



Reportable:	YES / NO
Circulate to Judges:	YES / NO
Circulate to Regional Magistrates:	YES / NO
Circulate to Magistrates:	YES / NO

**IN THE HIGH COURT OF SOUTH AFRICA
(NORTHERN CAPE DIVISION, KIMBERLEY)**

Case No: 1969/2022
Date Heard: 05 / 02 / 2024
Date Delivered: 28 / 03 / 2024

In the matter between:

MXOLISI VUNDISA

APPLICANT

and

**KIMBERLEY CORRECTIONAL SUPERVISION AND
PAROLE BOARD**

RESPONDENT

Coram: Tlaletsi, JP et Tyuthuza, AJ

JUDGMENT

Tyuthuza AJ

INTRODUCTION

1. The applicant is an inmate at the Tswelopele Correctional Centre in Kimberley. He launched this review application acting in person seeking an order in the following terms:

- 1.1 That non-compliance with the provisions of Rule 6(5)(b) pertaining to service address be condoned.
 - 1.2 That the respondent be ordered to observe and respect the right to fair administrative action in terms of section 33 of the Constitution of the Republic of South Africa, 1996.
 - 1.3 That the action of the respondent was procedurally unfair.
 - 1.4 That the decision was taken in bad faith.
 - 1.5 That the applicant be released on parole.
 - 1.6 That the respondent be ordered to pay the costs of the application the one paying the other to be absolved.
2. The respondent is the Kimberley Correctional Supervision and Parole Board (CSPB) appointed as such by the responsible Minister, in terms of section 74 of the Correctional Services Act¹ (the Act). The Parole Board is statutorily responsible for the consideration of reports of sentenced offenders and the determining of their parole in terms of section 75 of the Act. The review application is opposed.

FACTUAL BACKGROUND

3. The factual background in this matter is largely common cause. The Applicant was sentenced to 40 years and six months' imprisonment for various offences and his prison term is due to end on 26 February 2043. The applicant was released on parole on 28 September 2017. In January 2019 he was apprehended and incarcerated for violating his parole conditions. He was released again on parole on 21 January 2020. Whilst on parole, the applicant was arrested on 08 August 2021 on allegations of armed robbery and was detained in Douglas, a town which is about 107km from Kimberley.
4. On 03 October 2021 the Chairperson of the Supervision Committee issued a warrant for the arrest and the detention of the applicant for breaching his parole conditions. He recommended that the applicant be brought before the Board within 14 days to have his parole revoked because he had violated his parole

¹ Act 111 of 1998

conditions by leaving the district of Kimberley. The Head of Community Corrections also motivated that the applicant be referred back to the Board. The applicant's parole was formally withdrawn on 11 October 2021 by the Board.

5. The applicant appeared before the Parole Board on three instances after his arrest. It is apposite to provide a brief background on what transpired at these appearances as they are relevant to the applicant's case and the relief he seeks. The dates on which he appeared are 11 October 2021, 30 March 2022 and 30 June 2022.

11 OCTOBER 2021 HEARING

6. The appearance on this date happened eight days after he was served with the warrant of arrest and detention. The template for the referral of the applicant stated that he had violated his parole condition on 08 August 2021 as he had left the district of Kimberley without permission. The supervisory committee recommended to the Board that the applicant's parole be revoked. The recommendation for the referral and revocation of the parole was supported in the motivation prepared by the Head of Community Corrections on 03 October 2021.
7. The applicant confirms his appearance before the Board in his founding affidavit. He avers, however, that he presented to the Board his reasons for having violated his parole conditions. His reasons were briefly that, Sunday 08th August 2021 fell on a Women's Day celebration long weekend. There was also the lock down restrictions in place to combat the Covid-19 pandemic. He went to the Community Corrections offices to request permission as required. The offices were locked. Out of desperation, he got tempted and left the Kimberley district without the permission of his supervision officer.
8. The applicant further alleges that the Board understood his explanation and he was informed that he would appear before the Board at the next available

sitting where, should he obtain bail or should the charges against him be withdrawn or he be acquitted of those charges, he would be released on parole. A date for his next appearance was set as 01 March 2022. As the applicant understands it, his parole was provisionally withdrawn at this hearing and not revoked.

