

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
CASE NO.: 5:20-ct-03231-M**

BRETT ABRAMS,

Plaintiff,

v.

WILLIS J. FOWLER,

Defendant.

PLAINTIFF’S LOCAL CIVIL RULE 56.1 STATEMENT OF MATERIAL FACTS

Pursuant to Local Rule 56.1(a)(1), Plaintiff Brett Abrams, through undersigned counsel, hereby submits his Local Civil Rule 56.1 Statement of Material Facts, as to which he contends there is no genuine dispute. Pursuant to Local Rule 56.1(a)(4), all exhibits and other documents referenced herein are being included in Plaintiff’s Appendix to Local Civil Rules 56.1 Statement of Material Facts.

Facts Relating to Plaintiff Brett Abrams

1. On May 22, 1984, Brett Abrams pleaded guilty to Second Degree Murder, a Class C offense under North Carolina’s Fair Sentence Act, and was given a life sentence of imprisonment with the possibility of parole. Abrams was 14 years old when he committed the crime, and was 15 years old when he was sentenced. [App. 32: Judgment and Commitment, Iredell County, 83CRS10721].

2. As reflected in his parole file, the year prior to the murder, on Easter Sunday 1982, Abrams' younger brother was killed in a camper fire after a portable heater fell over. [App. 26: Dep. Ex. 33: Life Sentence Interview, May 14, 2020, Supp. 03774].

3. As reflected in his parole file, Abrams, who was adopted, blamed himself for not saving his younger brother, and carried enormous guilt because he was able to run away from the camper. [App. 30: Dep. Ex. 41: Letter from N.C. Prisoner Legal Services to Parole Commission, May 18, 2020, Supp. 03720].

4. By statute, Abrams became eligible for parole in 1993. He has been repeatedly denied parole by the Parole Commission since 1993. [Defendant's Answer at 2-3 (D.E. 18)].

5. The Parole Commission has never agreed to offer Abrams a MAPP agreement (or Mutual Agreement Parole Program). [Defendant's Answer at 5 (D.E. 18)].

6. The Parole Commission's 30(b)(6) witness, Chief Administrator Mary Stevens, testified that a MAPP is "just a delayed parole decision, in the sense the commission's agreeing to parole someone, but wants them to do a specific, maybe, programs, that they haven't been exposed to yet." [App. 1: Deposition Transcript of N.C. Post-Release Supervision and Parole Commission, by and through its Rule 30(b) Designee, Mary Stevens, 97:18-25].

7. Abrams has been in minimum custody, which is the lowest custody level within the North Carolina state prison system, since 1999. [App. 11: Dep. Ex. 10: Responses to Requests for Admissions, page 20, Nos. 21, 22].

8. Abrams has had a total of 11 infractions during his four-plus decades of incarceration, the most recent one occurring in 2005. [Defendant's Answer at 5 (D.E. 18)].

9. Abrams has been on work release in the community since 2008. [App. 11: Dep. Ex. 10: Responses to Requests for Admissions, page 20, No. 20].

10. Former Commissioner Angela Bryant presided over Abrams' first post-*Hayden* "Life Sentence Interview" in 2018. [App. 14: Dep. Ex. 13: Life Sentence Interview, July 26, 2018].

11. Former Chairman Fowler presided over Abrams' second post-*Hayden* "Life Sentence Interview" in 2020. [App. 26: Dep. Ex. 33: Life Sentence Interview, May 14, 2020].

12. In recommending Abrams for a MAPP agreement in April 2020, his case manager at Orange Correctional Center noted the following: Abrams had held his then-current work release job since 2016, working over 8100 hours without incident. He had held other work release positions since 2008, as well as other jobs at the prison. He had completed several educational programs (including human resources, education and reentry soft skills training, and landscape and construction) and taken aggression replacement training. He had also been assigned to the "community leave" program and had logged over 600 hours without incident. He had "devoted sponsor Mr. Whitt that takes him to church," attended Yokefellows ministry, had been active in the unit substance abuse programs, had a supportive family, and planned to live with his mother upon release. [App 13: Dep. Ex. 12: MAPP Recommendations, 2020, Supp. 03460].

13. In supporting Abrams for a MAPP agreement in April 2020, Warden Amanda Cobb at Orange Correctional Center wrote that she was recommending Abrams for a MAPP agreement because of "his positive progression through the system. Offender has been assessed favorably and participated in community bases [sic] programs for years without incident and been assigned to the work release program since 2008." [App 13: Dep. Ex. 12: MAPP Recommendations, 2020, Supp. 03458].

Facts Relating to the Parole Commission's Parole Review Process for Juvenile Offenders

14. The Parole Commission has four commissioners who are appointed by the North Carolina governor. One commissioner is designated by the governor as the chair. [App. 1: Deposition Transcript of N.C. Post-Release Supervision and Parole Commission, by and through its Rule 30(b) Designee, Mary Stevens, 15:21-16:1].

