

REPUBLIC OF SOUTH AFRICA



GAUTENG NORTH, HIGH COURT PRETORIA

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: ☒ YES ☐ NO

(2) OF INTEREST TO OTHER JUDGES: ☒ YES ☐ NO

(3) REVISED.

05.05.2010

DATE

SIGNATURE

05/05/2010
CASE NO: 31001/2009

In the matter between:

PRETTYBOY SELEPE

First Applicant

ADELAIDE LETSOKU

Second Applicant

and

MINISTER OF CORRECTIONAL SERVICES

First Respondent

CHAIRPERSON OF CSPB PRETORIA CC

Second Respondent

CHAIRPERSON OF CSPB PTA FEMALE CC

Third Respondent

CHAIRMAN, CMC PRETORIA CENTRAL CC

Fourth Respondent

JUDGMENT

MAKGOKA, J.:

[1] The applicants, two convicted prisoners serving long term jail terms, seek to review decisions or recommendations taken by the second respondent on 26 November 2008 and 19 March 2009, respectively, to the effect that their applications to be released on parole were deferred. In respect of the first applicant, such application was deferred for two years, and to 12 December 2010 in respect of the second applicant.

[2] The first applicant was found guilty in 1999 of attempted murder, unlawful possession of fire-arms and ammunition, theft, impersonating, malicious damage to property and escaping from lawful custody. On 14 May 1999, he was sentenced to an effective 27 years imprisonment. At the time of his application to be considered for release on parole, he had served almost 9 years 7 months of his sentence.

[3] The second applicant was found guilty of murder and sentenced to 30 years imprisonment on 11 May 1999. She, at the time she appeared before the second respondent, had served a period of about 9 years 9 months of her sentence.

[4] Both applicants prepared their own papers (though clearly with assistance of a person with some legal knowledge). They appeared in person. As a result, their papers are not entirely technically correct. For the mere reason that, due to their circumstances, the applicants do not always access the benefit of legal representation, I decided to hear their application, despite the shortcomings in their papers.

[5] The legislative framework that governs the release of prisoners on parole, is set out in sections 42, (read with section 38) and 75 of the Correctional Services Act 111 of 1998 (“the Act”). Prior to 1 October 2004, prisoners serving a period of 12 months or more, qualified to be considered for release on parole after serving one third of their sentence. The present regime, which applies to prisoners sentenced after 1 October 2004, requires that such prisoners must serve at least half their sentences before they may be considered for release on parole.

[6] The applicants, having been convicted and sentenced before 1 October 2004, are thus governed by the old regime, and thus qualify for consideration to be released on parole after having served at least a third of their sentences.

[7] What is immediately frustrating about the application is the paucity of information placed before court. First, I do not have the record of proceedings before the second respondent, during which the applicants, respectively, appeared. Secondly, and a direct result of the absence of the record, I do not have an indication as to the information placed before the second respondent, for the latter to have arrived at the recommendation to defer the applicants’ applications to be considered for release on parole.

[8] What the second applicant has to consider, is provided for in section 42 (read with s 38) and s 75 of the Correctional Services Act 111 of 1998 (“the Act”). The relevant provisions of section 42 of the Act read as follows:

“Case Management Committee

- (1) *At each prison there must be one more Case management Committees composed of correctional officials, as prescribed by regulation.*
- (2) *The Case Management Committee must-*
 - (a) *ensure that each sentenced prisoner has been assessed, and that for the prisoners serving more than 12 months, there is a plan specified in section 38(2);*
 - (b) *interview, at regular intervals, each prisoner sentenced to more than 12 months, review the plan for such prisoners and the progress made and, if necessary, amend such plan;*
 - (c) *make preliminary arrangements, in consultation with the Head of Community Corrections for possible placement of a prisoner under community corrections;*
 - (d) *submit a report, together with the relevant documents, to the Correctional Supervision and Parole Board regarding-*
 - (i) *the offence or offences for which the sentenced prisoner is serving a term of imprisonment together with the judgment on the merits and any remarks made by the court in question at the time of the imposition of sentence if made available to the Department;*
 - (ii) *the previous criminal record of such prisoner;*
 - (iii) *the conduct, disciplinary record adaptation, training, aptitude, industry, physical and mental state of such prisoner;*
 - (iv) *the likelihood of a relapse into crime the risk posed to the community and the manner in which this risk can be reduced;*
 - (v)...
 - (vi)...

