



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

CASE NO: 2023-011042

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: **YES**

(2) OF INTEREST TO OTHER JUDGES: **YES**

(3) REVISED.

3 October 2025

DATE

SIGNATURE

In the matter between:

OUPA CHIPANE PHAAHLA

Applicant

And

**NATIONAL COUNCIL FOR CORRECTIONAL
SERVICE**

First Respondent

THE MINISTER OF CORRECTIONAL SERVICE

Second Respondent

**THE CORRECTIONAL SUPERVISION AND
PAROLE SERVICE**

Third Respondent

JUDGMENT

TD SENEKE, AJ

INTRODUCTION

1. The Applicant brought an application seeking the following orders:

- “1. The first and second Respondents’ decision taken on the 23rd of December 2024 and approved by the second Respondent, the Minister, on the 09th of January 2025 is to be reviewed and set aside on the grounds of irrationality, unlawfulness and arbitrary in terms of PAJA and the Constitution.*
- 2. The Respondents to be ordered to release me on parole on condition that I continue to attend the programs listed in their further profile while on parole within 15 (Fifteen) days of the order.*
- 3. The Respondents to pay the costs of this application on Attorney and Client scale.”¹*

BACKGROUND

2. The Applicant was part of a group of individuals who committed armed robbery of a cash carrying vehicle on 17 December 1997. There were 18 individuals who were involved in the armed robbery.
3. When the cash carrying vehicle (cash vehicle) approached Marble Hall, Limpopo, the Applicant’s group of robbers used a truck to collide head on with the cash vehicle. The head on collision with the cash vehicle resulted in the death of six security guards.

¹ Caseline 62-2 to 62-3

4. Some of the members of the group of 18, who were hiding in the bushes nearby, approached the cash vehicle and took the money therefrom. They all drove to Jane Furse, Sekhukhune district, Limpopo province, where they divided the money amongst themselves. The estimated amount that they robbed from the cash vehicle is R10 000 000.00 (Ten Million Rand). They divided the money equally and each of them received an amount of R450 000.00.
5. Upon the arrest of the shop owner where the truck that was used to collide head on with the cash vehicle was parked, the Applicant and his accomplices were subsequently arrested. The shop owner gave the names of the group of individuals who were involved in the armed robbery of the cash vehicle.
6. The Applicant was subjected to a court trial for six years and ten months. He did not plead guilty to the case as he believed that the state did not have enough evidence to convict him.²
7. The group of 15 individuals including the Applicant were convicted of crimes ranging from aggravated robbery, six counts of murder, four counts of attempted murder on 25 September 2004 and sentenced to six life sentences on 5 October 2004.³
8. Since 2020, the Applicant has applied on several occasions to be placed on parole but all his applications have been declined by the various Ministers responsible for Correctional Services. Various reasons were advanced by the different Ministers for their decisions. The Applicant asserts that each time different reasons were found to refuse him parole. Indeed, he says that the goalposts were moved each time he applied to be placed on parole. It is

² Bopape Report dated 8 March 2024, Caseline 50-5 to 50-21

³ CSPB Decision dated 17 April 2020, Caseline 67-261 to 67-267

appropriate to refer below to the various applications for parole that the Applicant made to successive Ministers responsible for Correctional Services.

9. On 17 April 2020, the Applicant applied to be placed on parole. The Correctional Supervision and Parole Board (CSPB) recommended that he be placed on parole after receiving recommendations from the Case Management Committee (CMC).
10. The Applicant brought an application to compel the Minister to make a decision to act on recommendations made by the CMC and the CSPB that the Applicant be released on parole.⁴
11. The application referred to CSPB decision of 17 April 2020. The Applicant states as follows:

“5.6. In a recent 702 Radio interview, the Minister, without mincing his words, said, he does not have time to deal with our Parole applications sitting on his desk as he has more commitments and other work to do in Government. However, though such is appreciated as he is the Minister, that cannot be allowed at my expenses. I will present the clip of such interview during the hearing of this application for Court to take cognizance thereof and to be assisted.

5.7. It has been almost 2 (two) years and months, since the recommendations were made, and nothing has been done, and having regard to his public view on how he deals with lifer-parole applications, his focus is on other so called “important work” he does as the Minister, without regard to our rights.

⁴ Caseline 01-23 to 01-36

5.8. It does not make any sense that, I should be kept in prison, simply because someone is busy with his other important work. He must make decision whether to release me or not, and if not, I could be able to exercise my right to Review his Decision.

5.9. This delay is unnecessary, and it amounts to further detention, and indirectly denies me the benefits of the previous legislation.

5.10. I do understand that, I do not have right to Parole, but, consideration and decision thereof I am entitled to, and he is deliberately denying me such entitlement, he must make decision immediately, and if not, nothing prevent this court to make appropriate order, which in Casu, is to release me, on condition set out on by Parole Board, on its Recommendations.”⁵

12. On 21 September 2022, the National Council for Correctional Services (NCCS) declined to recommend the Applicant for a parole. The Minister of Justice and Correctional approved the recommendation of the NCCS to decline parole on 12 December 2022.

13. The NCCS indicated that the matter should be placed before the Council in 24 months. The NCCS went on to say that the offender is urged to improve his situation as follows:

“1. The offender should undergo individual psychotherapy to address his offending behaviour, lack of control and victim empathy.

2. A risk assessment by a non-treating Clinical Psychologist / Criminologist should be conducted.

⁵ Caseline 01-33 to 01-34

3. *Attempts should be made to find details of all victims so that VOD can be done with all of them. All efforts to be properly documented.”⁶*

14. Strangely, while the NCCS mentioned the three items that the Applicant should comply with, it stated that *“the above do not constitute reasons for the denial of parole”*.
15. This strange comment raises pertinent questions as to the reasons why parole was not recommended if the three items do not constitute reasons for the denial of parole. The only conclusion is that parole was not recommended notwithstanding that there was no reason to deny the parole. If there are no reasons to deny the Applicant parole, why is the re-consideration of the Applicant’s parole deferred for a further period of 24 months. If there are no reasons to deny parole, why did the NCCS decline to recommend parole.
16. A further question is why did the Minister support the recommendation of the NCCS in circumstances where there are no reasons to decline recommendation for parole.
17. In light of the NCCS recommendation not to recommend parole dated 21 September 2022 and the approval of the NCCS recommendation by the Minister on 12 December 2022, the Applicant brought an application for review in 2023 (the 2023 review).
18. In the 2023 review, the Applicant sought orders as follows:

“1. That the decision of the Minister of Justice and Correctional Service (Respondent) taken on the December 2022, to refuse to release me on Parole and directing me to undergo for further profile for 24 (Twenty-

⁶ Caseline 67-257

Four) months (two years), be Reviewed as such decision is irrational, unlawful and ultra-vires to his powers entrusted in terms of Correctional Service Act 8 of 1959, and further that, the period of 24 (twenty-four) months (two years) is unreasonable.

