

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

Case Number: **2024-059540/
SS121/2013**

(1)	REPORTABLE: YES
(2)	OF INTEREST TO OTHER JUDGES: YES
(3)	REVISED: YES
<u>31 July 2026</u>	
DATE	SIGNATURE

In the matter between:

CARRINGTON ROGER LAUGHTON

Applicant

And

**THE MINISTER OF JUSTICE, AND
CORRECTIONAL SERVICES**

1st Respondent

**NATIONAL COMMISSIONER CORRECTIONAL
SERVICES**

2nd Respondent

**CHAIRPERSON OF THE
CASE MANAGEMENT COMMITTEE**

3rd Respondent

CHAIRPERSON OF THE CORRECTIONAL

4th Respondent

SUPERVISION AND PAROLE BOARD

5th Respondent

(Johannesburg Management Area - Mr. Luckyboy Mathiba)

THE AREA COMMISSIONER, JOHANNESBURG

6th Respondent

THE HEAD OF CENTRE 'C', JOHANNESBURG

CORRECTIONAL CENTRE

(Johannesburg Prison – Mrs Jonas)

DIRECTOR OF PUBLIC PROSECUTIONS

GAUTENG LOCAL DIVISION, JOHANNESBURG

7th Respondent

Criminal Procedure Act 51 of 1977, section 276A(3)(a)(ii) – Conversion of sentence to correctional supervision – Meaning of "date of release" – Offences committed in 1999 – Parole eligibility governed by law applicable at date of offence – *Phaahla v Minister of Justice and Correctional Services* 2019 (2) SACR 88 (CC) and *Price v Minister of Correctional Services* 2008 (2) SACR 64 (SCA); applied *Swart v Minister of Correctional Services* 2011 (2) SACR 217 (WCC); distinguished – "Date of release" includes earliest parole consideration date under the 1959 Correctional Services Act regime and is not confined to sentence expiry date – Applicant consequently satisfied temporal jurisdictional requirement in section 276A(3)(a)(ii) – Nature of proceedings – proceedings constitute a sui generis criminal sentence reconsideration process and not ordinary civil motion proceedings – court on reconsideration vested with same powers as when imposing sentence after conviction – section 276A(3)(d) and (e) empowering court to confirm sentence, convert sentence to correctional supervision, or impose any other proper sentence – participation of prosecuting authority contemplated by section 276A(3)(b) requiring consultation with prosecutor before enrolment – Director of Public Prosecutions having direct and substantial interest in outcome of proceedings affecting existing criminal sentence – DPP entitled to be heard before sentence reconsidered – proceedings distinguished from ordinary civil applications notwithstanding that relief may initially be sought by notice of motion.

Correctional Services – Statutory discretion and administrative inaction – Offender not entitled to approach court for direct conversion of sentence absent recommendation contemplated in section 276A(3) – Court not empowered on the papers to determine suitability for correctional supervision – However, correctional authorities may not ignore a request for consideration under the statutory framework – Failure to consider and determine request constitutes failure to perform statutory duty and offends the principle of legality – Appropriate remedy is to compel consideration of the request and communication of a reasoned decision, not direct conversion of sentence.

Costs – Applicant unsuccessful in obtaining primary relief but substantially successful in establishing eligibility for conversion of sentence and unlawful administrative inaction by correctional authorities – Costs awarded against third to sixth respondents.

JUDGMENT

MODIBA, J

- [1] This application concerns the proper interpretation and operation of section 276A(3) of the Criminal Procedure Act 51 of 1977 (CPA).¹ While ostensibly directed at the possible conversion of a sentence of direct imprisonment to correctional supervision, it raises a number of interrelated questions concerning the statutory scheme established by that section. These include the meaning of “date of release” in section 276A(3)(a)(ii); the legal nature of proceedings instituted pursuant to section 276A(3); the role of the Director of Public Prosecutions (DPP) in such proceedings; whether the applicant satisfies the statutory requirements for consideration under the section; and the extent to which a court may intervene where correctional authorities have failed to perform functions entrusted to them by the legislative framework.
- [2] The applicant is Mr Carrington Roger Laughton (Mr Laughton), an inmate at the Johannesburg Correctional Centre. On 17 February 2016, following a trial before Ranchod J in the Gauteng Division of the High Court, Johannesburg, Mr Laughton was convicted on various charges. On 6 June 2016, he was sentenced to various terms of imprisonment. Certain of the sentences were ordered to run concurrently. The effective sentence imposed is 30 years’ imprisonment. He started serving his sentence immediately after it was imposed.
- [3] During his incarceration, Mr Laughton made various requests to correctional authorities concerning the possible conversion of his sentence from direct imprisonment to correctional supervision in terms of section 276A(3)(a)(ii). He

¹ Unless otherwise specified, references to statutory provisions are to the CPA.

addressed correspondence to the Case Management Committee (CMC) during 2023 and sought information regarding the progress of such process.