- (vii) *the possible placement of such prisoner on day parole or on parole, and the conditions for such placement; and*
- (viii) *such other matter as the Correctional Supervision and Parole Board may request;*
- (e) *at the request of the Area Manager, submit a report contemplated paragraph (d) to him or her in respect of any prisoner sentenced to 12 months'*
- (3) *A prisoner must be informed that the contents of the report submitted by the Case Management Committee to the Correctional Supervision and Parole Board of the Area Manager and he afforded the opportunity to submit written representation to the Correctional Supervision and Parole Board or Area Manager, as the case maybe."*

[9] Section 38 of the Act, which must be read together with section 42, provides-

"Assessment,

- (1) *As soon as possible after admission as a sentenced prisoner, such prisoner must be assessed to determine his or her-*
 - (a) *security classification for purposes of safe custody;*
 - (b) *health needs;*
 - (c) *educational needs;*
 - (d) *social and psychological needs;*
 - (e) *religious development programme needs;*
 - (f) *specific development programme needs;*
 - (g) *work allocation;*
 - (h) *allocation to a specific prison;*

(i) needs regarding reintegration into the community.

(2) In the case of a sentence of imprisonment of twelve months or more, the manner in which the sentence should be served, must be planned in the light of this assessment and any comment by the sentencing court.”

[10] The relevant provisions of Section 75 of the Act, which deal with the powers, functions and duties of Correctional Supervision and Parole Board, read as follows-

“(1) A Correctional Supervision and parole Board, having considered the report on any prisoner serving a determinate sentence exceeding twelve months submitted to it by Case Management Committee in terms of section 42 and in the light of any other information or argument, may-

(a) subject to the provisions of paragraphs (b) and (c) subsection 1 (A) place under correctional supervision or day parole or grant parole and, subject to the provisions of section 52, set the condition of community corrections imposed on a prisoner.”

[11] These provisions are clearly peremptory. Of importance is a report which must be prepared by the second respondent in terms of section 42. Such a report has to be a comprehensive report and will contain the information necessary for a proper consideration of the applicants' application to be considered for release on parole. Other documents that must be considered are the social worker's report, the psychological report, the education report and the religious work report.

[12] Without the record, I am unable to make a determination as to whether the above information was placed before, and was considered, by the second respondent. Put differently, I am unable to determine whether there was compliance with the provisions of the Act. A further difficulty is that the applicants were also not furnished with reports on which they could make comment.

[13] As indicated in the introduction to the judgment, the crimes of which the applicants were convicted, are very serious indeed, inherently violent in their nature. As a result, careful adherence to the Act and the applicable regulations is necessary, to ensure that the decision arrived at, does not bring the system of parole into disrepute so as to undermine the community's confidence in the system. In addition to all the provisions of the Act, the judgments of the courts which convicted the applicants, as well as the reasons for sentences imposed, are of equal importance.

[12] The net effect of this lack of information, is that there is nothing to review. All I can do is order the second respondent to transmit the record of the proceedings, in respect of each applicant, to the Registrar of this court, for a proper consideration of its decision to defer the applicants' application for release on parole.

[13] I therefore make the following order:

1. The application is postponed *sine die*.

2. The second respondent is ordered to transmit to the Registrar of this Court, within 10 days hereof, the respective records of proceedings before him on 26 November 2008 and 19 March 2009, wherein the decisions to defer the applicants' applications for release on parole, were taken.
3. The second respondent shall immediately on so transmitting the records, inform the applicants in writing.


T M MAKGOKA
JUDGE OF THE HIGH COURT
