

REPUBLIC OF SOUTH AFRICA



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG**

CASE NO: 21/54146

- (1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED: NO


SIGNATURE

DATE 18 November 2024

In the matter between:

MOTSATSI SARAH MALATJI

Applicant

and

THE HEAD OF PRISON FEMALE CENTRE:

First Respondent

DEPARTMENT OF CORRECTIONAL SERVICES

THE PAROLE BOARD:

Second Respondent

DEPARTMENT OF CORRECTIONAL SERVICES

JUDGMENT

This judgment is handed down electronically by circulation to the parties' legal representatives by email and by being uploaded to CaseLines. The date and time for hand down is deemed to be 18 November 2024.

MAHON AJ:

- [1] The applicant approached this court seeking an order directing the First Respondent to place her on parole and the Second Respondent to deduct the period of her pre-sentencing incarceration from her current sentence. The application was opposed by the respondents.
- [2] The applicant is currently serving an effective 28-year sentence for murder and robbery with aggravating circumstances, imposed on 8 June 2011. It would appear that her effective sentence is calculated at 30 years, considering the concurrent running of certain portions of her punishment and a remission of six months under a special remission of sentence granted in 2012.
- [3] The Applicant has already spent 10 years in custody and has not been considered for release on parole.
- [4] The applicant's minimum detention period runs to 7 February 2025, with a parole profile submission which was scheduled for 7 November 2024.
- [5] Despite these dates, the applicant asserts that she has already served sufficient time, including her period in custody awaiting trial, and should be considered for parole immediately. She further argues that she is entitled to earlier release on grounds of rehabilitation, her health concerns, and her eligibility under correctional services protocols.

[6] The applicant contends that:

- [6.1] She has fulfilled all requirements for parole consideration, including serving one-third of her sentence;
- [6.2] Her rehabilitation efforts, including education and regular participation in prison programs, demonstrates a readiness for societal reintegration; and
- [6.3] Her prolonged incarceration is prejudicial and unnecessary, given her rehabilitative progress and the lack of safety risks associated with her release.

[7] The applicant also argues that the three years spent in detention awaiting trial should be included in the calculation of her sentence.

[8] The respondents argue that:

- [8.1] The applicant has not reached her minimum detention period and, therefore, is not eligible for parole consideration;
- [8.2] The parole process requires compliance with institutional protocols, including victim-offender dialogues, which the applicant has not completed; and
- [8.3] The application is premature, as the Parole Board has not been approached with a profile submission or any formal recommendation from correctional services.

- [9] At the heart of this matter is whether the applicant's request for immediate parole consideration is procedurally and substantively justified. Integral to that enquiry is whether this court has the power to grant parole under circumstances where the statutory procedures contemplated under the Correctional Services Act 111 of 1998 ("the Correctional Services Act"), for consideration of parole, have not been followed.
- [10] The Correctional Services Act and relevant regulations provide a structured process for parole consideration. A prerequisite is that the offender must have reached their minimum detention period, barring exceptional circumstances.
- [11] Section 78 of the Correctional Services Act empowers the Minister of Justice and Correctional Services to grant parole to an offender serving a life sentence but requires life-sentenced prisoners to serve a minimum detention period before being eligible for parole consideration.
- [12] This period is determined by the Parole Board, taking into account the minimum periods prescribed by regulations.
- [13] The Parole Board, in consultation with other stakeholders such as social workers, psychologists, and correctional officers, considers several factors, including:
- [13.1] The prisoner's conduct and disciplinary record during incarceration;
- [13.2] Participation in educational, vocational, and behavioural correction programs;

[13.3] An assessment of whether releasing the prisoner poses a threat to public safety; and

[13.4] Inputs from the victim or victim's family, ensuring their perspectives are considered.

[14] The Board then makes a recommendation to the Minister of Justice and Correctional Services, who has the final authority (subject to judicial review) to grant or deny parole for life prisoners.

[15] Should a prisoner believe that he or she is eligible for parole, the prisoner must apply to the Correctional Supervision and Parole Board to be placed on parole. The Board, based on appropriate reports and recommendations from correctional officers, will consider and decide whether the prisoner should be granted parole.

[16] Should the Board dismiss the application, the prisoner or an interested party may request that the review board overturn the decision of the Board.