- [4] On 18 April 2024, the Head of Centre at the Johannesburg Correctional Centre (Head of Centre) advised Mr Laughton's attorney in writing that Mr Laughton should make a submission for conversion of sentence through the court that imposed the sentence. Acting on that advice, Mr Laughton launched the present application seeking the conversion of his sentence from direct imprisonment imposed under section 276(1)(b) to correctional supervision in terms of section 276A(3)(a)(ii).
- [5] In support of the application, Mr Laughton contends that the offences for which he was convicted were committed during May 1999 and that, in determining his parole eligibility and release date, the provisions of the Correctional Services Act 8 of 1959 (1959 Act) apply. He relies on authorities dealing with parole eligibility and the calculation of release dates for offenders whose crimes were committed before the commencement of the relevant provisions of the Correctional Services Act 111 of 1998 (1998 Act).
- [6] Mr Laughton alleges that, on the basis of the applicable parole regime and the allocation of maximum credits, he became or would become eligible for parole after serving one-third of his effective sentence, which date he calculates as 6 May 2026. He consequently contends that his release date is not more than five years in the future and that he therefore satisfies the jurisdictional requirements of section 276A(3)(a)(ii).
- [5] Mr Laughton further relies on personal circumstances which, according to him, demonstrate rehabilitation and suitability for correctional supervision. These include his continued contact with his children and family, the completion of several paralegal studies courses while incarcerated, his responsibilities in the prison library, the absence of disciplinary infringements during his incarceration, and his asserted participation in rehabilitation programmes.

- [6] The application was initially only opposed by the third to sixth respondents. I conveniently refer to them as the correctional services respondents. They do not dispute Mr Laughton's conviction and sentence. Their principal defence is that he is not entitled to approach the court directly for conversion of his sentence and that he has failed to satisfy the jurisdictional requirements prescribed by section 276A(3)(a)(ii).
- [7] They contend that section 276A(3) does not permit an offender to initiate the process. Instead, where a prisoner may be a suitable candidate for correctional supervision, the Commissioner or a Parole Board must first form the opinion that the offender is fit to be subjected to correctional supervision and thereafter apply to the clerk or registrar of the court for reconsideration of the sentence. According to the correctional services respondents, the discretion to determine whether an offender is eligible and suitable for reconsideration lies initially with the Commissioner or his delegate and not with the court. The court's role only arises once the statutory process has been triggered and the necessary recommendation has been made.
- [8] The correctional services respondents further allege that Mr Laughton has failed to establish the jurisdictional facts required by the section. They point out that, apart from the application for a victim offender dialogue, there is no indication before the court of rehabilitative programmes completed by Mr Laughton, nor sufficient evidence addressing the factors relevant to suitability for correctional supervision, including rehabilitation, employment prospects and accommodation upon release.
- [9] The correctional services respondents state that the Department is still in the process of dealing with Mr Laughton's request for a victim offender dialogue and that there is no evidence showing that the Commissioner has completed consideration of Mr Laughton's request or refused to do so. For that reason, they contend that the application is premature. Although they admit the existence of the letter from the Head of Centre dated 18 April 2024, they deny that it constituted a directive authorising Mr Laughton to institute the present proceedings or to bypass the statutory procedure prescribed in section 276A(3). They maintain that the letter did not dispense with the requirement that the

Commissioner initiate the reconsideration process. The correctional services respondents therefore deny that Mr Laughton is eligible for, or entitled to, conversion of his sentence to correctional supervision and pray for the dismissal of the application.