2. The Minister to pay the costs of this application, an Attorneys and client scale.”⁷

19. On 23 May 2023, the Applicant brought an application to compel the Minister to dispatch the records of his decision to refuse the Applicant parole to the Registrar of the Court.⁸
20. The Minister dispatched the record on 23 September 2023. The matter to compel the Minister to provide the record was already set down for 5 October 2023. Accordingly, the Minister had to pay the costs in terms of the Court Order.⁹
21. In the Court Order of 26 June 2024, the NCCS was joined as a second Respondent.
22. On 25 October 2024, the Applicant brought an urgent application for the following orders:

“2. The first Respondent (NCCS) to consider the Applicant for a parole and communicate its decision to the third Respondent (The Minister of Correctional Service) within 30 (Thirty) days of this order.

3. Thereafter, the Minister to consider the decision of the second Respondent and communicate his decision to me within 60 days of this

⁷ Caseline 01-7 to 01-8

⁸ Caseline 08-2 to 08-5

⁹ Caseline 18-1 to 18-2

order and should parole or day parole refused, to provide his written reason together with decision.

4. *The first and second Respondents to pay the costs of this application on attorneys and client scale jointly and severally the one paying the other is absolved.”¹⁰*

23. On 8 November 2024, the Court granted an order that the first Respondent is to consider the Applicant for a parole on or before 4 December 2024. That the second Respondent is to consider the decision of the first Respondent within 60 days from the date of the Order and should parole or day parole be refused, to provide his written reasons together with decision within 60 days from the date of the Order.¹¹
24. On 27 August 2024, the Applicant appeared before the CSPB. The CSPB recommended that parole be granted to him.
25. The CMC considered the parole application on 31 July 2024. The CMC recommended placement on parole. The CMC report was considered by the CSPB when it reached its decision to recommend parole for the Applicant.¹²
26. On 23 December 2024, the NCCS issued its recommendation. The NCCS stated that parole is not recommended at this stage.¹³
27. The NCCS listed four aspects that the Applicant was required to improve on:

¹⁰ Notice of Motion, Caseline 35-2 to 35-5

¹¹ Court Order, Caseline 45-3 to 45-4

¹² CMC Report, Caseline 67-26 to 67-31

¹³ NCCS Report, Caseline 80-5

- “1. To attend individual psychotherapy to address his superficiality, poor insight, greed, inability to show genuine victim empathy and violence propensity.*
- 2. A risk assessment by a non-treating Psychologist should be conducted indicating the risk level and tools used, if any.*
- 3. To attend the Substance Abuse Treatment Programme with the Social Worker.*
- 4. To attend the Moral Regeneration, Relapse Prevention and Resilience Enhancement Programmes.”¹⁴*

28. Curiously and strangely, the NCCS remarked that compliance with the above will not guarantee the offender placement on parole. In the same vein as the remarks which were made in 2022 when the NCCS considered his parole after the CSPB had recommended the Applicant for parole, this strange remark by the NCCS is disconcerting and disturbing. It signals that the NCSS will not approach the matter in an objective and fair minded way in line with the policies and guidelines of the Department of Correctional Services when considering the case of the Applicant.
29. On 9 January 2025, the Minister supported the recommendation of the NCCS which declined to recommend the Applicant for parole.
30. On 11 March 2025, the Minister issued his decision on the Applicant. The decision is repeated in this judgment in the exact words that were used by the Minister.¹⁵

¹⁴ Caseline 80-5

¹⁵ Minister’s decision, Caseline 47-18 to 47-19

31. The Minister stated the following:

“1. After carefully considering all the information in the Offender’s profile, the reports from various professionals, as well as the recommendations of the CSPB and NCCS. I have found the following:

1.1. The offender doesn’t completely acknowledge the wrongfulness of his criminal behaviour as he regards the crime he committed as an “accident”. This makes his acknowledgement superficial. Thus, he poses the risk of reoffending.

1.2. He was impatient during psychotherapy sessions. This indicated his intolerance of the rehabilitation interventions.

1.3. He has poor understanding of the impact of the index crime to the victim and society at large. He further fails to express genuine victim empathy.

1.4. Process during therapy: the closing psychotherapy report dated 31 January 2024 highlighted the following:

a. He was impatient during the session. While he acknowledged that many people died during the crime he tended to see the crime as an “accident”. He distances himself from the crime which makes his acknowledgement superficial. He has not fully internalised the value and benefits of rehabilitation interventions.

b. Victim empathy: It was difficult to express his remorse as he never knew them personally. This shows that he has a poor

understanding of the gravity of the crime, its impact on direct and indirect victims, and the society at large.

- 1.5. *The risk assessment report is dated 23 July 2024 states that “His risk for reoffending falls within the moderate to low range”. The Offender needs to bring down the risk of reoffending to a low level.*
2. *In light of the above, I therefore recommend that he be offered the following interventions to assist him in his rehabilitation process and to improve his situation:*
 - 2.1. *He must attend individual psychotherapy to address his superficiality, poor insight, greed, inability to show genuine victim empathy and violence propensity.*
 - 2.2. *A risk assessment by a non-treating Psychologist should be conducted indicating the risk level and tools used, if any.*
 - 2.3. *He must attend the Substance Abuse Treatment Programme with the Social Worker.*
 - 2.4. *He must attend the Moral Regeneration, Relapse Prevention and Resilience Enhancement Programmes.”¹⁶*

Application for review (2025)

32. On 3 February 2025, the Applicant brought an application for the following orders:

“1. The first and second Respondents’ decision taken on the 23rd of December 2024 and approved by the second Respondent, the Minister,

¹⁶ Caseline 47-18 to 47-19

on the 09th of January 2025 is to be reviewed and set aside on the grounds of irrationality, unlawfulness and arbitrary in terms of PAJA and the Constitution.

2. The Respondents to be ordered to release me on parole on condition that I continue to attend the programs listed in their further profile while on parole within 15 (Fifteen) days of the order.

