



**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)**

CASE NO: 2026-070920

In the matter between:

RALPH ISREAL STANFIELD

Applicant

and

MINISTER OF CORRECTIONAL SERVICES

First Respondent

NATIONAL COMMISSIONER OF

CORRECTIONAL SERVICES

Second Respondent

REGIONAL COMMISSIONER OF

CORRECTIONAL SERVICES: WESTERN CAPE

Third Respondent

HEAD OF CENTRE BRANDVLEI

CORRECTIONAL CENTRE

Fourth Respondent

HEAD OF CENTER HELDERSTROOM

CORRECTIONAL CENTRE

Fifth Respondent

HEAD OF CENTRE POLLSMOOR

CORRECTIONAL CENTRE

Sixth Respondent

Corum: Lekhuleni J et Nziweni J

Summary: Administrative law - Application for the transfer of applicant from Helderstroom Correctional Centre to Pollmoor Prison. Such a decision falling within the exclusive authority of the National Commissioner or his delegated official.

Heard: 02 April 2026

Delivered (electronically): 26 May 2026

JUDGMENT

Lekhuleni et Nziweni JJ:

Introduction

[1] This is an urgent application in which the applicant sought orders in two parts: Part A and Part B. In Part A, the applicant sought an order directing that he be transferred from Helderstroom Correctional Centre (“Helderstroom”) to the remand detention centre at Pollsmoor Prison (“Pollsmoor”). In Part B, the applicant sought a declaratory order that his detention at Brandvlei (“Brandvlei”) and Helderstroom Correctional Centres is inconsistent with the Constitution of the Republic of South Africa, invalid and that the detention unjustifiably limits his rights envisaged in sections 12(1)(a) and 35 of the Constitution.

[2] In addition, the applicant sought an order in Part B declaring that his detention at Brandvlei and Helderstroom is inconsistent with the Constitution and invalid to the extent that it constitutes prolonged solitary confinement as defined in Resolution 70/175 adopted by the United Nations General Assembly on 17 December 2015 (United Nations Standard Minimum Rules for the Treatment of Prisoners (“the Nelson Mandela Rules”). To the extent necessary, the applicant sought condonation under s 9 of the Promotion of Administrative Justice Act 3 of 2000 (“PAJA”) for instituting this application after the 180 days envisaged in s 7 of PAJA.

[3] By agreement between the parties, on 29 December 2025, the hearings of Parts A and B were consolidated. When the matter was heard, the applicant sought the relief in Part B, as Part A had become moot. For clarity and systematic analysis, we will structure our discussion of the application as follows: *First*, we will provide a summary of the applicant's arrest and subsequent detention. *Second*, we will provide a summary of the applicant's and respondents' cases. *Third*, we will address the preliminary issue concerning the delay rule. *Fourth*, we will evaluate the applicant's

grounds for review. Finally, we will conclude with the order that we consider appropriate, considering the evidence presented.

The applicant's arrest and detention

[4] The applicant was arrested on 29 September 2023 and detained at Milnerton Police Station on charges of robbery with aggravating circumstances, fraud, theft of a motor vehicle, possession of a firearm, possession of ammunition, and intimidation. On 2 October 2023, the applicant appeared at the Cape Town Magistrates' Court, where the magistrate issued a warrant for the applicant's detention at Pollsmoor prison pending further proceedings in respect of the charges proffered against him. Following the court proceedings of 2 October 2023, the applicant was accordingly processed for admission as a remand detainee at Pollsmoor remand detention centre. However, at about 23h00 on 2 October 2023, the applicant was transported to Brandvlei by members of the SAPS Anti-Gang unit, where he was subsequently detained. Mr Delekile Klaas, the former Regional Commissioner for the Western Cape, decided to place the applicant in Brandvlei.

[5] On 22 August 2025, the applicant was admitted and detained at Helderstroom Correctional Centre. It is alleged that while at Brandvlei Correctional Centre, the applicant committed several disciplinary offences. The third and fourth respondents aver that a cell phone charger was found hidden in the applicant's cell. In a separate search of his cell, after the Head of Centre (fourth respondent) received information that the applicant was in contact with persons outside the prison, the respondents aver that a cell phone was discovered in the applicant's cell. Additionally, four memory sticks were also later discovered in the applicant's cell.

[6] Subsequent thereto, the Head of Brandvlei, Mr Sontlaba, discussed the alleged discovery and confiscation of the cell phone with the Regional Commissioner for the Western Cape (fourth respondent). The Regional Commissioner subsequently decided to transfer the applicant from Brandvlei to Helderstroom, where he could still be kept in a single cell and more closely monitored, given that Helderstroom has better infrastructure and is better resourced for effective oversight.

The applicant's case

[7] The applicant asserts that upon arrival at Brandvlei after the SAPS Anti-Gang Unit transferred him from Pollsmoor, he was informed by a correctional official that he would be detained in a single cell. The applicant stated that he was not given any formal notice or reasons for his transfer to Brandvlei before or upon his arrival, nor was he given an opportunity to make representations or be heard before the decision to transfer him was made. The applicant asserted that in Brandvlei, he was kept in solitary confinement. After several days in solitary confinement, a correctional services official told him that this measure was taken to ensure his safety.

[8] To this end, the applicant points out that the decision to transfer him on both occasions was procedurally unfair. According to the applicant, he never received written reasons for either transfer. Despite months of enquiring about his transfer and subsequent solitary detention at Brandvlei, he was never provided with any reasons for his transfer. Furthermore, he never received any written rules or a court order confirming the legality of his detention at Brandvlei and its harsh conditions. In his opinion, in the absence of any further information, the implication is that the decision was taken for no reason, arbitrarily and capriciously.