9. The respondent's version on the outcome of the proceedings differs from that of the applicant. The respondent contends that a formal decision on the status of the applicant was taken by the Parole Board on the 11th of October 2021, namely, to "withdraw" the applicant's continued release on parole. The record of the proceedings reveals that the Commissioner – Corrections was informed on the same day and a signature of the secretary of the CSPB/ CMC in acknowledgment is reflected. A further profile report was requested for 01 March 2022. The report further reflects that the applicant (offender) was informed and he signed to signify this aspect.
10. The applicant alleges that he only became aware on 06 May 2022 that his parole was revoked on 11 October 2021, but he alleges that his parole was only revoked on 30 June 2022, eight months after he was served with the warrant of arrest and had been in custody. Thus, the Board had contravened section 75(2) (a) of the Correctional Services Act.
11. Despite the allegations in the founding affidavit, the applicant conceded in court that his case is that his parole was withdrawn on 11 October 2021 and that he was informed of this decision. The applicant further submitted that the withdrawal of his parole did not amount to it being revoked. He alleges that the parole was withdrawn as a result of the criminal case that was pending and that the withdrawal was effective until the circumstances of the case had changed.

30 MARCH 2022 HEARING

12. The applicant did not appear before the Board on 01 March 2022. He appeared on 30 March 2022. According to the applicant, the Chairperson

informed him that the Case Management Committee had prepared another report in which they recommended a further profile. The reasons advanced are that the applicant had a requisition to appear before court on 19 April 2022 on the criminal charges pending against him and that he had not submitted an address of residence to which he could be released on parole. He avers that the Board resolved to afford him more time to sort out the address to which he would be released and to secure his release on the pending criminal charges. He was for these reasons granted a shorter date for the next appearance, 01 June 2022.

13. The applicant was dissatisfied with the decision not to grant him parole because an address had already been supplied by his family member and he had been released on his own recognisance by the magistrates' court. He then launched an application in this court on 25 April 2022 under case number 549/2022 to review the decision of the Parole Board not to release him on parole. On 06 May 2022, he was served with an answering affidavit in his application. It is only then that he learnt for the first time that his parole was "revoked" on 11 October 2021 as averred by the deponent to the answering affidavit. Because of this turn of events he withdrew his review application and decided to wait for his next appearance before the Board which was 01 June 2022. He believed that his parole was never revoked and that he was wrongly kept in custody solely because of his pending criminal charges.

30 JUNE 2022 HEARING

14. It is common cause that the applicant appeared before the Board on 30 June 2022. It is the applicant's case that on this occasion he was informed that his parole was revoked for violating the parole condition by leaving the Magisterial District of Kimberley without permission and a further profile was imposed until 01 June 2024. The applicant contends that his parole was only revoked at this sitting which was his third appearance before the Board, constituting a further eight months after being served with the warrant of arrest. He voiced his dissatisfaction with the decision to revoke his parole at this hearing and was advised by the Chairperson that he could appeal the Board's decision, and

was informed that the operation two-year period for further profile will be suspended pending the finalisation of the appeal.

15. Dissatisfied with the actions of the respondent, the applicant launched this application seeking to review the decision made at the hearing of 30 June 2022. The respondent disputes that the decision to revoke the applicant's parole was made at the hearing on 30 June 2022. It contends that the decision was made on 11 October 2021.

ISSUES:

16. The applicant contends that the revocation of his parole was procedurally unfair and done in bad faith in that:
 - 16.1. his parole was revoked on 30 June 2022, eight months after he was served with the warrant of arrest and detention and thus contrary to section 75 of the Correctional Services Act.
 - 16.2. the decision to revoke his parole on 30 June 2022, was motivated by the applicant challenging the respondent's decision of 30 March 2022 by launching the application under case number 549/2022.
 - 16.3. the document titled "*Template for Referral*" which is attached to the respondent's answering affidavit (annexure "A") is forged in that:
 - (a) the surname and initials of the chairperson were not on the document which he received on 06 May 2022;
 - (b) the date stamp was not on the document he received on 06 May 2022; and
 - (c) the word "*revoked*" was not on the document he received on 06 May 2022.
17. It is on these grounds that the applicant seeks to have the decision of the respondent reviewed and set aside.