3. The Respondents to pay the costs of this application on Attorney and Client scale.”¹⁷

33. On 25 March 2025, the Applicant filed a supplementary affidavit to supplement his grounds of review after he was furnished with a record of decision by the Minister. In the supplementary affidavit, the Applicant dealt with the reports and their findings, the report relied upon by the Respondents in refusing parole and the reason for the decision.¹⁸

34. On 5 March 2025, the Respondents filed their answering affidavit which was attested to by the Minister of Correctional Services.¹⁹

35. On 9 May 2025, the Applicant filed his replying affidavit.²⁰

Legal Principles

36. This matter was dealt with in the Constitutional Court judgment which was brought by the Applicant in the seminal judgment of *Phaahla v Minister of Justice and Correctional Services and Another*.²¹

¹⁷ Caseline 62-2 to 62-5

¹⁸ Supplementary affidavit, Caseline 69-1 to 69-17

¹⁹ Answering affidavit, Caseline 70-1 to 70-38

²⁰ Replying affidavit, Caseline 71-1 to 71-24

²¹ (CCT44/18) [2019] ZACC 18; 2019 (2) SACR 88 (CC); 2019 (7) BCLR 795 (CC) (3 May 2019) (*Phaahla*)

37. In paragraph 7 of the judgment, the following is stated:

“From 1 March 1994 until 1 October 2004, inmates serving life sentences were required to serve a minimum period of 20 years in prison before they became eligible for parole. However, in terms of section 22A of the 1959 Prisons Act, introduced by an amendment in 1993, inmates could earn credits for good behaviour. These credits translated into days served, with the effect that the date for consideration for parole for those inmates was moved earlier. The effect of this was that inmates sentenced to life incarceration between 1 March 1994 and 1 October 2004 became eligible for parole after having served a minimum period of 13 years and four months of their life sentence.”

38. In paragraph 10 of the judgment, the following is stated:

“The applicant was convicted on 25 September 2004 and sentenced to life imprisonment on 5 October 2004. Because he was sentenced four days after the commencement of the new parole regime, he must serve a minimum of 25 years before he becomes eligible for consideration for parole. Had the applicant been sentenced a few days earlier, he only would have had to serve 20 years of his sentence before he could be considered for release on parole. Aggrieved by this, the applicant launched an application in the High Court of South Africa, Gauteng Division, Pretoria (High Court) challenging the constitutionality of sections 73(6)(b)(iv) and 136(1) of the 1998 Act on the basis that these sections infringed his right to the benefit of the least severe of the prescribed punishments in terms of section 35(3)(n) of the Constitution, and his right to equality under section 9 of the Constitution.”

39. In paragraph 5 of the order, the Constitutional Court stated:

“Parliament must, within 24 months from the date of this order, amend section 136(1) of the Correctional Services Act to apply parole regimes on the basis of date of commission of an offence, pending which the section shall read as follows:

“Any person serving a sentence of incarceration for an offence committed before the commencement of Chapters 4, 6 and 7 of the Correctional Services Act is subject to the provisions of the Correctional Services Act 8 of 1959, relating to his or her placement under community corrections, and is to be considered for such release and placement by the Correctional Supervision and Parole Board in terms of the policy and guidelines applied by the former Parole Boards prior to the commencement of those chapters.””

40. In terms of section 136 of the CSA the parole regime applicable to the applicant is one that was provided for in the Correctional Services Act²² of 1959 (the 1959 Act). In terms of section 65(2) of the 1959 Act the Minister has the power to place on parole any prisoner to whom the parole regime under the 1959 Act applies. Those are prisoners who were sentenced prior to 1 October 2004.²³
41. This dictum from the Constitutional Court judgment of *Walus v Minister of Justice and Correctional Services and Others (Walus)*, has application to the current matter in light of the order in *Phaahla* case (Constitutional Court). The applicable principle is no longer the date of the sentencing but the date of the commission of the crime.
42. Section 136(1), (2) and (3) of the CSA reads:

²² 8 of 1959.

²³ *Walus v Minister of Justice and Correctional Services* (CCT 221/21) [2022] ZACC 39; 2023 (2) BCLR 224 (CC); 2023 (2) SA 473 (CC); 2023 (1) SACR 447 (CC) (21 November 2022)

- “(1) Any person serving a sentence of incarceration immediately before the commencement of Chapters IV, VI and VII is subject to the provisions of the Correctional Services Act, 1959 (Act 8 of 1959), relating to his or her placement under community corrections, and is to be considered for such release and placement by the Correctional Supervision and Parole Board in terms of the policy and guidelines applied by the former Parole Boards prior to the commencement of those Chapters.*
- (2) When considering the release and placement of a sentenced offender who is serving a determinate sentence of incarceration as contemplated in subsection (1), such sentenced offender must be allocated the maximum number of credits in terms of section 22A of the Correctional Services Act, 1959 (Act 8 of 1959).*
- (3)(a) Any sentenced offender serving a sentence of life incarceration immediately before the commencement of Chapters IV, VI and VII is entitled to be considered for day parole and parole after he or she has served 20 years of the sentence.*
- (b) The case of a sentenced offender contemplated in paragraph (a) must be submitted to the National Council which must make a recommendation to the Minister regarding the placement of the sentenced offender under day parole or parole.*
- (c) If the recommendation of the National Council is favourable, the Minister may order that the sentenced offender be placed under day parole or parole, as the case may be.”*

43. The Constitutional Court in *Walus* case stated that, it will be seen from section 136(3)(a) of the CSA that a prisoner who was serving a life imprisonment

sentence immediately before Chapters IV, VI and VII commenced is required to serve a period of 20 years of imprisonment before he or she can be considered for parole. As a result of the judgment in the matter of *Van Wyk*²⁴ in the Gauteng Division of the High Court the then Minister of Correctional Services issued a policy document which provided that prisoners who had been sentenced before 1 October 2004 would become eligible for consideration for parole after serving a minimum of 13 years and four months. The applicant was one of such prisoners. The applicant completed 13 years and four months of imprisonment in 2007. However, as a result of Presidential amnesties that he received, he obtained certain credits which reduced the minimum period he had to serve before he could be considered for placement on parole by a whole year. The result was that the applicant became eligible to be considered for placement on parole in 2005. That is after serving 12 years and four months' imprisonment.²⁵

44. The Constitutional Court in *Walus* case stated that, the policy referred to in section 136(1) of the CSA, which applied to the applicant, is contained in the CSPB's Manual. Chapter VI(1A)(18) of the CSPB's Manual relates in part to the function of the parole system and reads as follows:²⁶

“(a) The placement of prisoners with a good prognosis as soon as possible after reaching their consideration dates, taking the necessary penalisation into account.

(b) The protection of the community takes place by means of prevention, rehabilitation, control and supervision of parolees. Consequently, parole measures must be aimed at the prevention and help in the

²⁴ *Van Wyk v Minister of Correctional Services* 2012 (1) SACR 159 (GNP).

²⁵ *Walus*, para 42

²⁶ *Walus*, para 43

community by means of the social re-integration of the parolee by different degrees of supervision and control.

- (c) *The concept of placement on parole is based on the supposition that it is a just and rational manner of giving prisoners the opportunity to serve the remainder of their sentence from within the community.*

Prisoners who are paroled under maximum supervision and who want to settle in areas that cannot be monitored may not be paroled. Alternatively, placement on day parole is considered.”²⁷ (Emphasis added.)