15. There is no specific training, background, or experience required to become a parole commissioner. [App. 1: Deposition Transcript of N.C. Post-Release Supervision and Parole Commission, by and through its Rule 30(b) Designee, Mary Stevens, 21:15-20].

16. In addition to reviewing and voting on parole cases for adult and juvenile offenders (which includes whether to engage in a parole or MAPP investigation), commissioners have a number of other responsibilities: voting on post-release supervision cases; establishing supervision conditions for people to be released on post-release supervision; reviewing requests for modifications from probation officers through an online voting system throughout the day; reviewing requests for warrants; reviewing physical files concerning preliminary hearings for post-release supervision revocation cases; attending meetings with the general public on Tuesdays; presiding over revocation hearings on Wednesdays; MAPP negotiations on Thursday mornings; *Hayden* videoconferences on bi-weekly Thursday afternoons; and weekly meetings to review requests from probation officers to reduce post-release supervision terms through reintegrative credits. [App. 1: Deposition Transcript of N.C. Post-Release Supervision and Parole Commission, by and through its Rule 30(b) Designee, Mary Stevens, 22:19-24:14].

17. Three of four commissioners must vote to approve a MAPP agreement or grant of parole. [App. 1: Deposition Transcript of N.C. Post-Release Supervision and Parole Commission, by and through its Rule 30(b) Designee, Mary Stevens, 26:1-6].

18. In 2015, the Honorable U.S. District Judge Terrence W. Boyle for the Eastern District of North Carolina found that the Parole Commission's parole process for juvenile offenders violated the Eighth Amendment. The court held that “it is evident that North Carolina has implemented a parole system which wholly fails to provide [the juvenile offender] with any ‘meaningful opportunity’ to make his case for parole. The commissioners and their case analysts do not distinguish parole reviews for juvenile offenders from adult offenders, and thus fail to consider ‘children's diminished culpability and heightened capacity for change’ in their parole reviews.” *Hayden v. Keller*, 134 F. Supp. 3d 1000, 1009 (E.D.N.C. 2015) (citations omitted).

19. The *Hayden* court held that although the plaintiff’s age at the time of the underlying offense – in that case, 15 years old – was stated within his parole case file, it was “difficult for this court to believe that a parole commissioner can fully take into ‘consideration [Hayden’s] chronological age and its hallmark features—among them, immaturity, impetuosity, and failure to appreciate risks and consequences [,]’ when reading Hayden’s case file along with 90 others in a single day.” *Hayden v. Keller*, 134 F. Supp. 3d 1000, 1009 n.5 (E.D.N.C. 2015) (citations omitted).

20. The *Hayden* court held that the Parole Commission’s then-existing process for how parole case analysts would research and prepare summaries of juvenile offender cases to be reviewed by the commissioners lacked specific information about their maturity or rehabilitative efforts:

The most important information found in the summaries has been noted as: the official crime version (narrative of events of crime of conviction); prison infraction history; gang membership; psychological evaluations; custody level history; visitation history; and a home plan. There is no information about one’s status as a juvenile offender. There is no specific information about maturity or rehabilitative efforts.

Hayden v. Keller, 134 F. Supp. 3d 1000, 1009 (E.D.N.C. 2015).

21. Pursuant to an order by the *Hayden* court, the Parole Commission submitted a proposed plan to remedy the identified failures and ensure meaningful review for juvenile offenders (“the *Hayden* Plan”). [App. 5: Dep. Ex. 3: Defendant’s Proposed Plan in Response to 25 September 2016 Order [D.E. 56] (“*Hayden* Plan”)].

22. The *Hayden* court adopted the Parole Commission’s proposed plan, finding that it was “narrowly drawn, extends no further than necessary to correct the violation of a federal right, and is the least intrusive means necessary to correct the violation of the federal right.” [App. 31: Order Adopting *Hayden* Plan, 2017; *Hayden v. Keller*, No. 5:10-CT-3123-BO (E.D.N.C. Nov. 2, 2017) (D.E. 96)].

Facts Relating to the *Hayden* Plan: 2018

23. The *Hayden* Plan included appointing a dedicated *Hayden* parole case analyst who would “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”; sending written notice to the juvenile offender at least 180 days in advance of any parole review hearing; affording juvenile offenders a 30 minute “hearing” before a Parole Commissioner and the *Hayden* parole case analyst; allowing an attorney, expert witness, advocate, and/or witness on behalf of the juvenile offender to present information to the presiding Parole Commissioner; and, in the event parole is denied, sending a letter to the juvenile offender specifying the reasons for denial as well as recommended steps for “improv[ing] his or her future chances for parole release. [App. 5: Dep. Ex. 3: Defendant’s Proposed Plan in Response to 25 September 2016 Order [D.E. 56] (“*Hayden* Plan”)].

