

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

No. 5:10-CT-3123-BO

SHAUN ANTONIO HAYDEN,)

Plaintiff,)

v.)

PAUL G. BUTLER,)

Defendant.)

DEFENDANT'S PROPOSED PLAN
IN RESPONSE TO 25 SEPTEMBER 2016
ORDER [D.E. 58]

NOW COMES Defendant Paul G. Butler, Jr., by and through counsel, North Carolina Attorney General Roy Cooper and Special Deputy Attorney General Joseph Finarelli, in accordance with the directives contained in the Court's 25 September 2015 Order [D.E. 58] and its 25 August 2016 Order [D.E. 72], and submits the following proposed to comply with the Court's "plan for the means and mechanism of compliance with the mandates of *Graham* to provide a meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation to juvenile offenders convicted as adults" [D.E. 58].¹

Pre-Hearing Procedures

- Juvenile offenders convicted as adults and sentenced to life with the possibility of parole ("Eligible Offenders"), will be assigned to the caseload of a designated parole case analyst;
- Eligible Offenders will be reviewed on a biennial basis;

¹ Although he submits the plan set forth herein, Defendant Butler does so in compliance with the Court's Orders and expressly reserves his right to pursue an appeal.

- Eligible Offenders will receive written notice from the North Carolina Post-Release Supervision and Parole Commission (“the Parole Commission”) at least 180 days in advance of any parole review hearing;
- In advance of an Eligible Offender’s parole review hearing, the family members, advocates, attorneys, or other witnesses of the Eligible Offender will be guaranteed a thirty-minute meeting slot to address, in person, one or more members of the Parole Commission in order to demonstrate how the Eligible Offender has achieved the level of maturity and rehabilitation necessary to render him suitable for parole release;
- An Eligible Offender may request a reasonable continuance of a scheduled parole review hearing up to thirty (30) days in advance of the designated hearing date;
- Those who may wish to oppose an Eligible Offender’s release on parole will be guaranteed, if requested, an equal thirty-minute meeting slot to address the same Commissioner(s) who will preside over any parole review hearing for the Eligible Offender whose suitability for parole release is being challenged;
- Offenders will be permitted to submit, in writing, a personal explanation of the circumstances of his underlying offense(s) or, if available, an appellate court opinion setting forth the facts of any offense(s), as well as any materials documenting the offender’s maturity, rehabilitation, and suitability for parole;
- The designated parole case analyst will prepare, on a biennial basis, a summary of the offender’s file, including a summary of any written materials submitted by or on behalf of the offender;

Hearing Procedures

- The Eligible Offender will be permitted to appear, via videoconferencing technology, before the Commissioner(s) and the designated parole case analyst during the thirty-minute parole review hearing;
- Audio recordings will be made of the proceedings of both the thirty-minute parole review hearing afforded to the Eligible Offender and, if requested, any thirty-minute hearing afforded to individuals opposing the Eligible Offender's parole release;
- Any attorney, expert witness, advocate, and/or witness on behalf of the Eligible Offender will be able to present to the Commissioner(s) any evidence demonstrating, in the opinion of the presenting party, the Eligible Offender's maturity, rehabilitation, and suitability for parole release;
- Any attorney, expert witness, advocate, and/or witness on behalf of those in opposition to an Eligible Offender's suitability for parole release will be able to present to the Commissioner(s) any evidence demonstrating, in the opinion of the presenting party, the Eligible Offender's lack of maturity, rehabilitation, and suitability for parole release;

Post-Hearing Procedures

- At the conclusion of the parole review hearing afforded to the Eligible Offender and, if requested, the hearing afforded to those opposing the Eligible Offender's parole release, the Commissioner designated to preside over the hearings, with the assistance of the designated parole case analyst, will prepare a report to be signed

by the presiding Commissioner and circulated to the remaining members of the Commission for review and consideration;

- In the event that parole release is denied, the Parole Commission will send a letter to the Eligible Offender stating the specific reason(s) why parole release was denied as well as any recommendation(s) for steps the Eligible Offender may take to improve his or her future chances for parole release, such as the completion of specific educational or rehabilitative programs offered by the Division of Prisons, or the continuation of infraction-free behavior prior to the next review;
- Although the STATIC-99 risk assessment tool is not currently used by the Parole Commission during the parole review process, that risk assessment tool will not be used nor will the results of any previously-administered STATIC-99 risk assessment be considered during the parole review process for any Eligible Offender;
- The audio recordings of the parole review hearing(s) for an Eligible Offender will be maintained for three years from the date of the denial of parole release following any parole review hearing or until such time as the Eligible Offender is released on parole, whichever occurs first;
- The Parole Commission will collect and maintain data, along the lines of its current practices, including how many parole review hearings for the population of Eligible Offenders are held annually, the results of the parole review process for the population of Eligible Offenders, and a statistical breakdown on the basis of age, race, gender, and type of criminal offense of parole review hearings conducted for Eligible Offenders;

- The Parole Commission will request that the Division of Adult Correction & Juvenile Justice and, specifically, the Division of Prisons, will give careful consideration to any MAPP contract recommended by the Parole Commission for any Eligible Offender when the MAPP contract contains requirements for the Eligible Offender's infraction-free behavior, education, job training, and/or successful participation in any available community volunteer, home visit, and work-release program

Respectfully submitted this 24th day of October, 2016.

ROY COOPER
Attorney General

/s/ Joseph Finarelli
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CERTIFICATE OF SERVICE

I hereby certify that on this day I electronically filed the foregoing **DEFENDANT'S PROPOSED PLAN IN RESPONSE TO 25 SEPTEMBER 2016 ORDER** with the Clerk of the Court using the CM/ECF system, which will send electronic notification of such filing to the following:

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This the 26th day of October, 2016.

/s/ Joseph Finarelli _____
Joseph Finarelli
Special Deputy Attorney General