[9] The applicant denied that he faces a threat so great to his life at Pollsmoor to warrant being shackled up in solitary confinement at Helderstroom. The applicant believes that he should not be deprived of his liberties only because correctional services cannot guarantee his safety. He was also not given a chance to make representations. He has been given no information or reasons for the transfer, including any details about the perceived threat to his safety.

[10] The applicant further avers that, from 2 October 2023, before he was transferred to Helderstroom on 22 August 2025, he was confined to a single cell for 22 hours a day. While in this cell, he was not treated any differently from sentenced prisoners. He was exposed to sentenced prisoners and consequently made to interact with them daily, including queuing for showers and exercise with persons convicted of all sorts of violent crimes. According to him, he was allowed to leave his cell for no more than one hour a day, which effectively meant that he was in solitary

confinement for 23 hours a day without any meaningful human contact. This persisted for more than 40 consecutive days without any reason or formal process established by the prison officials for him to challenge the status quo.

[11] The applicant complained about the condition of his cell. He complained that he did not enjoy all the privileges and rights of a remand detainee. Despite being a remand detainee, he was forced to wear a jumpsuit. He was not permitted to wear civilian clothing. His harsh detention conditions since October 2023, at Brandvlei, caused him severe psychological distress to the extent that he recently required to see a psychologist or social worker to address and formally document his mental wellbeing urgently.

[12] The applicant posits that despite him being a remand detainee, his detention in solitary confinement continues to persist, with the added difficulty of him being unable to consult meaningfully with his legal team and being denied regular visits from members of his family. As a result, his freedom was and remains deprived in the extreme. Simply put, the applicant contends that by transferring and detaining him in solitary confinement in both correctional centres due to a 'spectral' threat to his safety, of which he has been provided no details, where he suffers significant deprivation of his liberty, is unreasonable

[13] On 14 July 2025, the applicant requested a transfer back to Pollsmoor due to the harsh conditions he had been detained in at Brandvlei. This request was ignored and no official from the department provided a written response. The applicant contends that the decisions to transfer him to Brandvlei and subsequently to Helderstroom, and his detention at these correctional centres, are unlawful and unconstitutional. He asserts that the transfer decisions were procedurally unfair and violated his constitutional rights under sections 10, 12 and 35 of the Constitution. Consequently, the applicant seeks that the court grant the relief sought in the notice of motion.

The Respondents' case

[14] The respondents assert that when the Magistrate's Court issued warrants to remand the applicant in custody, the court merely determined that detention was warranted and could not direct which facility the detention was to occur. The first detention warrant directed that the applicant be detained at the nearest remand facility, being Pollsmoor, for processing and admission into the correctional services system as a remand detainee. The respondents contended that the applicant was taken to Pollsmoor for processing as a remand detainee, given that Pollsmoor was the closest remand detention facility, and to ensure that all the relevant role players, such as the DCS Emergency Support Team and the SAPS Anti-gang unit, were able to assist with appropriate security measures and transportation of the applicant to Brandvlei. Therefore, the sole responsibility of the officials at Pollsmoor was to determine and assign the applicant's specific detention centre, suited to the applicant's circumstances.

[15] To this end, the respondents explain that when a remand detainee is admitted for the first time, the department must complete a continuous remand assessment for security classification. The classification and placement of remand detainees are not static; they are reviewed every six months or when the remand detainee is involved in a security or injury-related incident, or where more charges are laid against the remand detainee, or if the remand detainee escapes from prison. According to the SAPS Anti-Gang Unit and the DCS, the applicant is classified as a high-risk remand detainee and involved in a high-profile case.

[16] The respondents went on to explain that the applicant was assessed to be a high-risk and high-profile remand detainee because of his affiliation with gangsterism and organised crime. It is the respondents' contention that the applicant is closely associated with the gang known as the Firm, where he is known to hold a senior leadership position. He is also associated with the prison gang, the 28s, who have a significant presence at Pollsmoor. When he was moved to Brandvlei, it was explained to him why it was necessary that he be relocated immediately, which transfer was done the same night when he arrived at Pollsmoor and that it was for his own protection. The respondents stated that the applicant did not object to his

transfer and accepted the reason for his immediate transfer. He also did not protest or ask for access to his attorney to object to or challenge the transfer.

[17] Given that he would hold a high level of influence at Pollsmoor among gang members, he could not be detained at Pollsmoor and was placed at Brandvlei for his own safety, given that the members of a rival gang, Nafez Modack and some of his associates, whose trial for serious offences is currently being heard in the Western Cape High Court, were detained in Pollsmoor at the time of the applicant's arrest. Most of them are still detained at Pollsmoor while their trial is ongoing. The respondents believe that it would have been irresponsible for the department to detain the applicant at Pollsmoor, knowing the risk to his life and safety.

[18] The respondents further explain that the applicant was also moved as a necessary measure to maintain institutional order at the correctional centres to avoid and/or mitigate the risk of inter-gang violence. According to the respondents, this decision was framed against the critical operational constraints at the Pollsmoor detention facility, which faces severe overcrowding and a significant deficit in both infrastructure and personnel resources. The respondents assert further that they cannot closely and personally monitor the applicant, nor can they provide him with a single cell for the remainder of his detention at Pollsmoor. The applicant's influence as a known gang leader and his alleged ties to organised crime contributed to the decision to transfer him from Pollsmoor.

[19] As previously mentioned, on 22 August 2025, the applicant was admitted to and detained at Helderstroom prison, where he remains. Helderstroom is a maximum-security correctional centre with a small Special Care Unit for the housing of high-risk and high-profile remand detainees. The respondents pointed out that while at Brandvlei, the applicant had perpetrated several disciplinary offences. A cell phone charger was found hidden in his cell. In a separate search of his cell, after the head of the Centre had received information that the applicant was in contact with persons outside the prison, a cellphone was discovered in his cell. As has been noted earlier, four memory sticks were also later discovered in his cell. To that end, the respondents emphasised that these items constituted prohibited contraband.