45. It is to be noted from (a) in this quotation that the Department’s policy is that the placement of a prisoner on parole should be as soon as possible after the date from which such prisoner becomes eligible for consideration for parole.²⁸

46. The criteria that must be used to determine whether a prisoner should be placed on parole are provided for in Chapter VI(1A)(19) of the CSPB Manual. In the introduction in Chapter VI(1A)(19) the following appears in part:²⁹

“(i) The criteria for selection for placement on parole is not meant to be used as the ultimate model. It should rather be seen as a predisposition according to which the Parole Board may serve the interests of the community on the one hand and those of the prisoner on the other hand to the best of their ability and in a responsible manner.

(ii) Thus the primary issue is that it should be attempted to evaluate prisoners fairly and justly for parole, to submit well-considered

²⁷ Chapter VI(1A)(18) of the CSPB’s Manual.

²⁸ *Walus*, para 43

²⁹ *Walus*, para 44

recommendations and to effectuate the highest possible form of professionalism.”³⁰ (Emphasis added).

47. In this excerpt the policy makes it clear that the evaluation of a prisoner for parole must be done “*fairly and justly*”. (Emphasis added.)³¹

48. Chapter IV of the CSA deals with sentenced prisoners. This chapter covers sections 36 to 45. The heading to section 36 reads: “Objective of implementation of sentence of imprisonment.” Section 36 of the CSA reads:³²

“With due regard to the fact that the deprivation of liberty serves the purposes of punishment, the implementation of a sentence of imprisonment has the objective of enabling the sentenced prisoner to lead a socially responsible and crime-free life in the future.” (Emphasis added.)

49. Section 36 seems to me to provide a statutory basis for the proposition that an important objective of imprisonment in our correctional facilities (prisons) is aimed at rehabilitating the prisoner so that he or she can lead a crime-free life after being released from prison and rejoining society. It is important to point out that the Minister accepts that the reports including the social worker’s report in respect of the applicant are to the effect that the risk of him re-offending if he is released is low. Indeed, his disciplinary record inside prison over more than 25 years supports this. There is no complaint that over so many years the applicant has ever had any incidents of ill-discipline. By all accounts he seems to have been an exemplary prisoner.³³

³⁰ Chapter VI(1A)(19) of the CSPB’s Manual.

³¹ *Walus*, para 44

³² *Walus*, para 46

³³ *Walus*, para 47

50. Section 37 bears the heading “General principles”. Section 37(2) reads:³⁴

“In addition to providing a regime which meets the minimum requirements of this Act, the Department must seek to provide amenities which will create an environment in which sentenced prisoners will be able to live with dignity and develop the ability to lead a socially responsible and crime-free life”.

(Emphasis added.)

51. The latter part of this provision also reflects the reformatory objective of imprisonment under the CSA.³⁵

52. Chapter VII of the CSA deals with: “Release from Correctional Centre and Placement under Correctional Supervision and on Day Parole and Parole”. The sections that fall under Chapter VII are sections 73 to 82. The heading to section 73 reads: “Length and form of sentences”. Section 73(1) reads:³⁶

“73(1) Subject to the provisions of this Act—

*(a) a sentenced prisoner remains in prison for the full period of sentence;
and*

(b) an offender sentenced to life incarceration remains in a correctional centre for the rest of his or her life.”

53. Section 73(1) of the CSA makes it plain that, subject to the provisions of the CSA, a sentenced prisoner serves the full period of his or her sentence. This means that, unless a prisoner is released from prison in terms of some or other provision of the CSA, he or she must serve a term of life imprisonment if he or she has

³⁴ *Walus*, para 48

³⁵ *Walus*, para 48

³⁶ *Walus*, para 49

been sentenced to life imprisonment or he or she must serve the full determinate term of imprisonment fixed by the court.³⁷

54. Section 73(4) reads:³⁸

“In accordance with the provisions of this Chapter a prisoner may be placed under correctional supervision or on day parole or on parole before the expiration of his or her term of incarceration.”

55. The release of a prisoner on parole is provided for in the CSA. Section 73(4) authorises the placement of a prisoner on parole before the expiry of his or her term of imprisonment.³⁹

56. Section 73(5) reads:⁴⁰

“(5)(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.”

57. It is to be noted that section 73(5)(a)(i) envisages a date for the placement of a prisoner on day parole or on parole being a date determined by the Correctional

³⁷ Walus, para 49

³⁸ Walus, para 50

³⁹ Walus, para 50

⁴⁰ Walus, para 51

Supervision and CSPB except in the case of a prisoner who has been sentenced to life imprisonment in which case it is contemplated that the date would be determined by the Minister.⁴¹

58. Insofar as it may be relevant to the placement on parole of a prisoner who had been sentenced to life imprisonment, section 73(6) reads as follows:⁴²

“(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, but day parole or parole must be considered whenever a sentenced offender has served 25 years of a sentence or cumulative sentences.

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

(b) A person who has been sentenced to-

(i) periodical incarceration must be detained periodically in a correctional centre as prescribed by regulation;

. . .

⁴¹ Walus, para 51

⁴² Walus, para 52

- (iv) *life incarceration may not be placed on day parole or parole until he or she has served at least 25 years of the sentence; or*

...

- (vi) *any term of incarceration, excluding persons declared dangerous criminals in terms of section 286A of the Criminal Procedure Act, may be placed on day parole or parole on reaching the age of 65 years provided that he or she has served at least 15 years of such sentence.”*

59. Section 75 of the CSA deals with the powers, functions and duties of CSPB. Only section 75(1) is important for purposes of this judgment. It reads:⁴³

“(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 and, subject to the provisions of section 52, set the conditions of community corrections imposed on the sentenced offender;*

- (b) *in the case of any sentenced offender having been declared a dangerous criminal in terms of section 286A of the Criminal Procedure Act, make recommendations to the court on the granting or the placement under correctional supervision, day parole, parole or*

⁴³ Walus, para 54

medical parole and on the period for and, subject to the provisions of section 52, the conditions of community corrections imposed on the sentenced offender; and

- (c) in respect of any sentenced offender serving a sentence of life incarceration, make recommendations to the Minister on granting of day parole, parole or medical parole, and, subject to the provisions of section 52, the conditions of community corrections to be imposed on such an offender.”*

60. It is clear that in respect of prisoners sentenced to life imprisonment the power of the CSPB is to make recommendations to the Minister on the granting of parole. That is provided for in section 75(1)(c). That provision must be read with section 78.⁴⁴ Section 78(1) to (4) reads:

“(1) Having considered the record of proceedings of the Correctional Supervision and Parole Board and its recommendations in the case of a prisoner sentenced to life imprisonment, the court may, subject to the provisions of section 73(6) (b)(iv), grant parole or day parole or prescribe the conditions of community corrections in terms of section 52.