WAS THE DECISION PROCEDURALLY UNFAIR?

18. In *Jimmale and Another v S*² the Constitutional Court held the following at paragraph 1:

"Parole is an acknowledged part of our correctional system. It has proved to be a vital part of reformatory treatment for the paroled person who is treated by moral suasion. This is consistent with the law: that everyone has the right not to be deprived of freedom arbitrarily or without just cause."

19. Section 73(5) of the Act which authorises an offender's right to correctional services or parole reads as follows:

- "(a) A sentenced offender may be placed under correctional supervision, on day parole, parole or medical parole-
- (i) on a date determined by the Correctional Supervision and Parole Board; or
 - (ii) in the case of an offender sentenced to life incarceration, on a date to be determined by the Minister.
- (b) Such placement is subject to the provisions of Chapter IV and such offender accepting the conditions for placement."

20. As defined in section 50 of the Act, the objectives of community corrections are the following:

- "(1)
- (1)(a) The objectives of community corrections are-
 - (i) to afford sentenced offenders an opportunity to serve their sentences in a non-custodial manner;
 - (ii) to enable persons subject to community corrections to lead a socially responsible and crime-free life during the period of their sentence and in future;
 - (iii) to enable persons subject to community corrections to be rehabilitated in a manner that best keeps them as an integral part of society; and
 - (iv) to enable persons subject to community corrections to be fully integrated into society when they have completed their sentences.

² [2016] ZACC 27; 2016 (2) SACR 691 (CC); 2016 (11) BCLR 1389 (CC).

- (b) *These objectives do not apply to restrictions imposed in terms of section 62(f) of the Criminal Procedure Act or section 24 (4)(d) or 26 of the Child Justice Act, 2008.*

- (2) *The immediate aim of the implementation of community corrections is to ensure that persons subject to community corrections abide by the conditions imposed upon them in order to protect the community from offences which such persons may commit."*

21. In accordance with section 70(1) of the Act, after the Commissioner finds that the parolee has failed to comply with any aspect of the imposed conditions, the Commissioner may:

- (i) *reprimand the person;*
- (ii) *instruct the person to appear before the Correctional Supervision and Parole Board that is situated closest to the place of residence of such person or the Board which has jurisdiction within the area where the non-compliance took place, or other body which imposed the conditions of community corrections;*
- (iii) *issue a warrant for the arrest of such person; and*
- (b) *must, if he or she is satisfied that the person has a valid excuse for not complying with any such condition or duty, instruct that the community corrections be resumed subject to the same conditions or duties applicable to that person.*

22. Section 75(2) of the Act which deals with the powers, functions and duties of the Board states as follows:

- "(a) *If the National Commissioner on the advice of a Supervision Committee requests a Board to cancel correctional supervision or day parole or parole except where the person concerned was originally serving a sentence of life incarceration, or to amend the conditions of community corrections imposed on a person, the Board must consider the matter within 14 days but its recommendations may be implemented provisionally prior to the decision of the Board.*
- (b) *After consideration of such conditions the Board may cancel the correctional supervision or day parole or parole, or amend the conditions but if the person concerned refuses to accept the amended conditions, the correctional supervision or day parole or parole must be cancelled." (emphasis provided)*

23. The applicant was placed on parole in terms of section 73 of the Act from 21 January 2020 to 26 February 2043. It is apposite to mention that the applicant was subject to community corrections in terms of section 51(1)(d) of the Act.
24. Part of the function of the Parole Board is to consider a report compiled by the Case Management Committee, which supervises and considers the fitness for parole of a prisoner sentenced to a determinate term of 24 months or more. The Case Management Committee supervises the prisoner's process of rehabilitation and oversees the services made available to a prisoner to enable that process.
25. It is a requirement in terms of subsection (2)(a) that the Board must consider the request to cancel or amend the correctional supervision or day parole or parole within 14 days of the request. In this case, the applicant was issued with a warrant of arrest and detention on 03 October 2021. On 03 October 2021, the Supervision Committee recommended that the applicant be placed before the Board within 14 days to revoke the remaining days of his parole. He appeared before the Board on 11 October 2021. In this regard the procedural requirement prescribed in subsection (2)(a) was complied with because it is common cause that the applicant appeared before the Board on the 8th day after the issuing of the warrant of arrest and detention. Having made this finding, it is necessary to determine whether a decision to cancel or revoke the applicant's parole was taken by the Board at the parole Board sitting of 11 October 2021.
26. While the applicant persists with an averment that the Board only revoked his parole on 30 June 2022, he conceded that the parole was withdrawn on 11 October 2021 and that the template for referral attached to the respondent's papers is a true reflection of what had transpired at the hearing on 11 October 2021. He however contended that the withdrawal of parole does not amount to revocation thereof. In his understanding, withdrawal is a temporary suspension of his release pending the finalisation of his criminal case or being released either on bail or on his own recognisance. Revocation, he contended, is a cancellation of the parole.