This constitutes a disciplinary infringement for the possession of unauthorised articles in terms of s 23(1)(m) of the Correctional Services Act 111 of 1998 (“the Act”).

[20] At Brandvlei and Helderstroom, the applicant was kept in a single cell and given full access to his legal representative for visitation and consultation, in person and by telephone. He is allowed family visits and receives the same amenities provided to remand detainees. The respondents further explained that the applicant was approved for a Smart TV and an open-view decoder for use in his cell at Brandvlei. This was, however, confiscated after contraband, including the cellphone, was found in his cell. The respondents listed various dates from 30 October 2023, wherein the applicant was allowed to consult with and have telephonic contact with his family.

[21] The respondents refuted the applicant’s allegations and stressed that there is no truth to the allegations that the applicant was and is unable to prepare and consult effectively with his legal team while detained at Helderstroom. According to the respondents, this allegation is contradicted by the legal visit permits and telephone register, which demonstrate that the applicant has not been precluded or unreasonably restricted from accessing his legal representatives for the purpose of consulting with them to prepare for his trial.

[22] The respondents also disputed that the applicant is detained in solitary confinement. According to the respondents, the applicant has been placed in a single cell at Helderstroom as a remand detainee for safety and security reasons. He is kept separate from the convicted offender population. He is afforded daily exercise, regular contact visits, non-contact visits, and telephonic access to his family members and relatives. None of his amenities as a remand detainee have been removed or restricted save for the televisions, which were confiscated from his cell in Brandvlei. He currently has a radio in his cell at Helderstroom. The respondents contend that, based on the foregoing, the application must be dismissed.

Principal submissions by the parties

[23] At the hearing of this matter, Mr Hodes SC (Mr Hodes), counsel for the applicant, submitted that the decision to transfer the applicant from Pollsmoor to Brandvlei and from Brandvlei to Helderstroom constitutes an administrative action under PAJA. These decisions to transfer him plainly affect the applicant's rights and had to be taken procedurally. In developing this argument, Mr Hodes contended that the applicant was never given a hearing before or after he was transferred from Pollsmoor to Brandvlei and thereafter to Helderstroom. Mr Hodes pointed out that the applicant is entitled, in terms of paragraph 6 of the Policy on the Management of Remand Detainees & Other Categories of Unsentenced Inmates, to challenge the placement decision through the court. To this end, the applicant denies ever having been given any reason for these transfers, even though the respondents claimed to have told him that this was done for his own safety but cannot identify any supporting document of any nature in this regard.

[24] Notably, the contention was that the official who is alleged to have decided to transfer the applicant, the former regional commissioner, Mr Delekile Klaas, has not, in an affidavit, confirmed that he did so or explained the reasons for his decision. In his heads of argument, Mr Hodes submitted that the applicant has been held in solitary confinement at Brandvlei since 2 October 2023, and thereafter at Helderstroom since 22 August 2025. According to counsel, at the time of this application, the applicant will have been detained for more than two years in solitary confinement without meaningful human contact. This, according to counsel, is contrary to international law.

[25] Furthermore, counsel pointed out that the applicant submitted numerous written complaints requesting transfer back to Pollsmoor. The respondents have not addressed any of these complaints in writing. They cannot identify any document in which they can substantiate any response, even though they concede that the applicant is entitled to such a response in accordance with paragraph 6 of the Policy. Moreover, counsel argued that despite being unsentenced, the applicant is treated no differently from sentenced inmates. Mr Hodes submitted that the detention of the applicant at Helderstroom is unlawful and urged the court to grant the relief sought in the notice of motion.

[26] On the other hand, Mr Papier, counsel for the respondents, challenged the lateness of the application. Counsel argued that the application was instituted after the 180 days prescribed by PAJA and that the applicant had not applied for condonation for the late filing of the application. Mr Papier asserted that without that application, the applicant's application is bound to fail. Mr Papier submitted that, as to which correctional centre a remand detainee should be placed in, involved a range of operational, logistical and administrative considerations that fall exclusively within the expertise and mandate of the respondents. These include the available capacity at various correctional centres, security classification of the detainee, separation requirements, the safety and conduct of the detainee, the safety of officials, the safety of other detainees, the potential for the detainee to interfere with potential witnesses in matters in respect of which the detainee is detained and staffing considerations.

[27] Mr Papier submitted that the court's function is to authorise whether a person should be detained, not where or how the detention is to be administered, the latter falling squarely within the operational domain of the respondents. According to counsel, the respondents have clearly shown that the applicant poses a security risk and should be detained in a special unit for high-risk, high-profile remand detainees. Mr Papier further opined that the respondent acted within the framework of the Act, in particular section 46, which provides that remand detainees may be subjected only to those restrictions necessary for the maintenance of security and good order in the remand detention facility and, where practicable, be allowed all the amenities to which they could have access outside the remand detention facility. Counsel argued that the applicant was not detained in solitary confinement but rather in a single cell, as envisaged by s 7 of the Act. Mr Papier submitted that the applicant failed to make out a case for the remedy sought and prayed the court to dismiss the applicant's application.

Preliminary point

[28] The respondent challenged the lateness of this application. Mr Papier submitted that, to the extent that the applicant did not file a condonation application together with this application, it is fatal to the applicant's application. In response, Mr

Hodes submitted that the 180 days prescribed in s 7 of PAJA were extended by agreement. Counsel also submitted that in the answering affidavit, the respondents explicitly stated that they do not oppose the applicant's condonation application. In addition, Mr Hodes argued that if the applicant explicitly opposed the condonation application as specified in the founding affidavit, the applicant would have filed a substantive application in this regard.