24. In March 2018, Mary Stevens, the Chief Administrator for the Parole Commission, informed the *Hayden* court that the new procedures for juvenile offenders that

would be implemented would “significantly increase” the workload of the commissioners, the commission’s case analysts, and other staff. [App. 9: Dep. Ex. 8: Declaration of Mary Stevens ¶ 3].

25. In March 2018, Mary Stevens, the Chief Administrator for the Parole Commission, informed the *Hayden* court that the commissioners, who carry a “very heavy caseload,” were operating with only two full-time commissioners. [App. 9: Dep. Ex. 8: Declaration of Mary Stevens ¶¶ 5-6].

26. In March 2018, Mary Stevens, the Chief Administrator for the Parole Commission, informed the *Hayden* court that “none of the commissioners have experience presiding over parole-review hearings that require soliciting information about the inmate’s efforts at self-improvement.” [App. 9: Dep. Ex. 8: Declaration of Mary Stevens ¶ 10].

27. In March 2018, Mary Stevens, the Chief Administrator for the Parole Commission, informed the *Hayden* court that in order to mitigate the commissioners’ “very heavy caseload,” the Parole Commission “asked the North Carolina General Assembly to create several new positions to help the commission comply with the new procedures for juvenile offenders,” including the creation of a fifth commissioner seat. [App. 9: Dep. Ex. 8: Declaration of Mary Stevens ¶¶ 6, 16-17].

28. The Parole Commission’s request for an additional commissioner in 2018 was denied, and the Parole Commission continued to operate with less than four full-time Commissioners at various times since 2018. [App. 1: Deposition Transcript of N.C. Post-Release Supervision and Parole Commission, by and through its Rule 30(b) Designee, Mary Stevens, 28:20-25].

29. In March 2018, Mary Stevens, the Chief Administrator for the Parole Commission, informed the *Hayden* court that the commission was seeking authorization from the General Assembly to hire a staff attorney. According to Stevens, “The new staff attorney’s duties would include advising the commissioners on compliance with the procedures set forth in the Court’s injunction order, and monitoring the legal landscape to ensure the commission is proactive in satisfying legal obligations to both juvenile and adult offenders going forward.” [App. 9: Dep. Ex. 8: Declaration of Mary Stevens ¶ 17]. No such attorney was ever authorized or hired. [App. 1: Deposition Transcript of N.C. Post-Release Supervision and Parole Commission, by and through its Rule 30(b) Designee, Mary Stevens, 15:21-21:14].

30. In late July 2018, the Parole Commission implemented the *Hayden* Plan. *Hayden v. Keller*, No. 5:10-CT-3123-BO (E.D.N.C. Mar. 19, 2018) (D.E. 113) (granting parties’ joint motion for extension of time to implement the remedial plan by July 28, 2018).

Facts Relating to the *Hayden* Plan and Implementation: 2018-2022

31. At the time that the court in *Hayden* noted that the “sheer volume of work may itself preclude any consideration of the salient and constitutionally required meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation,” *Hayden*, 134 F. Supp. 3d at 1009, commissioners were voting on approximately 90 cases each day in addition to their other work. *Hayden v. Keller*, 134 F. Supp. 3d 1000, 1009 n.5 (E.D.N.C. 2015).

32. Since the implementation of the *Hayden* Plan, commissioners vote on at least 100 cases per day in addition to their other work. [App. 1: Deposition Transcript of N.C. Post-Release Supervision and Parole Commission, by and through its Rule 30(b) Designee, Mary Stevens, 26:12-27:1].

33. Parole commissioners are very reliant on the *Hayden* parole case analyst “who [is] gathering, organizing, and packaging the material for the Parole Commission.” [App. 4: Deposition Transcript of Angela Bryant, 20:22-21:10; App. 3: Deposition Transcript of Willis J. Fowler, 16:5-9].

34. Joy Smith was designated by the Parole Commission as the parole case analyst for the entire juvenile offender caseload. Smith has worked in a part-time capacity in that role. [App. 1: Deposition Transcript of N.C. Post-Release Supervision and Parole Commission, by and through its Rule 30(b) Designee, Mary Stevens, 37:9-37:25].

35. Joy Smith started working with the state prison system in 1977 before transferring to the Parole Commission in 1991 as a parole analyst. She retired in 2013 before returning to the Parole Commission in a part-time capacity in 2016. [App. 2: Deposition Transcript of Joy Smith, 12:5-15, 37:16-24].

36. From 1991 until she retired in 2013, Smith handled only two juvenile offender cases (including Abrams). [App. 2: Deposition Transcript of Joy Smith, 37:16-21].

37. The Parole Commission did not require any particular qualifications for the *Hayden* parole case analyst. [App. 3: Deposition Transcript of Willis J. Fowler, 18:9-16].