27. It is the respondent's case that the applicant's parole was revoked on 11 October 2021 by Mr Samolapo because the applicant had left the Magisterial District of Kimberley without permission and that the applicant had violated another condition of his parole.

28. The respondent disputes that the applicant's parole was only revoked at the hearing of 30 June 2022. The Board did not decide on the applicant's parole on that day but reiterated what was decided during the meeting of 11 October 2021. The Court was referred to a document attached to the respondent's answering affidavit titled:

"COVERING PAGE FOR APPROVAL/DISAPPROVAL OF PROFILE REPORT: DETERMINATE SENTENCE (S):

"FP approved for 2024.06.01. The offender is alleged to have committed crime whilst on Parole. Warned by Court. Has also violated the parole conditions to leave the magisterial district without permission. CSPB approved revoke of his parole. FP approved for 2024/06.01. Must be engaged in rehab programme."

This document is signed by the chairperson Mr Tutuse and is dated 30 June 2022.

29. This document records what transpired at the hearing on 30 June 2022. It is clear therefrom that the withdrawal of the applicant's parole had already been approved and that the only decision made on 30 June 2022 was for a further profile of the applicant to be considered on 01 June 2024. In the circumstances, there is no merit to the applicant's assertions that the decision to revoke his parole was only made on 30 June 2022.

30. The applicant himself conceded that his parole was withdrawn on 11 October 2021 and that he was informed of this decision. The applicant was referred to the document titled: TEMPLATE FOR REFERRAL OF PROBATIONER/PAROLEE TO THE CORRECTIONAL SUPERVISION AND PAROLE BOARD (CSPB)/HEAD of Correctional Centre. This document records the various stages with recommendations for the referral of the parolee to the Parole Board. Section C records the applicant's non-compliance and

the type of violation as "*Left District without Permission*". The summary of the Supervision Committee is reflected as follows:

"Parolee left the district without permission, place before CSPB to revoke parole". Section E is a recommendation of the supervision committee to the head community corrections and recommends: 'Parolee violated his conditions by leaving the district of Kimberley to Douglas, place before CSPB within 14 days to revoke remaining days.'

Section G of the document, which is signed by the chairperson of the Board states, "*parole withdrawn*". The recommendation by the Supervision Committee to the Head Community Corrections which was signed on 03 October 2021 reads: '*Parolee Violated His Conditions By Leaving The District of Kimberley to Douglas. Place Before CSPB within 14 Days to Revoke Remaining Days*'. The "*motivated decision*" by Head Community Corrections also state the same violation by the applicant and that it be referred back to the CPSB to revoke his parole.

31. The record reflects that the same document with recommendation was placed before the CSPB when the applicant appeared. The decision of the CSPB is reflected as "*Parole withdrawn*". The applicant confirms that the document is a true account of the proceedings on 11 October 2021, that his parole was withdrawn and that he was informed about the withdrawal.
32. The applicant's point of contention is the word "*withdrawn*". It is the applicant's case that the word "*withdrawn*" carries a different meaning to the word "*revoke*". Thus, it is the applicant's case that the withdrawal meant that his parole was temporarily suspended pending the finalisation of his criminal case or being released either on bail or on his own recognisance. Revocation, he contended, is a cancellation of the parole.
33. The Concise Oxford English Dictionary³ defines the word revoke as "*end the validity or operation (a decree, decision or promise)*". Whilst the word "*withdraw*" is defined as, "*remove or take away, take back, discontinue or retract*".