(2) If the court refuses to grant parole or day parole in terms of subsection (1), it may make recommendations in respect of treatment, development and support of the prisoner which may contribute to improving the likelihood of future placement on parole or day parole.

⁴⁴ Walus, para 55

- (3) *Where a Correctional Supervision and Parole Board acting in terms of section 73 recommends, in the case of a person sentenced to life imprisonment, that parole or day parole be withdrawn or that the conditions of community corrections imposed on such a person be amended, the court must consider and make a decision upon the recommendation.*
- (4) *Where the court refuses or withdraws parole or day parole the matter must be reconsidered by the court within two years.”*

Factors Taken into Consideration

61. In his answering affidavit, the Minister set out the reasons for his decision under the heading: Reasons for my decision, dated 9 January 2025:

“21. My signature and/or confirmation of the NCCS recommendations signified my adoption and concurrence with the recommendations made.

22. In simple terms, I concurred with the NCCS’s observations and recommendations after reviewing the reports of various professionals, including social workers and psychologists.

23. According to various reports by professionals (e.g., social workers, psychologists), the Applicant exhibits the following character problems that must be addressed to ensure successful reintegration into society and prevent recidivism:

23.1.He is superficial; poor sighted; greedy;

23.2.He lacks the ability to show genuine victim empathy;

23.3. He has a tendency to act aggressively;

23.4. He has not fully dealt with his substance abuse issues.

- 24. For instance, amongst others, according to the Psychological Closing Therapy Report dated 31 January 2024, the Applicant “Seems able to take responsibility for his actions but sometimes distances himself from the “accident” therefore we cannot completely rule out some superficiality in his admission”. A copy of the Psychological Closing Therapy Report dated 31 January 2024 is annexed hereto marked Annexure “AA2”.*
- 25. The Applicant’s profile or record that served before me at the time demonstrate that I did not just rubberstamp the recommendation placed before me by the NCCS, but I considered it and came to the conclusion that other conditions had not yet been adequately addressed. This is all an indication that I applied my mind when I made the impugned decision and nothing can be gainsaid that I took it arbitrarily or capriciously, as contemplated in section 6(2)(e)(vi) of PAJA.*
- 26. The Applicant may not like or agree with the outcome of the decision-making process, nor the weight attributed to certain documents or factors, but that is not the enquiry to be entertained in the present application.*
- 27. In essence, I applied all the criteria including considering the interest of the community and/or the state, and in doing so, struck a reasonable*

equilibrium, resulting in the interests of the community/justice outweighing the remaining considerations.”⁴⁵

62. The Minister has added further reasons in his answering affidavit. This appear in paragraph 23.3 as “*he has a tendency to act aggressively*”. In paragraph 3.4, the Minister stated that, “*he has not dealt with his substance abuse issue*”.

Rationality

63. The Applicant has attacked the Minister’s decision to place him on parole on many grounds in support of his contention that the decision must be reviewed and set aside on the grounds of irrationality, unlawfulness and arbitrariness in terms of PAJA and the Constitution. The Applicant contends that the decision was irrational because there is no logic and sense and was not supported by any objective material evidence contrary to what is contained in his parole file. The applicant also stated that PAJA and Constitution requires that the decision of an administrative nature such as this one of the Respondents must be rational and based on sound reasons.
64. In attacking the Minister’s decision as irrational, the Applicant relied on amongst others, the fact that:

“6.3. Amongst other programs I have done and successfully completed all these years include but not limited to those programs listed in their latest impugned decision. The records and reports attest to that and are in possession of the Respondents, thereof, I challenge the Respondents to dispute that I have done these programs and provide evidence.

⁴⁵ Caseline 70-8 to 70-9

- 6.4. *I first appeared before the Parole Board in July 2020 and the Board after considering all the reports including both the Psychotherapy and Risk assessments recommended me for parole. However, the Respondents Reviewed the Parole Board's decision and denied me Parole and gave me a further profile of 24 (Twenty Four) months to attend these programs including to repeat the psychotherapy and Risk assessment.*
- 6.5. *I can confirm that those programs, including Psychotherapy and Risk assessment and Social Worker Report completed them successfully and in those 24 (Twenty Four) months period, the Respondent never approached and indicated whether there are additional programs over and above those, that needs to be attended to be able to release me on parole.*
- 6.6. *The Respondents after the 24 (Twenty Four) months further profile dragged their feet to reconsider my parole application. I then took them to court to compel them. Attached herein is a copy of the Court order marked "OP2".*
- 6.9. *I am not sure which objective material did the Respondents consider and consulted. There appears to be no dispute or contention that all the submitted relevant reports are questionable. They are accepted if not accepted if not then I challenge the Respondents to point which reports is disputed and on what grounds. In fact to say point blank, there are no reports in my file that is averse or against the granting of parole.*
- 6.10. *The Respondents failed to be well guided by those positive reports.*

6.11. *The Minister clearly rubber-stamped the irrational decision of the NCCS.*

6.12. *I have been already profiled 2 (Two) times, then the question is how many times should I be profiled.*

6.13. *The decision does not indicate that, based on objective assessments and evidence, I am likely to re-offend and substance abuse.*

6.14. *I really do not understand the purpose to repeat these programs. There must be a purpose to serve to repeat the programs.”⁴⁶*

65. The Minister stated that:

“62. *As I have previously stated, the reasoning I have provided in this affidavit demonstrates that I achieved a reasonable equilibrium between the relevant competing factors by denying releasing the Applicant on parole.*

63. *Although the Respondents do not dispute that the CMC and CSPB compiled a report that was submitted to the NCCS in order for the applicant to be considered for parole, this does not entitle the applicant to be released on parole without the NCCS and the Minister’s consideration.*

64. *The NCCS is conferred with a discretion to decide whether or not to release a prisoner on parole. It is therefore within the discretion of the NCCS to grant or not to grant an offender a parole after considering all available information.*

⁴⁶ Caseline 63-5 to 63-7

65. *The granting of parole is not a right that an applicant can claim; rather, it is a privilege. This is due to the fact that, in accordance with section 73(1)(a) of the Correctional Services Act, supra, a sentenced offender is required to remain in a correctional facility for the entirety of their sentence, subject to the above provisions.*⁴⁷

Analysis of the decision of the Minister

66. The Minister states that he considered all the information in the offender's profile, the reports from various professionals as well as the recommendations of the CSPB and NCCS.

67. The decision of the Minister was primarily based on the single report of Sukhdeo dated 31 January 2024 and to the limited extent the report of Buthelezi dated 23 July 2024.

68. The Minister dealt with the report of Sukhdeo in a piecemeal and nitpicking manner to suit his predetermined decision.

69. The reference to accident is clarified in the supplementary affidavit of the Applicant at paragraphs 4.16.5 and 4.16.6 and 4.16.7. The use of the word accident relates to the fact that the killing of the six victims happened in the context where the motor vehicles were used to collide with the cash vehicle to facilitate the armed robbery.