38. Smith received no training on issues specific to juvenile offenders – such as “brain development and the implications of a youth’s brain maturing over time” – since taking over the part-time role of *Hayden* parole case analyst. [App. 1: Deposition Transcript of N.C. Post-Release Supervision and Parole Commission, by and through its Rule 30(b) Designee, Mary Stevens, 82:10-15; App. 2: Deposition Transcript of Joy Smith, 20:1-5].

39. Smith did not receive training or guidance about how to assess the credibility of information to include in a juvenile offender’s file. [App. 1: Deposition Transcript of N.C.

Post-Release Supervision and Parole Commission, by and through its Rule 30(b) Designee, Mary Stevens, 72:7-11].

40. According to Smith, her new part-time role overseeing juvenile offender parole cases was “just like a regular case analyst, except as part of the parole review process, we would have videoconferences at the time of the [juvenile] offender’s scheduled parole review.” [App. 2: Deposition Transcript of Joy Smith, 13:9-14].

41. Smith does not pull together the juvenile offender files or write them up in any different way than she did before *Hayden*. [App. 2: Deposition Transcript of Joy Smith, 177:22-25; 56:1-19].

42. “[W]ith respect to the Parole Commission’s assessment of a juvenile offender’s heightened capacity for change compared with adults,” Smith testified that the Parole Commission never asked her to provide them with any different information in the file or with her summaries than she did pre-*Hayden*. [App. 2: Deposition Transcript of Joy Smith, 179:16-23].

43. The Parole Commission expected Smith would use and follow the Parole Commission’s policies and procedures that were updated in light of *Hayden*. [App. 3: Deposition Transcript of Willis J. Fowler, 21:6-16].

44. Smith does not consult the commission manuals that contain the updated *Hayden* processes, and instead relies on her old manuals. [App. 2: Deposition Transcript of Joy Smith, 31:7-18].

45. Smith was not familiar with the fact that the Parole Commission’s training and standard operating procedures manuals had been updated to include sections or references to *Hayden*. [App. 2: Deposition Transcript of Joy Smith, 31:9-14].

46. The Parole Commission does not engage in any annual audit or review of how the *Hayden* processes are working. [App. 1: Deposition Transcript of N.C. Post-Release Supervision and Parole Commission, by and through its Rule 30(b) Designee, Mary Stevens, 74:4-7].

47. Joy Smith, the only parole case analyst who handles *Hayden* cases, is the only parole case analyst who does not receive an annual review. [App. 2: Deposition Transcript of Joy Smith, 21:1-4].

48. Former Chairman Willis Fowler, who voted to deny Abrams parole as well as a MAPP agreement in 2020 and 2022, said he did not do anything differently when reviewing a juvenile offender's case after *Hayden* than he did before *Hayden*. [App. 3: Deposition Transcript of Willis J. Fowler, 23:8-12, 23:23-24:2].

49. The Parole Commission does not have any standards with respect to the information contained in a juvenile offender's file. [App. 1: Deposition Transcript of N.C. Post-Release Supervision and Parole Commission, by and through its Rule 30(b) Designee, Mary Stevens, 71:9-72:1].

50. Former Parole Commissioner Angela Bryant testified that parole commissioners would "hope" that the information contained in a summary write-up about a juvenile offender's parole case would be accurate, and she "surely [would not] want something in here to be so misrepresentative that it would be harmful to a fair assessment of the case." [App. 4: Deposition Transcript of Angela Bryant, 60:14-25].

51. Joy Smith, the *Hayden* parole case analyst, testified that "[w]hen the parole commissioners are engaging in [their] analysis of a juvenile offender's file, their understanding of the totality of the circumstances is only as good as the information they have[.]" [App. 2: Deposition Transcript of Joy Smith, 178:25-179:4].

52. Joy Smith, the *Hayden* parole case analyst, repeatedly included allegations in Brett Abrams' parole summaries that Abrams was criminally culpable in the death of his younger brother, while omitting information found in Abrams' parole file that local law enforcement ruled the death accidental as far back as 1984. For example, in April 2019, Smith wrote: "Abrams was adopted at the age of 10 weeks. His adoptive family had already adopted a daughter. Several years later they had their own son. It appears that Abrams was jealous of him. This child was killed in a camper fire in 1982. It was said that Abrams locked his brother in the camper and then set it on fire. Law enforcement were investigating this when Abrams committed the murder that resulted in his prison term. The other case remains 'open.'" [App. 25: Dep. Ex. 31: Parole Commission Event, April 10, 2019]. Smith wrote almost the exact same allegation in a June 2020 summary. [App. 27: Dep. Ex. 34: Parole Commissioner Review, June 2020].

53. Former Commissioner Angela Bryant confirmed that it would "definitely" be "significant" "[i]f somebody has an open case against them and they're up for parole[.]" [App. 4: Deposition Transcript of Angela Bryant, 62:1-4].