[17] Before a prisoner can be placed on parole, all possible relevant information should be considered, and any person, including the Applicant, may put relevant information before the Board. It is the duty of the Board to weigh and consider all information placed before it and to exclude information that may be irrelevant.¹

[18] In this case, the applicant's minimum detention period is still over a year away.

¹ *Clive Derby-Lewis vs Minister of Correctional Services and Others 2015 ZAGPPHC 661 Page 25*

[19] Furthermore, the evidence on record indicates that the applicant has not fulfilled the requisite victim-offender dialogue nor submitted her parole profile for assessment. These procedural prerequisites are integral to ensuring transparency, equity, and accountability within the parole process.

[20] The applicant's contention that the period spent in pre-trial detention should be credited against her sentence lacks support in the judicial sentencing order. The responsibility for addressing any potential errors or adjustments in sentence calculation lies within the purview of the Parole Board and the Department of Correctional Services as part of their administrative mandate.

[21] Considering these circumstances, the application is premature, as the Parole Board has not yet had the opportunity to evaluate the applicant's parole eligibility or resolve the issues presented.

[22] Seemingly alive to these difficulties, the applicant referred me to the wording of the amended notice of motion, which constituted a refinement of the formulation of the relief sought, thus:

- "1. An order directing the First Respondent to place the Applicant on parole **process** within 30 days of the granting of the Court Order.*
- 2. An order directing the First Respondent to release the Applicant on parole within 90 days of the granting of the Court Order.*
- 3. An order directing the Second read-in (sic) the period of awaiting trial into the period which the Applicant had already served in prison."*

[my emphasis]

[23] The applicant accepted that I could not grant an order directing that she be placed on parole and she accordingly sought to argue that the "process" which

was contended for in the amended notice of motion, was not the placement on parole, but, rather the commencement of the process by which the applicant's eligibility for parole is to be considered.

[24] However, this amendment does not assist the applicant for the same reason that the previous relief sought could not be granted, namely, the fact that the applicant had not yet submitted her parole profile for assessment. It is the applicant who may initiate this process by making application for parole and following the procedural pre-requisites contemplated in the Act. It is only if the relevant decision makers fail to act, that the applicant would be entitled to relief, but that is not the case which is made out in the founding papers.

[25] In the circumstances, this court cannot compel the respondents to place the applicant on parole, nor does it possess the authority to order the applicant's release on parole within 30 days. Such powers must first be exercised by the appropriate authorities in accordance with the statutory framework governing Correctional Supervision and the Parole Board.

[26] The applicant is required to fulfil all procedural requirements for consideration of parole, including submitting an application to the Board. Only upon the Board's satisfaction that all statutory and regulatory requirements have been met, may the applicant be placed on parole.

[27] In instances where the Parole Board declines an application for parole, the applicant is entitled to seek a review of the decision before the Parole Review Board. Thereafter, if dissatisfied, the applicant may bring a review application in terms of the Promotion of Administrative Justice Act 3 of 2000 (PAJA).

[28] The present application does not set out any legal basis upon which relief is sought. Specifically, it is uncertain whether the application is one for a mandamus under section 6(2)(g) of PAJA or a review application under section 33(1) of the Constitution. On either basis, however, the application is premature, but this lack of clarity underscores a material defect in the application, as the relief sought falls outside the scope of this Court's powers.

[29] The applicant has also raised concerns about her medical condition as a basis for her release. However, the applicant has not based her case on any compliance with the relevant requirements for medical parole. Compliance with these criteria, as prescribed by the Correctional Services Act, is a prerequisite for consideration of medical parole.

[30] Consequently, reliance on the applicant's medical condition without adherence to the statutory provisions is misplaced. The application is premature, as the applicant is required to exhaust all internal remedies before seeking relief from this Court.

[31] In view of the above, the application lacks merit and falls to be dismissed.

[32] In the circumstances, the following order is made:

1. The application is dismissed with costs on scale A.


D MAHON
Acting Judge of the High Court
Johannesburg

Date of hearing: 20 August 2024

Date of judgment: 18 November 2024

APPEARANCES:

For the Applicant: Mr Mashitoa
Instructed by: TML Mashitoa Inc

For the Respondent: Adv T Maluleka
Instructed by: Office of the State Attorney, Johannesburg