70. This aspect was dealt with in the matter of *Walus* as follows.⁴⁸

“One can put what I have said in the preceding paragraph in a different way. That is that, if more than 26 years after the applicant was sentenced for the

⁴⁷ Caseline 70-21

⁴⁸ *Walus*, para 82

crime he committed, it was appropriate for the Minister not to release the applicant on parole in 2020 because of the nature of the crime, the seriousness thereof and the Court's sentencing remarks, why would it be appropriate for the Minister to release him one or two or three or five years thereafter? These three factors are immutable. They will not change one or two or three or five years later. This the Minister has not explained, notwithstanding the fact that it cried out for an explanation because the applicant clearly put it in issue. Therefore, this Court must vitiate the Minister's decision. If it were not to do so, it would in effect be giving its approval to the proposition that in future it would be appropriate for the Minister to deny the applicant parole even when he may have served 30 or 35 or even 40 years of imprisonment. That, simply on the basis of the nature of the crime, the seriousness thereof and the trial court's and Supreme Court of Appeal's sentencing remarks despite the fact that the applicant has complied with all other requirements for him to be placed on parole which the Minister concedes. The Minister's decision is not rationally connected to the purpose of the power conferred upon him. His decision is, therefore, irrational and it falls to be reviewed and set aside."

71. The Minister says that by describing the criminal act that led to killing of six people as an accident, this makes the Applicant superficial and that he poses the risk of re-offending.
72. This is not borne by the various reports in respect of his application for parole. In paragraph 1.5 of his decision, the Minister relied on the report of Buthelezi dated 23 July 2024, that stated that the Applicant's risk for re-offending falls within the moderate to low range.

73. Paragraph 1.5 of the Minister's decision contradicts paragraph 1.1 of his decision. Paragraph 1.5 is based on the expert's report. On the other hand, paragraph 1.1 insofar as the Minister states that the Applicant poses the risk of re-offending is based on his own personal view which is not supported by facts.
74. The report of Sukhdeo in fact contradicts the decision of the Minister. Sukhdeo indicates that the Applicant stated that if parole is granted, he will use his mechanical skills in finding work. He may be too optimistic in his endeavours due to his age BUT it is important to note that there is a low chance that he might resort to offending behaviour in future due to his accomplices being in his seventies.
75. Sukhdeo recommended that stringent release conditions to reduce the Applicant's risk for re-offending.
76. The Minister referred to the fact that the Applicant was impatient during psychotherapy sessions. He further states that this indicated that the Applicant is intolerant of the rehabilitation intervention.
77. If regard is had to Sukhdeo's report at paragraph 5, which should be read in its totality to understand its context, the Applicant's impatience related to the fact that through his efforts, the Constitutional Court made a favourable judgment for prisoners like him in the Phaahla Judgment. Two of his accomplices, Kwaka and Mokwape, were released on parole. Kwaka was released on 5 May 2023 while Mokwape was released on 30 April 2024. These two individuals were convicted for the same crime on 5 October 2004 and received the same sentences.⁴⁹ The Minister, by denying parole to the Applicant, is treating him unfairly and unjustly.

⁴⁹ Caseline 67-9 and Caseline 67-27 to 67-28

- As one would expect that the Minister would apply consistency in dealing with situations that are similar in all respects.
78. He justifiably felt aggrieved and impatient. In the preceding paragraphs, I have outlined how the Department of NCCS and the Minister have delayed his consideration for parole. After he was recommended for parole by the CSPB on 17 April 2020, it took the NCCS more than two years to consider the recommendation of the CSPB. The NCCS made a recommendation to deny him parole. However, the NCCS strangely said, the steps that he must undertake to improve his situation did not constitute reasons to deny him parole. The Minister supported this strange recommendation. The NCCS kicked his matter to touch for 24 months (to use the sport parlance).
 79. The Applicant had to bring an application to compel the Minister to consider the CSPB recommendation to grant him parole. He also brought a review application (2023) and an urgent application in 2024. His impatience was perfectly justified as he was being treated unfairly by the Correctional Service system. To put it bluntly, he was being victimised for no apparent reasons.
 80. The Minister states that the Applicant has poor understanding of the impact of the index crime to the victim and society at large. The Minister states that the Applicant further fails to express genuine victim empathy.
 81. This is the personal view of the Minister which is not supported by facts and expert evidence. Buthelezi stated in her report that the Applicant admitted to the index offences and took responsibility for the crimes that he has committed. He presented as remorseful for his victims during the assessment.⁵⁰

⁵⁰ Buthelezi report, Caseline 50-28

82. The applicant wrote a letter of remorse on 7 February 2024.⁵¹

83. Bopape stated that:

“Mr Phaahla is aware that his criminal behaviour impacted negatively in his life and he is working hard to change his behaviour. He acknowledges guilt of the crime that he is incarcerated for and he is taking full responsibility for his actions.”⁵²

84. Phakathi stated that:

“Based on the assessment and integration of the information listed above Mr Phaahla does not display any major unresolved criminogenic needs, rather he displays protective factors which could reduce his risk of re-offending. He took full responsibility of the crimes he committed; he also showed remorse for his victims. His previous offences remain considered risk as it was reported a source of motivation in his past behaviour. However, many of his risk decreasing factors appear to offset his risk for violence. When considering his level of insight Mr Phaahla could potentially contribute meaningfully to the community. Mr Phaahla appeared to have developed sufficient desistance factors to moderate against re-offending and may be suitably considered for parole.”⁵³

85. Govender stated that:

“Progress during treatment: It was noted that Mr Phaahla was able to identify potential risk factors. He took responsibility for the crime that he committed. He communicated a sense of remorse for the victims and

⁵¹ Caseline 50-64

⁵² Caseline 50-21

⁵³ Caseline 50-32

regret for his actions. He specifically identified the following factors that he believed contributed to his offending behaviour: “bad company”, greed/wanting to live a lifestyle that is beyond his means; difficulty managing stress, anger, and feelings of frustration; and the need for immediate gratification. He was also able to consider factors that may indicate to him when he is at risk of committing a crime, such as thinking about crime, having negative thoughts, moving towards bad company, giving in to pressure from peers and not taking advice.”⁵⁴

86. The above reports have dealt with aspects such as the risk of re-offending, poor insight and violence propensity.
87. The Applicant is a model prisoner who does not have a disciplinary record for misconduct.
88. With regard to the recommendation that the Applicant must attend the intervention programs under paragraph 2 of the Minister’s decision, I intend to deal with them individually hereunder.
89. With regard to 2.1, the expert reports of Phakathi, Buthelezi, Bopape, Sukhdeo and Govender have satisfactorily addressed this aspect. The report of the Unit Manager and Workshop trainer have put a feather on his cap. They have given the Applicant good character evidence which is relevant in this instance to a person who has been confined to prison for close to 28 years.
90. The Unit Manager recommended the following:

“Offender Oupa Chipane Paahla registration no: (986 161 11) is a good example of what correctional behaviour is and proof of the effective impact

⁵⁴ Caseline 50-36

of the rehabilitation programmes we offer within our correctional centre respectively. He definitely manifests positive signs of being rehabilitated as indicated by his involvement in correctional and rehabilitation programmes.