[29] As discussed above, apart from contesting the applicant's application to be transferred from Helderstroom to Pollsmoor on its merits, the respondents relied on the delay rule. We pause to mention that although the delay rule has its origin in common law, it now finds its basis in s 7(1) of PAJA, which provides in relevant part that any proceedings for judicial review in terms of section 6(1) must be instituted without unreasonable delay and no later than 180 days after the date an applicant became aware of the action and the reasons for it or might reasonably have been expected to have become aware of the action and the reasons. Once the 180-day time limit prescribed by s 7 of the PAJA has been exceeded, it is regarded as unreasonable per se. The Court is then only empowered to entertain the review application if the interest of justice dictates an extension in terms of section 9. In the absence of such an extension, the Court has no authority to entertain the review application.

[30] In terms of s 9(1)(b) of PAJA, the period of 180 days may be extended by agreement by the parties or, failing such agreement, by a court or tribunal on application by the person or administrator concerned. A court or tribunal may grant an application for the extension of the 180 days where the interest of justice so requires. The reasonableness or unreasonableness of a delay is entirely dependent on the facts and circumstances of any particular case.¹

[31] In the present matter, the applicant instituted the review application outside the prescribed statutory timeframes. The applicant failed to file a standalone, substantive application for condonation alongside the review application. However, within the founding affidavit, the applicant explicitly seeks an indulgence from this

¹ See *Associated Institutions Pension Fund and Others v Van Zyl and Others* 2005 (2) SA 302 (SCA) para 46.

court to condone the late launch of these proceedings. The applicant sought condonation or variation in terms of s 9(1) based on the urgency of the application and the fact that he is allegedly being detained in solitary confinement. According to him, the delays in instituting these proceedings since his detention at Brandvlei are not in bad faith and have not caused the respondents or the court any prejudice. In response to these averments in the answering affidavits, the respondents stated that they do not oppose the condonation application for the late institution of the review proceedings.

[32] The application was launched on 27 November 2025. The delay in instituting this application was not inordinate. In the circumstances, it cannot be said that the applicant took an indifferent attitude in bringing this application timeously. The applicant took the steps available to him to investigate the reviewability of the administrative decision adversely affecting him as soon as he became aware of it.

[33] In any event, Mr Papier's invocation of the delay rule is, in substance, opportunistic. It is at variance with the respondents' answering affidavits, which clearly stated that they do not oppose the condonation application. Plainly, his argument is at variance with the assertions of his clients in the affidavits filed. Consequently, the applicant's application for condonation for the late launching of this review application must succeed.

Grounds of review

[34] We now turn to consider the application on the merits. Before we can do so, we pause to mention that the applicant impugned the decision to transfer him based on several grounds. The grounds of review, as discernible from the founding affidavit, can be summarised as follows:

- (a) That the transfer of the applicant from Pollsmoor to Brandvlei and from Brandvlei to Helderstroom was unreasonable and an unfair administrative action.
- (b) That the applicant's detention at Brandvlei and Helderstroom constitutes solitary confinement.

- (c) That as a remand detainee, he has been imprisoned together with sentenced prisoners.
- (d) That the applicant's alleged inability to consult or access lawyers would affect his right to prepare for trial.

Discussion

[35] For convenience, we will deal with the applicant's grounds of review sequentially.

(a) Unreasonable and an unfair administrative action

[36] The applicant contends that he has never been provided with reasons for both his transfers to Brandvlei and, thereafter, to Helderstroom. By implication, the applicant contends that these decisions were taken for no reason, were arbitrary and taken capriciously. In addition, the applicant argues that the decisions to transfer him on both occasions were procedurally unfair in that no notice of the decisions was given, nor was he given a chance to make representations, nor was he given any information or reasons for the transfers relating to the perceived threat to his safety. The applicant states that transferring him and detaining him in solitary confinement due to a spectral threat to his safety, of which the applicant has been provided with no details, is unreasonable. According to the applicant, the department can take alternative, less restrictive means to secure his safety.

[37] It is apposite to remind ourselves that the right to administrative action in s 33 of the Constitution guarantees every person administrative action that is lawful, reasonable, and procedurally fair. PAJA, which is giving effect to s 33 of the Constitution, requires that administrative action be substantively reasonable. It is trite that the transfer of a remand detainee such as the applicant from one detention centre to another constitutes an administrative action as defined in s 1 of PAJA.² The respondents' decision to transfer the applicant had to be lawful and consistent with

² *Modack v Regional Commissioner, Western Cape, of the Department of Correctional Services and Another* (4222/2021) [2022] ZAWCHC 139 (21 July 2022) para 11.

the Constitution and the rule of law. Thus, any decision of the respondents that materially and adversely affects the rights and legitimate expectations of the applicant must be procedurally fair, including in the aspects outlined in section 3 of PAJA.

[38] At this point, it is important to elaborate on the powers granted to the Department of Correctional Services to fulfil its responsibilities. These responsibilities are extensive and require a clear understanding of the department's authority. The Act confers upon the Department of Correctional Services the responsibility for the administration of correctional centres and the custody of all persons detained therein. The Act sets out the legislative framework for the detention of remand and sentenced prisoners. Section 5 of the Act empowers the National Commissioner to establish correctional centres and to determine the categories of inmates to be detained in each centre. Importantly, s 7 provides that every inmate shall be detained in a Correctional Centre as determined by the National Commissioner or his delegated official. Section 6(1) of the Act provides as follows:

'(1) (a) A person may not be committed to a correctional centre without a valid warrant for his or her detention.