54. Not included in any write-up or summary prepared by Joy Smith was the fact that Abrams' parole file included a record in which Detective Miller of the Iredell County Sheriff's Office reported on June 11, 1984, that Abrams' brother's death "had been ruled accidental." [App. 17: Dep. Ex. 17, Classification Referral & Action, June 1984, Supp. 02944].

55. After being informed of the omission of Det. Miller's report from the materials she had reviewed, former Commissioner Bryant confirmed that "it would have been important that this information be included as well." [App. 4: Deposition Transcript of Angela Bryant, 64:7-8].

56. In August 2018, during a review of Abrams' case for a possible MAPP agreement or parole, Joy Smith, the *Hayden* parole case analyst, wrote in a parole summary that, if he were to be paroled, Abrams would live with his mother who lives on the same block as the victim's mother. [App. 10: Dep. Ex. 9: Parole Commission Event, August 8, 2018, Supp 003492; App. 2: Deposition Transcript of Joy Smith, 126:19-127:1].

57. According to information contained in Abrams' file that the parole commissioners did not see, the allegation Smith included in her summary write-up about Abrams going to live with his mother on the same block as the victim's mother was also not true. [App. 2: Deposition Transcript of Joy Smith, 129:6-132:3; App. 23: Dep. Ex. 28: Handwritten Note by Goodmans, 1996; App. 24: Dep. Ex. 29: Letter to Goodman-Riley from Smith, April 19, 2018].

58. When confronted with the misinformation about Abrams going to live with his mother who lives on the same block as the victim's mother, Joy Smith confirmed that the information in question that she had included in the 2018 write-up about Abrams was false. [App. 2: Deposition Transcript of Joy Smith, 132:1-3].

59. The Parole Commissioners relied on Joy Smith and assumed that the information she provided them was accurate and credible. [App. 3: Deposition Transcript of Willis J. Fowler, 29:12-16].

60. Misinformation provided by Joy Smith could mislead and misinform a commissioner during their review. [App. 3: Deposition Transcript of Willis J. Fowler, 62:13-20].

61. During Brett Abrams' 2020 parole review, Joy Smith did not include any information that had been provided by his attorneys at N.C. Prisoner Legal Services that concerned his growth, maturation, and rehabilitation. [App. 27: Dep. Ex. 34: Parole Commissioner Review, June 2020]. When confronted with this fact, former Chairman Fowler,

who voted to deny Abrams a MAPP agreement and parole in 2020, said “it would be a concern” if that information from Abrams’ advocates had been not included. [App. 3: Deposition Transcript of Willis J. Fowler, 73:24-74:5].

62. Joy Smith, the *Hayden* parole case analyst, confirmed that she does not have access to a juvenile offender’s psychological records from the prison system. [App. 2: Deposition Transcript of Joy Smith, 148:14-17, 166:24-167:3].

63. Juvenile offenders have no access to their parole records (*i.e.*, the materials that the commissioners will be reviewing) and do not know what information the Parole Commission may or may not have during the review process. [App. 11: Dep. Ex. 10, Responses to Requests for Admissions, page 23, No. 44].

64. A juvenile offender is not informed that they may need to somehow request their prison psychological records and have those submitted to the commission in order for them to be considered during a parole review. [App. 1: Deposition Transcript of N.C. Post-Release Supervision and Parole Commission, by and through its Rule 30(b) Designee, Mary Stevens, 63:5-9].

65. According to the Parole Commission, the “Life Sentence Interview” with juvenile offenders “reflects the [Parole Commission’s] perspective that age at the time of the offense should be given special weight[.]” [App. 1: Deposition Transcript of N.C. Post-Release Supervision and Parole Commission, by and through its Rule 30(b) Designee, Mary Stevens, 85:19-24].

66. According to Joy Smith, the *Hayden* case analyst, the “Life Sentence Interview” is the only material difference in how the Parole Commission reviews a juvenile offender parole

case since the implementation of the *Hayden* Plan. [App. 2: Deposition Transcript of Joy Smith, 175:7-176:5].

67. Although the Parole Commission's goal of the "Life Sentence Interview" is to "spark a conversation" between the presiding commissioner and juvenile offender, neither the commissioners nor the *Hayden* parole case analyst (who attends) have had any training on techniques or tactics for engaging people in conversation. [App. 1: Deposition Transcript of N.C. Post-Release Supervision and Parole Commission, by and through its Rule 30(b) Designee, Mary Stevens, 110:1-12].

68. The Parole Commission does not permit Abrams or any juvenile offender to have counsel present during the "Life Sentence Interview." According to the Parole Commission's Standard Operations Manual, only "the Commissioner(s) and designated parole case analyst" are present during the hearing. [App. 7: Dep. Ex. 5: Standard Operations Manual, page 153].

