



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

Case No: 2024-10966

DELETE WHICHEVER IS NOT APPLICABLE	
(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	NOT REVISED
DATE _____	SIGNATURE _____

In the matter between:

STANLEY DE JAGER

APPLICANT

and

NATIONAL COUNCIL FOR CORRECTIONAL SERVICE

FIRST RESPONDENT

THE MINISTER OF CORRECTIONAL SERVICES

SECOND RESPONDENT

JUDGMENT

VAN DER MERWE, AJ

INTRODUCTION

- [1] The Applicant was arrested on or about 22 May 2002 in connection with multiple serious offences, namely three counts of rape, eight counts of kidnapping, and seven counts of indecent assault, committed between October 2001 and May 2002. The offences involved eight complainants, all female, aged between 15 and 25 years. In most instances, the Applicant lured the complainants into his motor vehicle and subjected them to acts of indecent assault, including non-consensual and degrading sexual conduct. Three of the complainants were raped. The Applicant was 24 years old at the time. He was subsequently convicted and, on 5 December 2003, sentenced to life imprisonment. He is currently serving his sentence at Kgosi Mampuru II Correctional Centre.
- [2] The Applicant has been incarcerated for over 21 years and first became eligible for parole in February 2018.
- [3] Prior to his initial parole consideration, the Applicant successfully completed a range of rehabilitative programmes and acquired various skills and qualifications. These include Individual Psychological Therapy; Victim-Offender Dialogue (VOD); Criminal Thinking Programme; Restorative Thinking; Sexual Offenders Programme; Anger Management; Anti-Gangsterism Course; DCS Anger Management Programme; DCS Restorative Justice; DCS Changing Lanes Programme; DCS Sexual Offenders Programme; DCS Community Project – Alternatives to Violence; DCS Emotional Intelligence Programme; CIT Development Course; DCS HIV and AIDS Programme; Grow for Life Recognition Letter; various Bible courses; and several certificates in sporting and community

activities. A comprehensive list of these programmes and qualifications appears from paragraph 4.4 onwards in the founding affidavit.

[4] The Applicant was first considered for parole in 2017. His placement was not recommended, and he was issued with a further 24-month profile. He was also required to complete the following programmes:

- *Repeat VOD;*
- *Sexual Offenders Programme;*
- *Repeat Individual Therapy;*
- *Repeat Risk Assessment.*

[5] The Applicant avers that he was informed of this decision only verbally and was not provided with a written copy. He further contends that there was an approximate nine-month delay in communicating the outcome, which deprived him of the opportunity to attend and complete the required rehabilitative programmes during that period.

[6] In April 2020, the Applicant was again considered for parole. The Respondents took six months to communicate the outcome, which mirrored the 2017 decision.

[7] Parole was again refused on 1 August 2024. The Applicant was once more instructed to repeat the same programmes, Individual Therapy and Risk Assessment, despite having already completed them twice. The Minister's reasons were as follows:

“Having considered the documentation of the aforesaid offender and the recommendations of the NCCS, parole is not approved. This matter should be placed before the Council after 12 months. The offender is urged to improve his situation as follows:

1. *To undergo intensive individual psychotherapy to address deviant sexual behaviour and the risk of reoffending.*
2. *A risk assessment by a non-treating psychologist should be conducted, indicating the risk level and tools used, if any.*
3. *Updated reports must be attached when the profile is resubmitted.”*

[8] The Applicant was accordingly issued with a further 12-month profile.

[9] The Applicant failed to reapply for parole in August 2025. There is no evidence that he underwent the recommended therapy or risk assessment.

[10] A review of the documentation placed before the Parole Board reveals that it is dated. The psychological reports, in particular, date back as far as 2019. No updated psychological reports were placed before either the Parole Board or this Court.

[11] The Applicant, aggrieved by the Minister’s decision, launched the present application on 30 September 2024. In the notice of motion, he seeks the following relief:

- “1. That the First Respondent’s decision to refuse parole be declared irrational, unconstitutional, unlawful, and lacking in logic, and that it be set aside with an order directing his release on parole;*
- 2. Alternatively, that the decision be set aside and remitted to the Respondents for reconsideration;*
- 3. That the First Respondent be ordered to pay the costs of the application on an attorney-and-client scale, alternatively on Scale C, including the costs of any opposing Respondent;*
- 4. Further and/or alternative relief.*

[12] The application is not opposed by either of the Respondents.

DISCUSSION

[13] Parole decisions constitute administrative action within the meaning of the Promotion of Administrative Justice Act 3 of 2000 (*“PAJA”*). There can be no doubt that, in requiring a further profile in August 2024, the Minister exercised a public power under the Correctional Services Act 111 of 1998. It is trite that all public power is constrained by the principle of legality, an incident of the rule of law enshrined in section 1(c) of the Constitution. Where the exercise of such power fails to meet the requirements of lawfulness and rationality, a court is obliged, in terms of section 172(1)(a) of the Constitution, to declare such conduct invalid.

[14] Before addressing the legality of the Minister’s decision, it is necessary to consider the significance of the Minister’s failure to oppose this application. The Minister is the only functionary capable of defending the impugned decision. It must also be noted that the Applicant’s papers, although prepared by legal representatives, are disorganised and poorly presented. The documents uploaded to Caselines were in disarray, lacking proper indexing and pagination, and contained numerous duplications. Even the hard copies provided were inadequately arranged. This significantly hampered the Court’s ability to identify the documents placed before the Parole Board, as well as the decision and reasons of the Minister. Despite a request for supplementary heads of argument and a clear practice note, the assistance provided remained inadequate. In the absence of any justification from the Minister, the Court is left to draw conclusions from the limited material available and the brief reasons provided.