(b) Despite the wording of the warrant relating to the place of detention but subject to the provisions of this Act, such warrant authorises the National Commissioner to detain the person concerned at any correctional centre.'

[39] In terms of section 6(6) of the Act, on admission, the National Commissioner must make a preliminary security classification of the inmate. Security classification is determined by the extent to which the inmate presents a security risk, and by the correctional centre or part of a correctional centre in which he or she is to be detained. The legislative intention envisaged in s 6(1)(b) of the Act is that, regardless of what a warrant may state regarding the place of detention, the National Commissioner or his delegated official retains the authority to determine placement of any remand detainee to any correctional centre.

[40] Simply put, when the court remands an accused person in custody, it exercises a judicial function by determining that the continued detention of that

person is lawfully justified pending the finalisation of the criminal proceedings. This determination involves consideration of various factors, such as the strength of the state's case; the risk of flight; the risk of interference with witnesses or the investigation; the risk to public safety; and the interest of justice generally. An order of court, rather than a detention warrant, is the legal basis for a person's incarceration. A warrant of detention signed by the court, in this context, is merely 'an administrative means of proving to the correctional services authorities that the person they are requested to receive is lawfully in custody and may therefore be detained in their facility'.³

[41] Viewed in light of the above considerations, it is clear that the court's function is to authorise whether the person should be detained, not where or how the detention is to be administered. The latter falls squarely within the domain of the Department of Correctional Services. As correctly pointed out by respondents, the decision as to which correctional centre a remand detainee should be placed in involves a range of operational, logistical, and administrative considerations that fall exclusively within the expertise and mandate of the department. These considerations include the available capacity at various correctional centres; security classification of the detainee; separation requirements (for instance, separation from co-accused, gang affiliations, or vulnerable categories); the safety and conduct of the detainee; the safety of officials; the safety of other detainees, etc.

[42] To our mind, the most significant feature of this case is that the decision to place a remand detainee in a centre requires specialised knowledge of the correctional system, information about facility conditions, and the exercise of administrative discretion. A court is neither equipped nor constitutionally empowered to make such determinations. As stated earlier, at the heart of the complaint made by the applicant is his transfer from Pollsmoor to Brandvlei and eventually to Helderstroom. It is common cause that when a remand detainee is admitted to the correctional centre for the first time, the Department is required to complete a continuous risk assessment for security classification. The classification and placement of remand detainees are not static; they are reviewed every six months.

³ *S v Bogaards* 2013 (1) SACR 1 (CC) para 33.

There are different risks and security levels across centres. In actuality, there are procedures used to assign detainees to a particular centre. The evidence in this case demonstrates that established guidelines govern the classification and placements of detainees. These guidelines are designed to prevent arbitrary and inaccurate placements, thereby ensuring a more systematic and reliable process.

[43] In the present matter, it is common cause that the applicant has been assessed, and a decision was made to classify him as a high-risk, maximum-security detainee who needs to be held in a maximum-security centre. The respondents noted that, according to the SAPS Anti-Gang unit and the Department, the applicant is classified as a high-risk remand detainee and in a high-profile case. The respondents asserted that the applicant was assessed to be a high-risk and high-profile remand detainee because of his affiliation with gangsterism and organised crime. He is also associated with the prison gang, the 28s, who have a significant presence at Pollmoor. Given the above, the respondents believe that the applicant would hold a high level of influence at Pollsmoor among gang members, and he would be a target to be harmed and killed.

[44] The respondents also pointed out that the applicant was moved to maintain the good order of correctional centres to avoid and mitigate potential violence and conflict among the remand detainees and the rival gangs. Helderstroom has, in light of the foregoing, been assessed as the most appropriate centre for the applicant's detention. In the notice of motion pertaining to both Part A and Part B, the applicant did not contest or challenge his designation as a high-risk remand detainee, which necessitated his placement in a maximum-security facility. This, in our view, is fatal to the applicant's case.

[45] It is trite that administrative actions are presumed to be valid until declared otherwise by a court of law. As the Constitutional Court stated in *Magnificent Mile Trading 30 (Pty) Limited v Charmaine Celliers NO and Others*,⁴ what this means is that any person who disregards such law or action does so at his or her own peril should it turn out that the law or action is valid. To this end, the decision taken by the

⁴ 2020 (4) SA 375 (CC) para 83.

former Regional Commissioner, Mr Klaas, and the subsequent decision to transfer the applicant to Helderstroom were based on the applicant's classification. There is no evidence suggesting that the applicant's classification was erroneous, nor that there was no necessity for him to be detained in a maximum-security facility.

[46] Clearly, the decision of the respondents cannot be faulted. Significantly, this decision is underscored by the fact that our courts have consistently adopted a policy of judicial restraint towards matters of prison administration. In *Conjwayo v Minister of Justice, Legal and Parliamentary Affairs and Others*,⁵ quoted with approval by the SCA in *Minister of Correctional Services and Others v Kwakwa and Another*,⁶ the court observed that this policy of deference stems from a healthy sense of realism that prison administration are responsible for securing their institutions against escape or unauthorised entry, for the preservation of internal order and discipline and for rehabilitating, as far as possible, the inmate placed in their custody.

[47] In the context of this case, the need for exercising judicial restraint is underscored by specialised expertise and information required to effectively assess the conditions of facilities for the placement of remand detainees. A court is neither equipped nor constitutionally empowered to make such determinations. However, 'whatever fundamental rights are flouted or legislative protection ignored, to any prisoner's prejudice, this Court's writ will run, breaking through stone walls and iron bars, to right the wrong and restore the rule of law.'⁷

[48] The applicant impugns the legality of his detention at Helderstroom, specifically because he was never given advance notice of the decision to transfer him and was never given a hearing before or after the transfer from Pollsmoor to Brandvlei, and thereafter to Helderstroom. We emphasise that a distinction must be drawn between the placement of remand detainees on the one hand and sentenced prisoners on the other.