69. The Parole Commission has not provided or ordered any training on techniques or tactics for its commissioners to engage people in conversation during the "Life Sentence Interview" despite the fact that the Parole Commission told Judge Boyle during the *Hayden* litigation that "none of the commissioners have experience presiding over parole-review hearings that require soliciting information about the inmate's efforts at self-improvement," and that the commission was planning "to conduct training on motivational interviewing techniques for all of the commissioners." [App. 9: Dep. Ex. 8: Declaration of Mary Stevens ¶ 10].

70. Former Chairman Fowler explained that "[i]f it was the first time [interviewing a juvenile offender,] I would not have reviewed anything. If it was the first time he became eligible, and -- and the analyst sent it up for us to vote on it, I would not have reviewed that file." [App. 3: Deposition Transcript of Willis J. Fowler, 42:19-43:2]. Former Chairman Fowler

clarified that he would review a summary of the crime before the life sentence interview. [App. 3: Deposition Transcript of Willis J. Fowler, 43:24-44:2].

71. The Parole Commission does not instruct its commissioners to “consider youth and its various characteristics when assessing the nature or brutality of the underlying crime in juvenile offender cases.” [App. 1: Deposition Transcript of N.C. Post-Release Supervision and Parole Commission, by and through its Rule 30(b) Designee, Mary Stevens, 79:20-25].

72. The Parole Commission does not identify anywhere in its manuals, or elsewhere, how its commissioners might evaluate or consider a juvenile offender’s age at the time of the underlying crime in the context of a parole review. [App. 1: Deposition Transcript of N.C. Post-Release Supervision and Parole Commission, by and through its Rule 30(b) Designee, Mary Stevens, 78:14-20, 83:11-16; App. 6: Dep. Ex. 4: Parole Case Analyst Caseload Management Training, pages 158-162; App. 7: Dep. Ex. 5: Standard Operations Manual, pages 151-155].

73. While under deposition, the Parole Commission was unable to confirm whether juvenile offenders have diminished culpability compared with adults who may have committed the same underlying criminal acts. [App. 1: Deposition Transcript of N.C. Post-Release Supervision and Parole Commission, by and through its Rule 30(b) Designee, Mary Stevens, 83:17-21].

74. While under deposition, the Parole Commission was unable to confirm whether it agrees, as exhibited through its policies or procedures and operations, that juvenile offenders have a heightened capacity for change compared with adults. [App. 1: Deposition Transcript of N.C. Post-Release Supervision and Parole Commission, by and through its Rule 30(b) Designee, Mary Stevens, 84:18-22].

75. While under deposition, the Parole Commission confirmed that it “consider[s] the nature of [sic] brutality of the crime when it’s deciding parole,” but it could not answer how, if at all, it considers youth when assessing the nature or brutality of the crime in juvenile offender cases. [App. 1: Deposition Transcript of N.C. Post-Release Supervision and Parole Commission, by and through its Rule 30(b) Designee, Mary Stevens, 79:12-19].

76. The Parole Commission does not use any objective measures for whether a juvenile offender has demonstrated rehabilitation or maturation. [App. 2: Deposition Transcript of Joy Smith, 179:12-15].

77. Former Chairman Willis J. Fowler testified that he left it up to the staff psychologists to determine whether juvenile offenders had “matured or rehabilitated themselves.” [App. 3: Deposition Transcript of Willis J. Fowler, 24:3-7].

78. Former Chairman Willis J. Fowler confirmed that “there were no instructions or particular directives given to the staff psychologists to consider the issues raised in *Hayden*[.]” [App. 3: Deposition Transcript of Willis J. Fowler, 19:8-12].

79. During the hiring process for a staff psychologist after the implementation of *Hayden*, neither “Hayden” nor “juvenile offender” was discussed during those interviews. [App. 1: Deposition Transcript of N.C. Post-Release Supervision and Parole Commission, by and through its Rule 30(b) Designee, Mary Stevens, 34:12-20].

80. Pursuant to the *Hayden* Plan, the Parole Commission is required to send a letter specifying the reasons for denial and recommendations for steps the individual could take to improve his chances of release at a future parole review. [App. 5: Dep. Ex. 3: Defendant’s Proposed Plan in Response to 25 September 2016 Order [D.E. 56] (“*Hayden* Plan”); App. 1:

Deposition Transcript of N.C. Post-Release Supervision and Parole Commission, by and through its Rule 30(b) Designee, Mary Stevens, 122:19-21].

81. According to the Parole Commission, “the purpose of providing recommendations to a juvenile offender after they’ve been denied parole [is] so that they may one day possibly be paroled[.]” [App. 1: Deposition Transcript of N.C. Post-Release Supervision and Parole Commission, by and through its Rule 30(b) Designee, Mary Stevens, 123:4-7].

82. According to former Commissioner Angela Bryant, the commissioners expect that during a parole review following an earlier denial, a juvenile offender’s file will include and/or reflect information about whether they followed through on the recommendations included in the previous denial letter. [App. 4: Deposition Transcript of Angela Bryant, 73:2-9].

