

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NO.: 2024-009755

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

Date: 17 March 2025

E van der Schyff

In the matter between:

Mbulelo Zitha

Applicant

and

Minister of Justice and Correctional Services

First Respondent

Acting National Commissioner of Correctional Services

Second Respondent

Acting Area Commissioner Correctional Services

Third Respondent

Acting Head of Correctional Services

Fourth Respondent

Head of the Case Management Committee

Fifth Respondent

JUDGMENT

Van der Schyff J

- [1] The applicant, Mr. Zitha, appeared in person. He is an inmate at the Boksburg Correctional Centre A. He seeks an order directing the respondents to grant him a combined 36 months of special remission on sentence, in addition to paying previous legal costs incurred in the amount of R34 670.00.
- [2] Mr. Zitha essentially takes issue with the fifth respondent's decision that he does not meet the requirements for special remission of sentence in terms of special remission granted, respectively, on 16 December 2019, 8 May 2020, and 11 August 2023.
- [3] The correct legal process to follow if an applicant seeks a decision to be set aside is to institute review proceedings. This would, among others, oblige the decisionmaker to provide the reasons underpinning the decision and the record of proceedings.
- [4] I accept that the applicant is a layperson. However, the lenience that a court can show towards in-person applicants has its boundaries.
- [5] The applicant seeks this court to issue a *mandamus* that will effectively set aside a decision taken by the fifth respondent. He thus seeks the court to step into the shoes of the administrator and to make the decision with which the administrator was seized. Such an approach militates against the principle of separation of powers. In addition, this court is not apprised of the applicable policies that apply, the exact wording of the remissions concerned, or the criteria that had to be considered by the fifth respondent. Media statements can be misleading, and this court cannot rely solely on the media statements that were attached to the application.
- [6] The applicant has verbally been informed of the reason for not granting him special remission on sentence on 15 August 2023. This reason was confirmed in writing on 1 December 2023. He, however, never received any feedback on the questions raised in written communication with the third or fifth respondents.

- [7] In the answering affidavit filed, the respondents convey that the applicant will be considered for parole on 19 September 2025. The respondents again reiterate the reason for holding that the applicant does not meet the requirement to be granted remission on sentence, i.e., because he committed aggressive offenses 'and therefore the remission excluded all inmate[s] who have committed aggressive offences'. The respondents highlighted that the nature of the application is not a review of unfair administrative action but an application to compel.
- [8] The application does not meet the requirements for a *mandamus* to be granted. The requirements for an interdict are trite. A *mandamus* is a specific category of interdict, so all the requirements for a final interdict must be met. One of the requirements for a final interdict is that no other legal remedy is available to the applicant.¹
- [9] An applicant who challenges an administrative or other decision is bound to follow review proceedings. Where the applicable timeframes for instituting review proceedings have been surpassed, an aggrieved party can still attempt to make out a case for condonation.
- [10] *In casu*, the other satisfactory remedy is review proceedings. The effluxion of time might be a hurdle to overcome, but the applicant is entitled to seek condonation. Whether it will be granted will depend on the court considering the application.
- [11] In the circumstances, the application stands to be dismissed. The dismissal of this application is not in itself a hurdle to instituting review proceedings if the legal requirements for such proceedings have been met.
- [12] The respondents did not seek a costs order to be granted against the applicant.

ORDER

In the result, the following order is granted:

1. The application is dismissed.

¹ *Lubbe v Die Administrateur, Oranje Vrystaat* 1968 (1) SA 111 (O).

2. No order as to costs is granted.



E van der Schyff
Judge of the High Court

Delivered: This judgment is handed down electronically by uploading it to the electronic file of this matter on CaseLines.

For the applicant:

In person

For the respondent:

Adv. M. Mavundla

Instructed by:

State Attorney, Pretoria

Date of the hearing:

5 & 7 March 2025

Date of judgment:

17 March 2025