³ Pearsal, J. (1999) Concise Oxford Dictionary. 10th Edition, Oxford University Press, Oxford, 1591

34. In my view these two words carry the same meaning and same effect. I find no merit in the applicant's assertion that the fact that the parole was withdrawn did not mean that it was revoked. The effect of the withdrawal is that on 11 October 2021, the applicant's parole ended, alternatively, the validity thereof had ended.
35. In the circumstances I find that the Board decided to revoke the applicant's parole on 11 October 2021. The decision was made in compliance with section 75(2)(a) of the Act and thus the decision is not susceptible to review and stands.

WHETHER OR NOT THE DECISION WAS MADE IN BAD FAITH:

36. The applicant alleges that the decision of 30 June 2022 to revoke his parole was made in bad faith in that the decision was made after his application was launched against the Board in April 2022.
37. It is now established that the decision to revoke the parole was actually taken on 11 October 2021 and not on 30 June 2022 as alleged by the applicant, thus prior to him launching the application. Accordingly, there is no merit to the applicant's assertion that the decision was taken as a result of him launching the application against the respondent.
38. The applicant further alleges that the document titled "*Template for Referral*" which is discussed above is forged. He bases his contention on the fact that upon launching the application in April 2022 against the Board, the applicant was served with the respondent's answering affidavit on 06 May 2022, which had the document titled "*Template for Referral*" purporting to be the one that served before the CSPB. He submitted that the document he received then differs in some respect from the one produced by the respondent in the present proceedings.
39. The applicant is correct in his observations of the differences between the document which he received on 06 May 2022 and the document which is now attached to the respondent's answering affidavit as Annexure "A". The

surname and the initials of the chairperson of the Board, the date stamp and the word “*revoked*” have now been included on the document which is attached to the respondent’s answering affidavit as Annexure “A”. These features were not included in the document filed with the respondent’s answering affidavit under the proceedings in case number 549/2022.

40. It is clear that the document attached to the respondent’s answering affidavit as Annexure “A” to these proceedings was tampered with after 06 May 2022. The date stamp, surname and initials of the Chairperson were inserted after the fact and not on 11 October 2021. The respondent could not explain the discrepancies between the two documents. Be that as it may, the applicant has conceded that the document is a true reflection of the events of and the decision taken on 11 October 2021. The substantive content of the two documents including the handwriting in the various sections are similar. The date stamp and the names of the chairperson were omitted and only included later. It would therefore be unreasonable to suggest that the document was fraudulently manufactured to deceive the court. The stand-alone handwritten inscription of the word “*revoked*” at the top of the typed document is not part of the contents of the document. It does not relate to any of the contents or items of the document. It is also not in response to any prescribed requirements to be filled in the document. The applicant’s claim that the document was forged should be dismissed.
41. What remains for consideration is the issue of costs. The respondent has been substantially successful. The general rule is that costs follow the result unless there are good reasons to depart from the general rule. The applicant is a prisoner who drafted his papers and appeared in person in an attempt to exert and protect his constitutional rights. He did not have access to legal advice. Punishing him with costs would discourage prospective litigants in the position of the applicant from protecting their rights (See ***Biowatch Trust v Registrar Genetic Resources and Others***⁴). In addition, the applicant mentioned that he tried to pursue an appeal against the CSPB internally and could not get the

⁴ (CCT 80/08) [2009] ZACC 14; 2009 (6) SA 232 (CC); 2009 (10) BCLR 1014 (CC) (3 June 2009)

necessary assistance from the correctional officers as prescribed. For these reasons, there shall be no order as to costs.

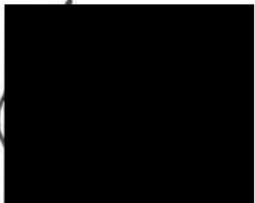
In the premise, the following order is made:

1. The application is dismissed.
2. No order as to costs.



T TYUTHUZA
ACTING JUDGE OF THE HIGH COURT
NORTHERN CAPE DIVISION

I agree.



L P TLALETSI
JUDGE PRESIDENT OF THE HIGH COURT
NORTHERN CAPE DIVISION

APPEARANCES:

On behalf of the Applicant:

In person

On behalf of the Respondent:
On the instruction of:

Mr Ramavhale
Office of the State Attorney