

REPUBLIC OF SOUTH AFRICA



**IN THE HIGH COURT OF SOUTH AFRICA,
GAUTENG LOCAL DIVISION, JOHANNESBURG**

CASE NO: 34747/2015

- (1) REPORTABLE: YES / NO
(2) OF INTEREST TO OTHER JUDGES: YES/NO
(3) REVISED.

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DATE

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SIGNATURE

In the matter between:

ABEL MAWELELE

Applicant

And

THE MINISTER OF CORRECTIONAL SERVICES

First Respondent

THE CHAIRPERSON CMC LEEUWKOP MEDIUM C

Second Respondent

**THE DIRECTOR PUBLIC PROSECUTIONS
JOHANNESBURG**

Third Respondent

J U D G M E N T

Summary:

Criminal law – Parole – statutory regime governing placement on parole – sentenced inmate (applicant) seeking order for placement on parole – applicant relying on Correctional Services Act 8/1959 (old Act) – old Act governing the release of prisoners who committed offences before enactment of Correctional Services Act 111 of 1998 (new Act) – applicant contending he qualifies for placement on parole after serving one third of sentence under the Rules and Regulations of old Act – applicant charged and sentence for offences in 2004 – he also relies on s35(3)(n) of Constitution – authorities show date of sentencing is operative date for determining eligibility for placement on parole – applicant’s assertions that he is entitled to be considered for placement on parole after serving one third of sentence under Old Act therefore misplaced – application dismissed.

MOSHIDI, J:

INTRODUCTION

[1] This judgment need not to be elaborate in the light of the concessions made by the applicant in closing argument. As a sentenced inmate at the Leeuwkop Medium C Correctional Centre, he is seeking an order declaring that he qualifies to be considered to be placed on parole under the provisions of the Correctional Services Act 8 of 1959 (*“the Old Act”*). In addition, the

applicant seeks an order declaring the respondents to apply the provisions of sec 35(3)(n) of the Constitution when dealing with the release of prisoners who committed crimes before the enactment of the Correctional Services Act 111 of 1998 (*“the 1998 Act”*).

[2] These are the facts: the applicant was arrested during July 2004 and charged with certain serious charges, including attempted murder, robbery with aggravating circumstances and offences of unlawful possession of firearms and ammunition. On 25 October 2004, he was duly convicted and sentenced to an effective prison term of 20 years. According to the Department of Correctional Services documents attached to the founding papers, his release date is 13 February 2032; he shall have served half of his sentence by 5 August 2017; he served a third of his sentence by 2 May 2013; he shall have completed 15 years imprisonment by 25 October 2029; and his profile for parole will be submitted by 5 February 2017. The applicant contended that he qualifies for placement on parole after serving one third of his sentence under the Rules and Regulations framed under the Old Act. The application was opposed by the respondents.

[3] The central issues raised in this application, concern the interpretation of the relevant provisions of the Old Act, and the 1998 Act, as well as the respective regulations framed thereunder. These issues, coupled with the provisions of sec 35(3)(n) of the Constitution, and being prevalent in the motion courts, have been raised in several case law, and fully ventilated. For example, *Makaba v The Minister of Correctional Services and Others*, Case

No 5369/2011, Free State High Court; *Tony Phakiso Seganoe v Minister of Correctional Services and Others*, Case No 33432/2012, South Gauteng High Court, Johannesburg; and *Ernest Ramonetha v The Chairperson of Case Management Committee (Leeuwkop Medium C)*, Case No 32914/2015, Gauteng Local Division, Johannesburg, with various results.

[4] However, more recently, the Supreme Court of Appeal (SCA), in *Minister of Correctional Services and Others v Seganoe*, (20507/2014) [2015] ZASCA 148 (01 October 2015) (*supra*), resolved the issue for now. The SCA in para [1] of the judgment, formulated the issue on appeal as follows:

“The crisp question in this appeal in which statutory regime governs the eligibility of placement on parole of sentenced offenders convicted of offences committed during the existence and operation of the Correctional Services Act 8 of 1959 (the 1959 Act) but sentenced after the commencement of the Correctional Services Act 111 of 1998 which repealed it. The Gauteng Local Division, Johannesburg (the high court) held that it is the statutory regime in force at the time of the commission of the offences that is applicable. The Minister of Correctional Services (the Minister) appeals against that judgment with the leave of this court.”

In the process of upholding the appeal, the SCA at para [5] of the judgment, said:

“The high court agreed with the respondent, in contrast to previous high court decisions which held that in terms of the law, the date of sentencing was the operative date for purposes of determining eligibility for placement on parole ...” (underlining added)

See also paras [8] to [11] of the judgment.

[5] Based on the above it is more than plain that the applicant's assertions in the present matter, that he is entitled to be considered for placement on parole after serving one third of his sentence, and in terms of the provisions of the Old Act and the regulations framed thereunder, were misplaced. The applicant conceded this much during closing argument. He however, urged the Court to show mercy and come to his rescue in any event. This was not feasible legally speaking.

[6] The inevitable conclusion is that the application ought to fail as it was brought clearly prematurely. In the exercise of my discretion, there should be no order as to costs in matters of this nature.

ORDER

[7] In the result the following order is made:

7.1 The application is dismissed.

7.2 There shall be no order as to costs.

7.3 The state attorneys office shall hand a copy of this judgment to the applicant if he is not present during the handing down of this judgment.

**D S S MOSHIDI
JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG**

COUNSEL FOR THE APPLICANT	IN PERSON
COUNSEL FOR THE RESPONDENTS	MR R T POOE
INSTRUCTED BY	THE STATE ATTORNEY JOHANNESBURG
DATE OF HEARING	23 MAY 2016
DATE OF JUDGMENT	10 JUNE 2016