[15] It may be assumed that the Minister considered all relevant documents that served before him and that this formed part of the record before this Court.

INTERNAL REMEDIES

[16] Section 7(2)(a) of PAJA provides that a court may not review administrative action unless any internal remedy has first been exhausted. The purpose is to ensure that effective internal mechanisms are utilised before judicial intervention is sought.

[17] In this matter, the “further profile” scheduled for August 2025 does not constitute an internal remedy as contemplated in section 7(2)(a). It is not a mechanism to challenge or overturn the impugned decision but forms part of the ordinary parole process under the Correctional Services Act.

[18] An internal remedy must be a genuine mechanism capable of correcting or reversing the impugned decision, such as a statutory appeal or formal reconsideration process.

[19] The decision to subject the Applicant to further profiling is itself an exercise of public power, not a remedial process. It is therefore conceptually incorrect to characterise it as an internal remedy under PAJA.

[20] Where an internal process does not provide redress or finality but merely defers reconsideration, it cannot qualify as an internal remedy in law.

[21] The Applicant is accordingly not barred from approaching this Court for relief.

IS THE DECISION OF 1 AUGUST 2024 REVIEWABLE

[22] The Applicant adopted a broad, unfocused approach, advancing multiple grounds of review. However, the Minister's failure to oppose does not entitle the Applicant to automatic relief. This Court must still determine whether the decision is lawful and rational.

[23] If any one ground of review is established, the decision falls to be set aside under section 172(1)(a) of the Constitution.

[24] As held in ***Van Vuuren v Minister of Correctional Services 2010 CC 17*** these proceedings concern the application of section 136 of the Correctional Services Act. The Applicant has served the requisite portion of his sentence and has undergone multiple assessments.

[25] The Applicant contends that the decision is irrational, particularly as the reports are not adverse to parole. The reports are outdated, many dating back to 2019.

[26] In ***Walus v Minister of Justice and Correctional Services and Others 2023 (1) SACR 477 (CC)***, the Constitutional Court confirmed that rationality is assessed objectively, requiring a connection between the decision, its purpose, and the material before the decision-maker.

[27] Similarly, in ***Moodley v Minister of Justice and Correctional Services and Others (21/53385) [2023] ZAGPJHC 1447 (13 December 2023)***, the Court held that parole decisions must be based on a proper and rational consideration of all relevant material.

[28] In this case, no explanatory affidavit has been provided by the Minister, which impedes the Court's ability to conduct the required objective enquiry.

[29] The Constitution requires that all exercises of public power be objectively rational and justifiable.

[30] In the absence of an affidavit, it is unclear what factors informed the Minister's decision. The only indication is that further psychotherapy, risk assessments and updated reports were required.

[31] It appears that the decision was mainly influenced by the outdated nature of the reports.

[32] While the Minister has a discretion under section 136(3)(c) of the Correctional Services Act, this entails an independent evaluative function and not a mere endorsement of recommendations.

[33] That discretion cannot be fettered by requiring a favourable recommendation as a precondition.

[34] Public power must be exercised rationally and on the basis of relevant material.

[35] The Minister's reliance on outdated reports, without further explanation, renders the decision difficult to justify. As noted in **Walus**, an unexplained decision is likely to be irrational. The absence of reasons leaves the Court uninformed as to the basis of the decision.

[37] Although the offences are undeniably serious, considerations such as risk of reoffending and rehabilitation are relevant in parole determinations. However, it remains unclear why further assessments were required when similar

processes had already been completed. Given the lack of explanation, the Court can only infer that the decision was based on outdated reports

[39] In the absence of a proper evidentiary foundation, the decision appears irrational and falls to be set aside. A single valid ground of review suffices to invalidate the decision.

CONCLUSION

[42] The decision is irrational and must be set aside. The question is whether the Court should substitute its own decision or remit the matter. This requires a careful exercise of judicial discretion, mindful of the separation of powers.

[43] The Court has extensive documentation, however, the reports are indeed outdated, undermining their reliability. In these circumstances, remittal for reconsideration on a properly updated record is appropriate.

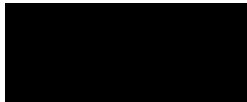
COSTS

[45] Costs are within the Court's discretion. In matters involving constitutional and administrative law, courts are generally reluctant to award costs against the State absent bad faith. Although, the Applicant has succeeded, the relief is a remittal, and the papers were poorly presented. There is no basis for a costs order.

ORDER

[46] The following order is made:

- 46.1 The recommendation of the Second Respondent dated 1 August 2024 regarding the Applicant's suitability for parole is reviewed and set aside.
- 46.2 The Second Respondent is directed, within 60 days, to schedule a new parole hearing.
- 46.3 All necessary reports and preparatory steps must be completed at least 30 days prior to the hearing.
- 46.4 Not less than two weeks before the hearing:
- 46.4.1 The Applicant must be informed of the date and time;
- 46.4.2 The Applicant must be granted access to all material to be considered;
- 46.4.3 The Applicant must be granted access to all relevant policies, manuals, and directives.
- 46.5 The First Respondent must take all necessary steps to ensure compliance of the Second Respondent with this order.
- 46.6 No order as to costs.


VAN DER MERWE, AJ
Acting Judge of the High Court
of South Africa, Gauteng Division, Pretoria

HEARD ON: 4 DECEMBER 2025

DATE OF JUDGMENT: 20 APRIL 2026

For the Applicant: Advocate Daniel Melaphi

Instructed by: Me Makgopa Attorneys

For Respondents: No Appearance