83. According to former Chairman Willis Fowler, the commissioners believe that the recommendations given to juvenile offenders are intended to provide a realistic pathway towards parole. [App. 3: Deposition Transcript of Willis J. Fowler, 75:4-10].

84. The Parole Commission does not have any policies or procedures “that provide a framework for measuring objectively whether a juvenile offender has successfully followed recommendations provided by the Parole Commission.” [App. 1: Deposition Transcript of N.C. Post-Release Supervision and Parole Commission, by and through its Rule 30(b) Designee, Mary Stevens, 124:9-14].

85. In April 2019, the *Hayden* denial letter sent to Abrams recommended that he engage in psychological counseling and treatment, complete any correctional programming to “increase your self-awareness,” and continue with work release and community volunteer passes. [App. 15: Dep. Ex. 15: Parole Denial Letter to Abrams, April 2019].

86. Abrams followed the recommendations made by the Parole Commission in his April 2019 denial letter. [App. 11: Responses to Requests for Admissions, pages 17-19, Nos. 2-9].

87. In response to the Parole Commission's recommendations in April 2019, Abrams met with Dr. Michael Conley, a psychologist with the North Carolina Department of Public Safety. Dr. Conley noted, *inter alia*, that "the treatment goals cited by the [Prison Commission] (i.e. learn to better regulate his emotions; developing insight into his motivations, conflicts, tc.), are very general and, therefore, would be difficult to assess objectively. (He has been infraction free for 13 years, for example, so just how improving his 'emotional regulation' would be measured is not clear." [App. 16, Dep. Ex. 16, Abrams' Psychological Records, May 2, 2019, page 62].

88. Abrams worked with Dr. Conley from May 2, 2019, through June 24, 2020. Dr. Conley's notes indicate that Mr. Abrams accomplished his goal to "cover issues related to his emotions and to help develop insight about his crime and past behavior." [App. 16, Dep. Ex. 16, Abrams' Psychological Records, May 8, 2020, page 1].

89. Joy Smith never saw or obtained Dr. Conley's counseling records during the review of Abrams' case for a MAPP or parole. [App. 2: Deposition Transcript of Joy Smith, 153:24-154:3].

90. The parole commissioners deciding Abrams' parole review in 2020 never saw Dr. Conley's counseling records or a detailed summary of them, and were not in a position to know whether he had, in fact, followed through on any of their earlier recommendations. [App. 2: Deposition Transcript of Joy Smith, 148:25-149:5, 154:9-13].

91. Former Chairman Fowler testified that Abrams' psychological records played a part in his considerations, while also admitting that he did not have Dr. Conley's psychological records to review. [App. 3: Deposition Transcript of Willis J. Fowler, 94:21-95:15].

92. With respect to his consideration of Abrams' review in 2020 for either a MAPP agreement or parole, former Chairman Fowler said that he and the other commissioners were not in a position to review "the full range of psychological assessments of Mr. Abrams from the time he was a child, teenager, until 2020 ... that full spectrum of change in development because of the absence of those records." [App. 3: Deposition Transcript of Willis J. Fowler, 95:8-15].

93. Former Commissioner Willis Fowler believes that a MAPP agreement is "a pathway to parole," especially for major crimes like murder and first-degree sex offenses. [App. 3: Deposition Transcript of Willis J. Fowler, 32:4-6].

94. Judge Boyle previously found that "[t]he MAPP contract is ordinarily a mandatory step toward felony parole." *Hayden v. Keller*, 134 F. Supp. 3d 1000, 1003 (E.D.N.C. 2015) (citing deposition testimony of Parole Commission Chief Administrator Mary Stevens and former Parole Commission Chairman Paul G. Butler).

95. During a three-year period from 2018 through 2020, the Parole Commission reviewed 228 juvenile offenders for parole; 18 juvenile offenders were granted parole (or 8%). Of the 18 juvenile offenders granted parole, one was granted parole without a MAPP (or 6%). [App. 33: Defendant's Post 30(b)(6) Responses and Excel Spreadsheet; App. 18: Dep. Ex. 18: Hayden Statistical Information, 2018-2019; App. 19: Dep. Ex. 19: Hayden Statistical Information, 2020-2021].

96. During a three-year period from 2018 through 2020, the Parole Commission reviewed 1,904 adult offenders for parole; 207 adult offenders were granted parole (or 10%). Of

the 207 adult offenders granted parole, 78 of them were granted parole without a MAPP (or 38%). [App. 33: Defendant's Post 30(b)(6) Responses and Excel Spreadsheet; App. 18: Dep. Ex. 18: Hayden Statistical Information, 2018-2019; App. 19: Dep. Ex. 19: Hayden Statistical Information, 2020-2021].