⁵ 1992 (2) SA 56 (ZA); See also *Van Vuren v Minister of Correctional Services and Others* 2012 (1) SACR 103 (CC) para 49.

⁶ 2002 (4) SA 455 (SCA) at para 24.

⁷ *Charles Sobhraj v Superintendent, Central Jail, Tihar, New Delhi* (1979) 1 SCR 512 (SC, India) at 518 – 519.

[49] Chapter III of the Amended Regulations⁸ (Regulations 22 to 25) deal with the classification and placement of sentenced prisoners. Specifically, Regulation 25(1)(a) provides that ‘when an inmate is transferred, the head of the correctional centre or a correctional official authorised by him or her must convey the reasons for the proposed transfer to the inmate and allow the offender to make a representation in this regard, which must be recorded in writing, whereafter the head of prison of the correctional centre or the authorised official may take a decision on the proposed transfer.’

[50] However, Regulation 25(1)(b) expressly provides that, ‘if the transfer is for security reasons, the head of the correctional centre or the authorised official need not inform the inmate of the proposed transfer, but the inmate must be informed of the reasons as soon as practicable after his or her admission to the place where he or she is transferred to and must be allowed an opportunity to make a representation in this regard as well as an opportunity to notify his or her spouse, partner, or next of kin in the manner prescribed by the order.

[51] Chapter IV of the Regulations specifically addresses the management, safe custody, and well-being of remand detainees in regulations 26 to 26I. Pointedly, unlike Chapter III, which specifically addresses sentenced offenders, Chapter IV of the Regulations does not contain any regulations addressing the location and transfer of remand detainees. Put differently, the requirement for representations to be made when a remand detainee is transferred from one correctional centre to another does not apply to remand detainees. However, that does not mean the remand detainee lacks a remedy.

[52] In our view, the remedy available to a remand detainee is located in section 21 of the Act. Section 21 of the Act affords the applicant and all other remand detainees recourse to internal remedies with a view to addressing any complaint and/or request that may arise during their incarceration. If an offender believes their classification is incorrect or that their placement in a specific correctional centre is

⁸ See Promulgation of Correctional Services Regulations with Amendments Incorporated - Government Gazette No. 35032 dated 27 February 2012 to the Correctional Services Regulations 2004 promulgated in the Government Gazette no. 26626 dated 30 July 2004.

unreasonable, irrational, or done in bad faith, they must follow the complaints procedure outlined in section 21. The views expressed by Bertelsmann in *Masilela and Others v Bouwers and Others*,⁹ (“*Masilela*”) are on point. The learned justice stated:

[14] An offender may, of course, also follow the same route by way of a request to be transferred to another centre. If the head of the relevant correctional centre reacts in a manner the inmate regards as unsatisfactory to a complaint or request, an appeal may be directed to the National Commissioner. If the inmate is still displeased with the National Commissioner's response, he has the option to seek the assistance of the Independent Prison Visitor.

[15] It would appear that the assessment, classification and placement of an offender in a correctional institution, the filing and consideration of a complaint and the submission and consideration of a request are administrative actions. Any challenge to a decision taken in regard to these matters must therefore be brought in terms of the Promotion of Administrative Justice Act 3 of 2000.’

[53] In this case, the applicant contends that he wrote letters to the Head of the Correctional Centre and to the Regional Commissioner, but did not receive a response. This, in our view, is inconsequential. In addition to the views expressed in *Masilalela*, we emphasise that there is nothing that prevents the applicant from escalating the matter to the next level of decision-making if no response is received from the other levels. The applicant was legally represented. He could have referred his complaint to the Independent Prison Visitor, who had to deal with the complaint in terms of the procedures laid down in section 93 of the Act. Section 93, amongst others, enjoins an Independent Prison Visitor to report any unresolved complaint to the Visitors’ Committee and may, in cases of urgency or in the absence of such a committee, refer such complaint to the Inspecting Judge, whose decision will be final. This, the applicant failed to do.

[54] To this end, we share the view expressed by Raulinga J in *Krecjir v Minister of Correctional Services and Others*,¹⁰ Where the learned justice observed that the

⁹ 2013 (2) SACR 350 (GNP) para 13.

¹⁰ 2016 (1) SACR 452 (GP) paras 18 and 19.

internal remedies as appear in s 21 of the Act must be exhausted as a conjunctive whole and not disjunctively. The court noted that the reason why such remedies are provided is to ensure that, where a particular person or sector takes no administrative decision, the next rung of decision-making must be pursued. Failure to do this plagues the whole chain of events. Consequently, there is a duty on the applicant to exhaust this process fully and to state whether such complaints were registered and what the outcomes were at the various levels of decision-making. The applicant failed to follow the procedure set out in s 21 of the Act, that provides detainees sufficient protection of compliance with due process. As such, it cannot be said that the applicant's transfer failed to meet procedural due process requirements.

[55] In the circumstances, it is not permissible for this court to order the applicant's transfer to Pollsmoor. In our view, such authority falls within the power of the National Commissioner. Granting such an order in these circumstances would usurp the National Commissioner's powers and violate the separation of powers doctrine. The respondents have provided legitimate and justifiable reasons for the applicant's transfer to Brandvlei and Helderstroom. The applicant's placement in Helderstroom after he was allegedly found in possession of a phone and a charger in his cell is lawful and justifiable. We do not suggest that these allegations were proven. However, to the extent that these allegations were directed against the applicant, it was within the respondents' rights to take lawful action they deemed appropriate in such circumstances. For a court to direct the department to detain a remand detainee, in this case, the applicant, at a particular facility of the applicant's choice, is not statutorily permissible. Such an order, in our view, would constitute an impermissible intrusion into the executive's powers.

