

FREE STATE HIGH COURT, BLOEMFONTEIN
REPUBLIC OF SOUTH AFRICA

Case No.: 2338/2013

In the matter between:-

LAZARUS MOKETE SHEBE

Applicant

and

**THE MINISTER OF CORRECTIONAL
SERVICES**

First Respondent

**THE REGIONAL COMMISSIONER OF
FREE STATE AND NORTHERN CAPE**

Second Respondent

STATE ATTORNEY

Third Respondent

CHAIRPERSON OF THE PAROLE BOARD

Fourth Respondent

HEARD ON:

5 SEPTEMBER 2013

JUDGMENT BY:

THAMAGE, AJ

DELIVERED ON:

19 SEPTEMBER 2013

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- [1] This is an application whereby the applicant seeks an order that the respondents be compelled to release him from prison forthwith.
- [2] Applicant appeared in person. He is serving a sentence of thirty five and a half years at Kroonstad Correctional Centre.

In terms of his correctional service profile, he was supposed to have appeared before the Parole Board on 25 April 2013. However due to the credits he received, he was seen and considered for parole on 1 December 2012 i.e. before he had done one third of his sentence. The Parole Board decided not to grant parole and postponed the matter to 1 May 2013 for further profile. The reason for not granting parole was that the victims of crime were not engaged as envisaged in terms of section 299A of the Criminal Procedure Act 1977, Act 51 of 1977.

- [3] Applicant had previous convictions and the current imprisonment is for five counts of attempted murder, two counts of armed robbery and possession of firearm. On 31 May 2013, the applicant again appeared in front of the Parole Board and by then the victims of his crimes had still not been engaged and the matter was postponed to 1 December 2013. As a result of this, applicant approached this court for an order that respondents be compelled to release him from prison.
- [3] The issue to be considered is whether the applicant had made up a case for this court to can order the respondents to immediately release him from prison based on the aforesaid facts.
- [4] Section 73(1)(a) of Correctional Services Act 1998, Act 111 of 1998 states as follows:

- “(1) Subject to the provisions of this Act-
- (a) a sentenced offender remains in a correctional centre for the full period of sentence;”

Section 73(6)(a) states:

- “(6) (a) Subject to the provisions of paragraph (b), a sentenced offender serving a determinate sentence or cumulative sentences of more than 24 months may not be placed on day parole or parole until such sentenced offender has served either the stipulated non-parole period, or if no non-parole period was stipulated, half of the sentence...”

[5] Section 75(1)(a) of the aforesaid Act states

- (1) A Correctional Supervision and Parole Board, having considered the report on any sentenced offender serving a determinate sentence of more than 24 months submitted to it by the 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) and subsection (1A) place a sentenced offender under correctional supervision or day parole or grant parole or medical parole...”

[6] It is common cause that case management committee had compiled a report which was submitted to the Parole Board for applicant to be considered for parole hence applicant's parole was considered on 1 December 2012. The provisions of section 75(1)(a) are not peremptory hence it states that the Parole Board may grant parole. It is therefore within the

discretion of the Parole Board to grant or not to grant an offender a parole after considering all available information. It is common cause that the victims of the crimes were not engaged, a scenario which is stipulated by section 299A of the Criminal Procedure Act due to the fact that applicant was convicted of serious offences.

- [7] The granting of parole is not a right that can be claimed by an applicant, it is a privilege as in terms of section 73(1)(a) of the Correctional Services Act, *supra*, a sentenced offender is to remain in correctional centre for a full term of his sentence subject to the provisions of section 73(6)(a). The Act makes provision for consideration of placement on parole and not the actual placement on parole. What a sentenced offender in the position of the applicant enjoys is the right to be considered for parole. See also in this regard **Winckler and Others v Minister of Correctional Services and Others** 2001 (2) SA 747 (CPD).

- [8] It is apposite to mention that this is not a review matter either at common law or in terms of Promotion of Administrative Justice Act 2000, Act 3 of 2000 (PAJA). In an obiter, if the applicant is of the view that the respondents' decision was grossly unreasonable, his cause of action should be based on administrative review. I may mention, *en passant*, without deciding the issues that *ex facie* the documentary evidence before me, there appears to be no substantial merits in such a review, should the applicant be adduced for launch of same.

- [9] The applicant requests this court to compel the Parole Board to release him. The Parole Board is a statutory body having its powers and functions. This court can thus not interfere with the decisions of the Parole Board as this will be contrary to the well-known notion of separation of powers between the judiciary and the executive. As aforesaid, this court can interfere with the executive powers once it has been proven that such powers were unreasonably in a review application.
- [10] In my judgment the real cause of the applicant's grief is failure on the part of the authorities to finalise his consideration for parole. An application for a mandatory order to that effect would most probably be appropriate.
- [11] Counsel for third respondent rightly submitted that there is a misjoinder in respect of the third respondent as he has no direct or substantial interest in this matter and thus requested a costs order. Applicant submitted that the third respondent was joined because he always defends the other respondents in litigation, which submission has no merits.
- [12] In the circumstances applicant failed to make up a case as per his prayer and the application thus falls to be dismissed.
- [13] Respondent requested the court to order costs against the applicant whilst the applicant, on his part, prayed for costs against all four respondents. The general rule is that the successful party is entitled to its costs. I however feel that such a costs order against the applicant would be academic

and of no practical effect regard being had to the fact that he is currently serving a penal term. There was, further, no fault on the part of the applicant with regard to failure to engage victims of the crimes. To the foregoing extent the applicant, in my view, has cause to grief although the vehicle which he chose to convey his grievance to court is inappropriate.

[14] The following order is thus made:

1. Application is dismissed.
2. No order is made as to costs.

S.J. THAMAGE, AJ

On behalf of applicant: In person.

On behalf of respondents: Adv B.S. Mene
Instructed by:
State Attorney
BLOEMFONTEIN