evidence of maturation and rehabilitation. *Foster v. Booker*, 595 F.3d 353, 360 (6th Cir. 2010).

Thus, unless this Court orders otherwise, a child who received a mandatory life sentence under the current system will remain in prison without any entity ever providing individualized consideration to the mitigating factors associated with youth—consideration that *Miller* requires before a youth is condemned to prison for the rest of his or her natural life. The Eighth Amendment requires Defendants to give youth a meaningful hearing(s) based on reliable information about the youth's maturation and rehabilitation, guided by criteria that give mitigating effect to youth-related factors identified in *Miller* and followed by reasoned decisions to grant or deny parole.

C. Defendants' continuing refusal to recognize their constitutional obligations toward youth underscores the need for equitable relief.

A revealing passage appears near the end of Defendants' supplemental brief: "In the absence of a state-created liberty interest, a parole board can deny release on parole for any reason or no reason at all, and neither the Eighth Amendment nor the Due Process Clause has any application." (Defs.' Br. at 15-16.) Although this may be a correct statement of law as applied to adult offenders, the Supreme Court recognized in *Graham* and *Miller* that children are different in that they must be given individualized consideration and a meaningful and realistic opportunity for release. Plaintiffs, who were sentenced to mandatory life without any individualized consideration of their youthful status, cannot now be denied parole "for any reason or no reason at all."

Defendants urge this Court to allow them, "in the first instance," to explore the means and mechanisms for complying with the *Graham* and *Miller*. Yet their position throughout this litigation reveals that they have no intention of complying unless this Court orders appropriate relief. Plaintiffs request that the Court order the relief requested in their Supplemental Brief.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on March 29, 2013, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system which will send notification of such filing as well as via U.S. Mail to all non-ECF participants.

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