

IN THE HIGH COURT OF SOUTH AFRICA
(NORTH GAUTENG HIGH COURT, PRETORIA)

CASE NO: 19293/2006

6/4/2011

In the matter between:

CITY: BAFANA FREDDIE

APPLICANT

and

DELETE WHICHEVER IS NOT APPLICABLE
(1) REPORTABLE: YES/NO.
(2) OF INTEREST TO OTHER JUDGES: YES/NO.
(3) REVISED.
2011-04-06
DATE
SIGNATURE

MINISTER OF CORRECTIONAL SERVICES 1ST RESPONDENT
THE PROVINCIAL COMMISSIONER OF
CORRECTIONAL SERVICES 2ND RESPONDENT
THE HEAD OF MEDIUM PRISON (PRETORIA) 3RD RESPONDENT
THE CHAIRPERSON OF PAROLE BOARD
(PRETORIA MEDIUM PRISON) 4TH RESPONDENT

JUDGMENT

MAVUNDLA J;

[1] Due to circumstances beyond my control, it has taken rather too long for me to have this judgment delivered. The delay has

indeed, most regrettably, caused the applicant great deal of inconvenience. I can do no better than to apologize to the applicant. The cause of the delay is a subject of another forum and shall therefore not further address that aspect.



[2] On the 28th February 2006 the fifth respondent recommended that the applicant was not suitable for parole placement. It further decided that the applicant be reconsidered on 28 February 2008 whether he is suited for parole. The applicant sought to have this decision reviewed, corrected and set aside. He also sought ancillary relief. The matter came before me on 8 February 2007. I reserved the judgment.

[3] It is common cause that the applicant was serving 23 years imprisonment terms for multiple crimes of housebreaking with intent to rob and robbery, robbery with aggravating circumstance, attempted murder and possession of a firearm and ammunition. The applicant was sentenced on 21 August 1997. His sentence was prior to 1 October 2004. The

consideration of his parole status falls to be determined in terms of the provisions of section 65(4)(a) of Act 8 of 1959.

[4] The appellant appeared before the fifth respondent at a correctional supervision and parole board hearing on 28 February 2006. The fifth respondent decided that the applicant should be further profiled on 28 February 2008. The relevant date has come and gone. In my view, this decision, for whatever it is worth, is now academic.

[5] The applicant's discontent with the fifth respondent is, according to him, that the fifth respondent misdirected himself in the following respect: by failing to meaningfully consider his placement on parole, alternatively failing to properly apply his mind to the matter at hand, having prejudged the outcome of the said hearing applying incorrect or irrelevant criteria. He further contends that the fifth respondent did not ask him the circumstances surrounding his offence by merely reading from the print out and informing him ~~that~~ the nature of his crime, the length of his sentence, the seriousness of the crime and

interest of the community. He further contended that there were no other issues discussed with him as required in terms of section 63 of the Act. The fifth respondent had regard to documents which the applicant was not informed of.

[6] The applicant further contends that the fifth respondent did not take into account the fact that he had completed the following courses while in prison:

Higher Diploma in Electrical Studies – Unisa (current studies); Life Skills Course – 2005; HIV/AIDS Awareness Program – 2005; N1 to N6 Engineering Studies-2001 to 2005; Electrical Appliance Repair Course, Investment in Excellence Course; Umalusi Senior Certificate-2002; Soldiers of Peace – Criminon 2002; Soldier of Peace – Criminon 2002; The way to peace – Criminon 2001 and ICDL Computer Course for Beginners. He further complains about the duration of 15 minutes the entire hearing took before the Correctional Supervision and Parole Board.

[7] The respondents concede that the applicant's consideration of parole placement is subject to the provisions of Act 8 of 1959. The fifth respondent had regard to the nature of the offences the appellant was convicted for and the sentence of 23 years he was serving. He further had regard to the following: "The Correctional Supervision and Parole Board acknowledge the certificates and testimonials attached like the N6 theory in Engineering Studies. His address is positive. However, the Correctional Supervision and Parole Board have taken into account the seriousness of the crimes, the length of the sentence and the interest of the community. He must therefore serve more of his sentence in order to be exposed to case intervention team for therapeutic intervention."

[8] In the matter of Van Gund v Minister of Correctional Services 2011 (1) SACR 16 at 20f-h the Court stated that:

"[11] It is trite law that a prisoner has no right to be released on parole. He, however, has a right to be considered. Furthermore, once an offender has been lawfully sentenced by a court of law he or she has no right to liberty. That right to liberty is deprived by a process of law after he/she has been sentenced. The right to be considered for parole should not be

equated to the right to be freed from prison. That right only arises once the Board decides to grant parole. The right to be considered for parole is an administrative action and consequently a prisoner is entitled to a fair procedure. Section 33 of the Constitution of the Republic of South Africa Act 1996, provides that: 'Everyone has the right to a fair administrative action that is lawful, reasonable and procedurally fair.'

[12] When considering the merits of the application for placement on parole the Board is entitled to take into account the seriousness of the offence. The argument that this is an irrelevant consideration must therefore be rejected."

[9] The sentence imposed on the applicant is of long duration. The offences the applicant was sentenced for are indeed serious and need no further proof to show their gravity. The very fact that the sentence is 23 years imprisonment emphasises the seriousness thereof. There is no substance in contention that the fifth respondent misdirected himself in concluding that the offences were serious without hearing the appellant in that regard.

[10] I deem it not necessary to consider the rest of the issues that raised the applicant's chagrin regarding the decision of the fifth

respondent. I am of the view that there is no merit in the application for review and it stands to be dismissed. I shall not order costs against the applicant because these would in any event not be recovered by the respondent.

[11] In the result the application is dismissed and no order as to costs is made.


N.M. MAVUNDLA

JUDGE OF THE HIGH COURT

APPLICANT'S ATT	: KRUGER AND PRINSLOO INC
APPLICANT'S ADV	: MR C SNOYMAN
2 ND RESPONDENT'S ATT	: STATE ATTORNEYS
2 ND RESPONDENT'S ADV	: MR J ROUX
JUDGMENT DELIVERED	: 6 APRIL 2011.