(b) Detention constituting solitary confinement

[56] The applicant alleges that his detention at Brandvlei and Helderstroom constitutes solitary confinement. However, at the hearing of this application, this ground of review was not pursued with enthusiasm and alacrity. Nevertheless, for completeness, we will consider this ground. The applicant alleges that he is currently detained in his cell without any amenities and without meaningful human contact for more than 22 hours a day. His alleged solitary confinement at Helderstroom will be

indefinite and prolonged. The applicant believes that the officials at Helderstroom intend to keep him in these conditions indefinitely, pending the finalisation of his trial.

[57] To this end, the applicant relied on the United Nations Standard Minimum Rules for the Treatment of Prisoners. These Rules are called the “Mandela Rules”. Rule 1 provides that all prisoners shall be treated with the respect due to their inherent dignity and value as human beings.

[58] Rule 43(1) of the Mandela Rule provides that:

‘In no circumstances may restrictions or disciplinary sanctions amount to torture or other cruel, inhumane or degrading treatment or punishment. The following practices, in particular, shall be prohibited:

- (a) indefinite solitary confinement.
- (b) prolonged solitary confinement.’

[59] Rule 44 provides:

‘For the purpose of these rules, solitary confinement shall refer to the confinement of prisoners for 22 hours or more a day without meaningful human contact. Prolonged solitary confinement shall refer to solitary confinement for a period in excess of 15 consecutive days.’

[60] Rule 45 regulates the application of solitary confinement as follows:

‘Solitary confinement shall be used only in exceptional cases as a last resort, for as short a time as possible and subject to independent review, and only pursuant to the authorisation by a competent authority. It shall not be imposed the virtue of a prisoner’s sentence.’

[61] The applicant believes that his detention is accordingly contrary to international law, the Constitution, and is invalid. The applicant further believes that prolonged or indefinite solitary confinement constitutes cruel, degrading, and inhumane treatment and that s 12(1)(e) of the Constitution prohibits such treatment.

[62] The respondents disputed that the applicant was detained in solitary confinement. The respondents further contended that the applicant has been placed in a single cell as a remand detainee, where he is kept separate from the convicted offender population.

[63] The objective facts placed before us significantly contradict the applicant's version of events. It is important to note that s 7 of the Act regulates the accommodation of inmates. Section 7(1) establishes that prisoners must be held in cells that meet the requirements prescribed by regulation in respect of floor space, cubic capacity, lighting, ventilation, sanitary installations, and general health conditions. These requirements must be sufficient to ensure detention under conditions of human dignity.

[64] The applicant is not detained in solitary confinement. The applicant has been placed in a single cell at Helderstroom as a remand detainee, where he is kept separate from convicted offenders. The applicant has access to all amenities, including family visitation, legal representative visits, medical visits, psychosocial support, recreational activities, and access to reading material. The record before us demonstrates that the applicant has had, and continues to have, regular and meaningful human contact with his family members, children, legal representatives, correctional officials, and his chosen medical practitioner.

[65] In particular, the department's records also show that the applicant enjoyed frequent telephonic communication and regular in-person visits at both Brandvlei and Helderstroom. This level of ongoing human contact is incompatible with the concept of solitary confinement as defined in Rule 44 of the Mandela Rules.

[66] From the department's listing of visits received and telephone calls made since the applicant's detention at Brandvlei, as reflected on annexure DCS32 of the answering affidavit, the applicant received no less than 40 contact and non-contact visits from his family members during the period 5 October 2023 to 17 October 2024. The applicant was never prevented from contacting his wife telephonically. In fact, on 16 February 2026, a telephone call was arranged with his wife, who is detained at Pollsmoor Women's Remand Detention Centre.

[67] To this end, the respondents' submission that it is misplaced to equate single-cell accommodation for security reasons with solitary confinement within the meaning of the Nelson Mandela Rules is spot on and cannot be faulted. These submissions accord with s 7(2)(e) of the Act, which expressly empowers the National Commissioner to accommodate inmates in single or communal cells, depending on accommodation availability. This means that inmates, such as the applicant, may be kept in single cells as normal accommodation.

[68] Additionally, the records indicate that none of the amenities available to him as a remand detainee have been removed or restricted, except for the television, which was confiscated from his cell in Brandvlei after a phone and a charger were allegedly discovered there. He currently has a radio in his cell at Brandvlei. We repeat, the objective facts significantly contradict the applicant's version of events. The conditions of the applicant's detention as a remand detainee in both Brandvlei and Helderstroom do not constitute prolonged or indefinite solitary confinement as envisaged in the Mandela Rules.

[69] The conditions of the applicant's detention as a remand detainee do not constitute cruel, degrading, or inhumane treatment as prohibited by s 12 of the Constitution. To the contrary, the applicant's detention in a single cell for security and separation purposes, while retaining most, if not all, of his amenities in accordance with South African domestic law, is completely compatible with the overarching principles of the Nelson Mandela Rules. Additionally, it seems to us that any restriction that may have been imposed is necessary for his own safety, the security and good order of the correctional centre where he is detained and is permissible in terms of section 46 of the Act.¹¹

[70] More so, Pollsmoor, as a remand detention facility, is grossly overpopulated and severely under-resourced. There is also an increased risk of hygiene and

¹¹ Section 46 of the Act provides: '(1) Unsentenced prisoners may be subjected only to those restrictions necessary for the maintenance of security and good order in the prison and must, where practicable, be allowed all the amenities to which they could have access outside prison.