97. During a five-year period from 2018 through 2022, the Parole Commission reviewed 362 juvenile offenders for parole; 34 juvenile offenders were granted parole (or 9%). Of the 34 juvenile offenders granted parole, two were granted parole without a MAPP (or 6%). [App. 33: Defendant's Post 30(b)(6) Responses and Excel Spreadsheet; App. 18: Dep. Ex. 18: Hayden Statistical Information, 2018-2019; App. 19: Dep. Ex. 19: Hayden Statistical Information, 2020-2021; App. 20: Dep. Ex. 20: Hayden Statistical Information, 2022-2023].

98. During a five-year period from 2018 through 2022, the Parole Commission reviewed 3,244 adult offenders for parole; 372 adult offenders were granted parole (or 11%). Of the 372 adult offenders granted parole, 147 of them were granted parole without a MAPP (or 40%). [App. 33: Defendant's Post 30(b)(6) Responses and Excel Spreadsheet; App. 18: Dep. Ex. 18: Hayden Statistical Information, 2018-2019; App. 19: Dep. Ex. 19: Hayden Statistical Information, 2020-2021; App. 20: Dep. Ex. 20: Hayden Statistical Information, 2022-2023].

99. At least as far back as 2007, the Parole Commission began noting that Abrams "would be a good one for MAPP (no prior adult record, has been in custody since the age of 14, has strong family support, has progressed to Min-2, good prison conduct)[.]" [App. 21: Dep. Ex. 23: Parole Commission Event, May 18, 2007].

100. In 2012, pre-*Hayden*, Joy Smith wrote about Abrams, "I do not recommend MAPP. This inmate is already doing everything that a MAPP could provide for him to do." [App. 22: Dep. Ex. 26: Parole Commission Event, May 21, 2012].

101. In 2018, during Abrams' first post-*Hayden* parole review, Joy Smith noted that "[t]here is nothing to be gained from MAPP as [Abrams] is already doing everything that MAPP would provide." [App. 14: Dep. Ex. 13: Life Sentence Interview, July 26, 2018, Supp. 3912].

102. In 2020, Abrams' prison case manager, the Warden of Orange Correctional Center, the Central Region Office, and the MAPP Director for Division of Adult Corrections all recommended that Abrams be afforded a MAPP agreement. [App. 13: Dep. Ex. 12: MAPP Recommendations, 2020; Defendant's Answer at 5 (D.E. 18)].

103. Former Chairman Fowler presided over Abrams' second post-*Hayden* "Life Sentence Interview" in 2020. During this interview, former Chairman Fowler said to Abrams: "Since you been on work release and CV passes, I don't think MAPP would do you any good. Would you like to make a comment about that?" In response, Abrams said, "I'm not really in a position to demand anything. I'm thankful for any opportunity that you give. I'll be thankful for anything sir." [App. 26: Dep. Ex. 33: Life Sentence Interview, May 14, 2020, Supp. 03772].

104. Former Chairman Willis Fowler testified that it would be "very unusual" for a juvenile offender to be paroled without MAPP. [App. 3: Deposition Transcript of Willis J. Fowler, 34:1-9].

105. Former Chairman Willis Fowler testified that the only way a MAPP "would help" Abrams in 2020, and the only way he would possibly support it, would be if Abrams had "fallen back, so to speak, had violated a rule, or had not been as successful as he previously had been." As long as Abrams continued to do as well as he had been doing, "a MAPP still did not make sense." [App. 3: Deposition Transcript of Willis J. Fowler, 80:22-81:6].

106. Former Chairman Willis Fowler voted against a MAPP agreement for Abrams in 2020 despite the fact that Abrams "had already been out of the institution, and he was on work

release and/or home leaves and had access to whatever in the community,” and despite the fact that he could not think of anything else Abrams could have done “to demonstrate his ... ability to reintegrate.” [App. 3: Deposition Transcript of Willis J. Fowler, 65:7-23].

107. Former Chairman Fowler also presided over Abrams’ third post-*Hayden* “Life Sentence Interview” in 2022, which only lasted approximately ten minutes. [App. 3: Deposition Transcript of Willis J. Fowler, 77:11-21].

108. During Abrams’ “Life Sentence Interview” in 2022, former Chairman Fowler asked Abrams several of the same questions he had posed during the 2020 “Life Sentence Interview.” [App. 3: Deposition Transcript of Willis J. Fowler, 77:22-83:24; App. 26: Dep. Ex. 33: Life Sentence Interview, May 14, 2020; App. 29: Dep. Ex. 36: Life Sentence Interview, May 19, 2022].¹

Dated: March 4, 2024

By: /s/ Jacob H. Sussman

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¹ The Commission has yet to vote on Abrams’ 2022 parole review.

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing pleading with the Clerk of Court using the CM/ECF system which will send notification of such filing to:

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Dated: March 4, 2024

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