Date of sentence: 2000/10/05 and decision further profile closing stage after: 2024/12/12. He is also involved in production workshop as Motor industry section since 12th of November 2016 to date. Offender Oupa Chipane Paahla registration no: (986 161 11). He has a positive relationship with his family which will also facilitate his re-integration process outside as they regularly visit him. This makes his support system to be stable and sustainable.

Offender shows remorse or regret as not having disciplinary offence for the cycle of twenty years incarcerated.

It is highly recommended that he be given a second chance to be re-integrated into the community and as he will contribute positively to the society at large.”⁵⁵

91. The workshop supervisor stated that:

“Oupa Phaahla registration no 98 616 111 has been admitted under my supervision from 16 October 2016 to Date. Ever since his arrival, he does his job with pride and dedication. He is professional and multi skilled in his job performances. He finishes the assigned tasks on time. He received the Artisan certificate in 2021

He also plays a pivotal role in assisting, developing and empowering fellow inmates with knowledge and skills acquired during training. His behaviour

⁵⁵ Caseline 50-2

towards fellow inmates and members is unquestionable irrespective of race, religion and belief. He follows instructions and orders as commanded.”⁵⁶

92. With regards to 2.2, the Applicant has already been subjected to two risk assessment. On 5 October 2004, Phakathi conducted a risk assessment report. Her report is at page 50-29 to 50-34. Under reasons for the referral, she stated that the aim of this report is to conduct a psychological evaluation to provide an indication of risk factors that could contribute to re-offending. This report provided an extremely favourable assessment of the Applicant.
93. The Phakathi report was produced in 2004, more than 20 years ago. This report should have been used to consider Applicant's parole in 2017 when he became eligible. The policies of the department requires that an offender must be considered for parole as early as possible.
94. It appears from the conduct of the Minister and the NCCS that this expert report was simply ignored, put aside and forgotten as it did not suit their predetermined outcome.
95. I am saying so because the NCCS recommendation of 2022 did not seem to take Phakathi's report into account in declining to recommend the Applicant for parole.
96. In item 2 of the 2022 NCCS recommendation, it is stated that a risk assessment by non-treating clinical psychologist / criminologist should be conducted.
97. The NCCS does not say anything about the Phakathi report that was already in place. It does not say whether the Phakathi report was defective, and if so, in what respect it was defective.

⁵⁶ Caseline 50-4

98. The second assessment was done on 13 May 2024 by Buthelezi. Among the purpose of the assessment was to determine what the Applicant's potential risk for re-offending is. Buthelezi concluded that based on the assessment and integration of the information listed above, the Applicant does not display any major unresolved criminogenic needs and his risk of re-offending falls within the moderate to low range.
99. As in the case of Phakathi report, the NCCS did not seem to consider the report of Buthelezi in its recommendation of 23 December 2024.
100. If the NCCS had regard to the Phakathi report of 2004 and the Buthelezi report of 2024, why is it referring the Applicant to undertake further risk assessment. The NCCS has not indicated whether these reports are defective or inadequate. NCCS has not indicated in any manner what further risk assessment would achieve.
101. The clear intentions of the Minister and NCCS is undisguised in the NCCS report of 2024. That undisguised intention is clearly spelled out as follows, "*compliance with the above will not guarantee the offender placement on parole.*" In clear terms, this statement is intended to convey a message that the Applicant must contend himself with being sent from pillar to post in circumstances where both NCCS and the Minister have already predetermined the issue.
102. The Minister is required to consider the parole of the Applicant expeditiously and must be fair and just in considering the placement of the Applicant on parole.
103. With regard to 2.3, that the Applicant must attend the Substance Abuse Treatment programme with the Social Worker. In his answering affidavit, the Minister went further to state that the Applicant has not dealt with his substance abuse issues.

104. In this respect, Phakathi dealt with the issue of substance abuse as follows: *“Mr Phaahla has a history of drug and alcohol abuse, he reported that he started using substances when he was 13 years old, however, he reported that he quit in 1984 because it made him sick.”*
105. In Bopape report of 2024, the Applicant indicated that he has stopped taking alcohol and smoking cigarette and dagga in the year 1985. Since then he does not smoke cigarettes and he has no history of drug use.
106. In Bopape report, the Applicant has indicated that he has attended drug awareness on 6 June 2006. In Phakathi’s report, she also states that the Applicant has indicated that he has attended a drug awareness program while being incarcerated. The Buthelezi report also mirrors that of Phakathi in exonerating the Applicant from drug use.
107. Bopape stated the following:
- “He also attended drug awareness in 6 June 2006 whereby he was introduced to substance abuse and relapse prevention program. The aim of the program was to broaden his knowledge and understanding of substance usage, abuse and dependency in order to enable him to develop a lifestyle free of substance abuse/usage and to gain insight into the negative effects of substances to life. The impact of the program is that, it made him benefit in a sense that he is now got skills on how to refrain from relapsing into bad behaviour and substance after rehabilitated.”⁵⁷*

⁵⁷ Caseline 50-19

108. As the Applicant has not used and abused substances since 1984 or 1985, it is irrational for the Minister to recommend that he must attend programmes to deal with his substance abuse problem.
109. The Minister has not provided any tangible and substantive reasons for this malicious, outlandish, illogical and unsound recommendation. Frankly, this borders on the Minister being spiteful. The Minister is clearly acting prejudicially and unconstitutionally in this instance.
110. With regards to 2.4, that the Applicant must attend the Moral Regeneration Release Prevention and Resilience Enhancement Programmes.
111. The Applicant attended the moral regeneration programme and was awarded the certificate on 2 August 2024.⁵⁸
112. In the Replacement Assessment Tool, the Applicant has listed all the programmes that he has successfully attended and completed.⁵⁹ In the CSPB parole report, the Applicant also listed the programmes that he has attended under the section that deal with rehabilitation.⁶⁰ This was in respect of the 17 April 2020 parole recommendation by the CSPB. Also on the CMC report of 31 July 2024, the programmes that he has attended are listed under the offending behaviour addressed.⁶¹ The CSPB report in respect of the 27 August 2024 recommendations for parole, mentions the programmes that the Applicant has attended under offending behaviour addressed.⁶²

⁵⁸ Certificate of moral regeneration, Caseline 67-181

⁵⁹ Caseline 67-216 to 67-217 under E Care, Development and Correctional Programmes