(2) The amenities available to unsentenced prisoners which may be restricted for disciplinary purposes must be determined by regulation.'

disease for the applicant if placed in Pollsmoor. The respondents explained that the applicant will be at a higher risk of contracting diseases and illnesses because of his medical condition. Helderstroom is much better equipped in terms of safety and security to ensure the applicant's safety and maintain good order within the facility.

[71] In conclusion on this point, we find that the applicant is not being detained in solitary confinement in Helderstroom. Instead, he is kept in a single cell, which does not constitute or amount to solitary confinement.

(c) Sentenced prisoners and Remand Detainees

[72] The applicant asserted that he was treated as a sentenced prisoner at Brandvlei and continues to be treated as such at Helderstroom. The applicant further contends that he has had all the privileges and rights of remand detainees that ought to be available to him stripped and violated, and that he was treated no differently than sentenced prisoners. The respondents, on the other hand, contend that the applicant is detained in a single cell for 22 to 23 hours and is permitted to be outside his cell for one hour of exercise. Remand detainees exercise separately from convicted offenders and at different times of the day.

[73] Section 7(2)(a) of the Act provides that sentenced prisoners must be kept separate from unsentenced prisoners. In *Zealand v Minister for Justice and Constitutional Development and Another*,¹² the Constitutional Court held that, as a rule, remand detainees must be kept separately from and treated differently from sentenced prisoners. The court found that stripping a remand detainee of the rights afforded to remand detainees by treating them as a sentenced prisoner amounts to a deprivation of freedom contemplated by s 12(1)(a) of the Constitution. This deprivation cannot be arbitrary and without just cause.

[74] The respondents refuted the submission that the applicant is treated as a sentenced prisoner. The respondents acknowledged that the applicant is a remand detainee and is presumed innocent until proven guilty. In our view, the fact that the

¹² 2008 (4) SA 458 (CC) para 30.

applicant is detained at a maximum prison does not, per se, without more, suggest that he is treated as a sentenced prisoner. As foreshadowed above, the applicant is detained in Helderstroom in a single cell whilst awaiting trial, to ensure his safety and maintain good order within the facility. The suggestion that he is treated as a sentenced prisoner is fallacious and unsustainable.

(d) Inability to access lawyers

[75] The applicant avers that he cannot properly consult with his lawyers at Helderstroom. Section 17(4) of the Act establishes that prisoners facing trial or sentence must be provided with the opportunities and facilities to prepare their defence. The applicant has the right in terms of sections 35(3)(b) and 35(2)(b) of the Constitution to an adequate time for preparation of his defence for the fair trial standard to be met and to consult with a legal practitioner. The applicant asserts that his consultation with his attorney is limited to one hour despite the multifaceted and complex nature of his case. The applicant also contends that his telephonic consultation is limited to approximately 20 minutes per day with only one legal representative. This is despite him being represented by several lawyers on different matters.

[76] In this regard, Counsel for the applicant submitted that the applicant's detention at Helderstroom is unlawful. Mr Hodes argued that these violations of the regulations unjustifiably limit the applicant's right to a fair trial, which is guaranteed in s 35 of the Constitution. It was contended that the applicant cannot be detained at Helderstroom in circumstances where he is effectively deprived of the right to consult his lawyers.

[77] The respondents refuted the applicant's assertions that the telephone consultations are limited to 20 minutes per day. According to the respondents, telephone calls are often longer. However, inmates cannot remain on the phone for long periods at a time. Legal visits are permitted between 09h00 and 15h00 from Monday to Friday. The respondents noted that legal visits are also permitted over weekends with prior arrangements and permission from the head of the centre.

[78] From the department's record, the applicant has never been denied access to his legal representatives. Expressed differently, there is no truth to the allegation that the applicant was and is unable to prepare and consult effectively with his legal team while detained at Helderstroom. This allegation is contradicted by the legal visit permits and telephone register, which demonstrate that the applicant has not been precluded or unreasonably restricted from accessing his legal representatives for the purpose of consulting with them to prepare for his trial. The case notes for Brandvlei and Helderstroom confirm that the applicant had every opportunity to consult with his legal representatives throughout his detention.

[79] Moreover, the respondents stressed that the applicant has full access to his legal representatives every day, should his attorneys wish to consult with him on a regular basis. Helderstroom, which is situated in Caledon, is approximately one and a half hours from Cape Town and is easily accessible by car. Although some legal representatives and family members complain about its location, this does not stop visitation. Inconvenience cannot be a determining factor in the applicant's transfer to Pollsmoor. Nothing prevents the applicant and his legal representatives from fully preparing for his trial at Helderstroom. Arrangements can be made for consultations even on weekends in preparation for the trial. At the risk of repetition, the mere fact that Helderstroom may be slightly inconvenient because it is further away than Pollsmoor is not a good or justifiable reason to transfer the applicant to Pollsmoor.

Conclusion

[80] The applicant does not have the right to choose a correctional centre where he is to be placed. The applicant does not have a right to be transferred to Pollsmoor. It is impermissible in law for this Court to order that an inmate be transferred to a particular correctional centre unless his transfer from one centre to the other was based on malicious grounds. The power to transfer falls within the exclusive authority of the National Commissioner or his delegated official. Such an order would usurp the National Commissioner's powers and violate the separation of powers doctrine. The respondents have provided legitimate and justifiable reasons for the applicant's transfer or movement from Pollsmoor to Brandvlei and

Helderstroom. We conclude, therefore, that the applicant's transfer is entirely lawful and justifiable.

Order

[81] Given all these considerations, the following order is granted:

1. The applicant's application is hereby dismissed.
2. Each party is ordered to pay its own costs.

LEKHULENI JD
JUDGE OF THE HIGH COURT

NZIWENI CN
JUDGE OF THE HIGH COURT

APPEARANCES

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