



Republic of South Africa

In the Western Cape High Court of South Africa
(Cape of Good Hope Provincial Division)

In the matter between

Case No: 22537/10

S. W. Goodwin

First Applicant

Versus

The Minister of Justice
The Minister of Correctional Services

First Respondent
Second Respondent

Judgment delivered: 26th November 2010

LOUW J

[1] This matter came before me in the fast lane of the motion court.

[2] The applicant is presently serving an effective sentence of 10 years of imprisonment imposed on 20 April 2009 by this court after he had pleaded guilty in terms of a plea and sentence agreement under section 105 A of Act 51 of 1977, to one count of fraud, two counts of corruption and 32 counts of money laundering. It was recorded as part of his sentence that the period of 9 month the applicant had spent incarcerated in the Unites States of America, would be

subtracted from the effective term of imprisonment.

[3] It is common cause that the full period of the applicant's sentence will expire on 6 April 2018, that the earliest date upon which he can be considered for parole is 6 April 2013 and that the applicant completed one quarter of his effective term of imprisonment on 6 October 2010.

[4] The applicant seeks as a matter of urgency, in an application launched on 11 October 2010, an order declaring that the applicant is suitable to be placed under correctional supervision as contemplated by the provisions of section 73 (7) (c) (i) of the Correctional Services Act, 111 of 1998.

[5] The charges against the applicant arose from the manner in which the affairs of the Fidentia group of companies had been conducted. In pleading guilty, the applicant admitted that he had received R32m as his share and profit from the various schemes perpetrated by the persons involved in the management of Fidentia. He further admitted that he laundered approximately R93m. The applicant has undertaken to co-operate with the criminal investigation and the efforts of the Curators of Fidentia to recover the Fidentia funds and that he will testify against his co-accused.

[6] Sec 73 (c) (i) of the Correctional Services Act provides as follows:

- (c) If a person has been sentenced to incarceration for
 - (i) a definite period under section 276 (1) (b) of the criminal procedure act, ...

the person shall serve at least a quarter of the effective sentence imposed or the non-parole period, if any, whichever is the longer before being considered for placement under correctional supervision, unless the court has directed otherwise.

[7] This application is premature. The applicant had hardly become (5 days earlier) eligible for consideration to be placed under correctional supervision, before the application was launched. Section 276 A (3) of the Criminal Procedure Act, which appears to be the applicable provision (See section 73 (3) (d) of Act 111 of 1998), lays down the process to be followed, namely, that the Commissioner of Correctional Services or a parole board

'may, if he or it is of the opinion that such a person is fit to be subjected to correctional supervision, apply to the clerk or registrar of the court, (namely the court which had previously sentenced the person to a period of imprisonment) as the case may be, to have that person appear before the court a quo to reconsider the said sentence.'

[8] Such court may then re-consider the sentence and, as one of the

sentence options, convert the sentence to correctional supervision.

[9] This court is not at present in a position to consider a decision of the Commissioner or parole board. In the time which had elapsed since 6 October 2010, no decision has been taken on whether the applicant, now that he has become eligible for consideration, is a person who is fit to be subjected to correctional supervision.

[10] Once the Commissioner or the parole board has taken a decision in this regard, the matter may be open for review by the court. This court cannot at this stage consider whether it should substitute its decision for that of the Commissioner or the parole board.

[11] The answering papers filed on behalf of the second respondent show that the applicant's position is under consideration by correctional services. In my view, that process must run its course. If the process of evaluation or if completed, the decision taken is, in the view of the applicant flawed, he may, depending on the circumstances, be entitled to bring the matter on review. I put it no higher than that.

[12] It follows that the relief sought cannot be granted at present. I would, however, in view of the papers already filed on both sides not dismiss the application but rather postpone the application sine die with leave to the parties

to apply the papers in due course and to set the matter down once the application is ripe for hearing. Costs must also stand over for later determination.

I make the following order:

1. The application is postponed sine die;
2. The parties may in due course apply their papers in line with the tenor of this judgment and either party may set the matter down again for an order reviewing a decision by the respondents or for the dismissal of the application, as the case may be;
3. Costs will stand over for later determination.



W.J. LOUW J

Judge of the High Court