⁶⁰ Caseline 67-267

⁶¹ Caseline 67-29

⁶² Caseline 67-11

113. There is no purpose that would be served by subjecting the Applicant to further programmes. The Applicant has demonstrated that he has attended all these superfluous programmes already.
114. It is irrational for the Minister to expect the Applicant to keep on attending programmes which have already been completed. I must bear in mind that the NCCS and the Minister have indicated that attendance of these programmes and compliance thereto will not guarantee the Applicant placement on parole.
115. This has indeed come to pass. The Applicant has been attending these programmes since 2004. More than 20 years later, the Minister and the NCCS are still not satisfied that he can be placed on parole notwithstanding the recommendation of the CSPB on 17 April 2020 and 27 August 2024. What is apparent in this case and as it was the case with *Walus*, is that the Minister and the NCCS have no intention of placing the Applicant on parole.
116. When dealing with this aspect, the Constitutional Court indicated as quoted in paragraph 70 that in circumstances where there are no basis to deny placement of an offender on parole, that decision is irrational.
117. In this case, I want to quote the letter from the Unit Manager:

“Offender Oupa Chipane Phaahla registration no: (986 161 11) was Proves his willingness to change and contribute positively to the community upon his release was knows exactly why he is given a second chance as he remained considerate towards his reason of being incarcerated; he behaves very well and respects both fellow offenders and officials.”⁶³

118. I find that the decision of the Minister is irrational. Rationality is defined as follows:

⁶³ Caseline 50-1

“This means in essence that a decision must be supported by the evidence and information before the administrator as well as the reasons given for it. It must also be objectively capable of furthering the purpose for which the power was given and for which the decision was purportedly taken. The question to be asked is the following: ‘Is there a rational objective basis justifying the conclusion made by the administrative decision-maker between the material property available to him and the conclusion he or she eventually arrived at?’”⁶⁴

119. In *Pharmaceutical Manufacturers*,⁶⁵ the Constitutional Court said about the standard of rationality:

“It is a requirement of the rule of law that the exercise of public power by the Executive and other functionaries should not be arbitrary. Decisions must be rationally related to the purpose for which the power was given, otherwise they are in effect arbitrary and inconsistent with this requirement. It follows that in order to pass constitutional scrutiny the exercise of public power by the Executive and other functionaries must, at least, comply with this requirement. If it does not, it falls short of the standards demanded by our Constitution for such action.”

120. The Constitutional Court went on to point out: *“The question whether a decision is rationally related to the purpose for which the power was given calls for an objective enquiry”*.

⁶⁴ See Hoexter: *Administrative Law in South Africa*, 2nd Ed, p340; *Carephone (Pty) Ltd v Marcus* N.O. 1999 (3) SA 304 (LAC) at para 37.

⁶⁵ *Pharmaceutical Manufacturers Association of South Africa: In re Ex Parte President of the Republic of South Africa* [2000] ZACC 1; 2000 (2) SA 674 (CC); 2000 (3) BCLR 241 (CC).

121. Indeed, the Constitutional Court said later in the same case: “What the Constitution requires is that public power vested in the executive and other functionaries be exercised in an objectively rational manner”.

122. Finally, the Constitutional Court went on to say about rationality:

“Rationality in this sense is a minimum threshold requirement applicable to the exercise of all public power by members of the Executive and other functionaries. Action that fails to pass this threshold is inconsistent with the requirements of our Constitution, and therefore unlawful. The setting of this standard does not mean that the courts can or should substitute their opinions as to what is appropriate, for the opinions of those in whom the power has been vested. As long as the purpose sought to be achieved by the exercise of public power is within the authority of the functionary, and as long as the functionary’s decision, viewed objectively, is rational, a court cannot interfere with the decision simply because it disagrees with it, or considers that the power was exercised inappropriately.”

123. In the result, I confirm the order that was made on 5 September 2025.

124. In terms of PAJA, the Court is empowered to make an order not to remit this matter to the Minister. I have dealt with the exceptional circumstances which justify the Court taking a decision not to remit the matter back to the Minister of these programmes and compliance thereto would not guarantee the offender placement on parole.

125. The Applicant was supposed to have been considered for placement on parole in 2017. The Applicant’s parole was only considered in April 2020, three years after he was supposed to have been considered for parole. The CSPB’s recommendation for the Applicant to be placed on parole on 17 April 2020 was

- only considered by the NCCS on 21 September 2022 when the NCCS declined to recommend the Applicant for parole despite not having plausible reasons.
126. The Applicant had to bring an application to compel the Minister to consider his parole as recommended by the CSPB on 17 April 2020. The Applicant had to bring an application for a review to compel the Minister to consider him for parole in 2023. Further, the Applicant had to bring an urgent application to compel the Minister to consider his parole in October 2024.
127. The CSPB recommended the Applicant for parole in August 2024. The NCCS on 23 December 2024 again declined to recommend the Applicant for parole. The Minister approved the recommendation of the NCCS not to place the Applicant under parole on 9 January 2025. In the NCCS recommendations of 21 September 2022 and December 2024, the Applicant was required to attend a psychotherapy and risk assessment session. These programmes were already complied with at the time the NCCS dealt with the Applicant's recommendation for parole by the CSPB.
128. With respect to the 21 September 2022 NCCS's report requiring the Applicant to attend the Victim Offender Dialogue (VOD), this was already done on 26 November 2020. With regard to the requirement that the Applicant should attend the substance abuse programme with the social worker (as contained in the NCCS report of December 2024), this was already done on 6 June 2006. With respect to the requirement to attend the moral regeneration, relapse prevention and resilience enhancement programmes, this was done on 6 June 2006 and 2 August 2024.
129. The NCCS and the Minister have indicated in the report of 23 December 2024 and 9 January 2025, that attendance of these programmes and compliance

thereto will not guarantee the Applicant placement on parole. It is almost 8 years since the Applicant became eligible to be considered for parole yet to date it does not appear as if both the NCCS and the Minister will consider the placement of the Applicant in a fair and just manner as required by Chapter VI(1A)(19) of the Parole Board Manual which requires that the evaluation of a prisoner for parole must be done "*fairly and justly*". The Parole Board Manual Chapter VI(1A)(18) requires that the placement of a prisoner on parole should be done as soon as possible after the date from which such prisoner becomes eligible for consideration for parole.

In the result, I make the following order:

1. I confirm the order that I made in terms of the draft order dated 4 September 2025 which is uploaded under 078-4 to 078-5



TD SENEKE AJ

Acting Judge of the High Court

Gauteng Division, Pretoria

Appearances

For Applicant	:	Advocate D.B Melaphi
Instructed by	:	M.E Makgopa Attorneys
For Respondent	:	Advocate R Ramuhala
Instructed by	:	State Attorney, Pretoria