DPP joinder application

[10] After the launching of the main application, the DPP, instituted separate proceedings seeking to be joined as a respondent in the application. The DPP asserts an interest in the proceedings arising from its role in the prosecution that led to Mr Laughton's conviction and sentence. Mr Laughton initially opposed the joinder application, contending that the DPP has not demonstrated the direct and substantial interest required for joinder. The DPP did not file a replying affidavit in its application for joinder, nor did they set the matter down from 28 June 2024 to 29 April 2025. It therefore stands to be determined with the main relief sought by Mr Laughton.

[11] Mr Laughton's case on joinder is that the prosecution was completed upon conviction and sentence; that the present proceedings concern conversion of sentence and correctional supervision; that no relief is sought against the DPP; and that the DPP will suffer no prejudice if not joined. Mr Laughton accordingly seeks dismissal of the joinder application and an order permitting the determination of his application for conversion of sentence against the correctional services respondents cited in the main application.

[12] Meanwhile on 16 July 2024 the DPP filed an answering affidavit in the main application. On 29 April 2025, Mr Laughton withdrew his opposition in the joinder application. It therefore serves before me unopposed.

[13] The DPP contends that these proceedings cannot properly be determined in the absence of the prosecuting authority, which has a direct and substantial interest in the outcome and ought therefore to have been joined. According to the DPP, proceedings under section 276A(3) are not ordinary civil motion proceedings but

a criminal sentencing reconsideration process. Reliance is placed on section 276A(3)(d), which provides that, upon reconsideration, the court enjoys the same powers as if it were considering sentence after conviction and must apply the procedure applicable to sentencing proceedings, *mutatis mutandis*.

[16] The DPP submits that the court's powers are not confined to deciding whether a sentence of imprisonment should be converted to correctional supervision. Rather, the court may confirm the existing sentence or impose any other competent sentence in terms of section 276A(3)(e). Since the reconsideration may result in the exercise afresh of the court's sentencing discretion, the DPP contends that the interests of justice require that the prosecuting authority be afforded an opportunity to participate in the proceedings and address the court before any sentence is reconsidered or altered.

[17] For reasons I set out at a pertinent point in this judgment, the DPP ought to be joined to an application for conversion of sentence in terms of section 276A(3).

Issues for determination

[18] The material facts between the parties are largely common cause. Mr Laughton was convicted and sentenced on 6 June 2016 for offences committed in May 1999. The effective sentence is 30 years' imprisonment which he commenced serving on 6 May 2016. He lodged requests with the CMC concerning conversion of sentence and a victim offender dialogue. No recommendation by the correctional services authorities has been produced before the Court. The correctional services respondents have not referred the matter to the sentencing court in terms of s 276A(3). The parties accept that s 276A(3) is the governing provision.

[19] Although the correctional services respondents criticise Mr Laughton for not placing sufficient evidence before court regarding rehabilitation, prison conduct, programmes attended, accommodation and employment prospects, they do not

appear to put up positive evidence contradicting his allegations. It is not their case that he has a poor disciplinary record; failed rehabilitation programmes; lacks accommodation upon his release; lacks employment prospects; or is unsuitable for correctional supervision. The issues they raise are largely legal. They contend that the Court lacks the necessary assessment and recommendation from the correctional authorities. That is a complaint about the evidential and procedural foundation for the relief, not a genuine dispute of fact.

[20] That said, in my view, the issues that arise for determination are entirely legal. They are as follows:

- a. Is Mr Laughton legally eligible for consideration of conversion of his sentence in terms of section 276A(3)?
- b. Is the DPP a necessary party to proceedings under section 276A(3).
- c. What is the nature of proceedings under section 276A(3): are they civil motion proceedings, or a criminal sentencing reconsideration process?
- d. Has the statutory correctional services process been properly?
- e. Have the correctional services respondents failed to perform their requisite statutory duties and if so, is judicial intervention warranted?
- e. If judicial intervention is warranted, what relief is appropriate?

Eligibility for consideration of conversion of sentence

[21] Mr Laughton's eligibility for consideration of conversion of sentence hinges on the meaning of the phrase –

"his date of release in terms of the provisions of the Correctional Services Act ... is not more than five years in the future"

in section 276A(3)(a)(ii) of the Criminal Procedure Act. The answer depends on which correctional services regime governs Mr Laughton's sentence.

[22] Mr Laughton contends that he satisfies the jurisdictional requirement contained in section 276A(3)(a)(ii) namely that his "date of release" is not more than five years in the future. He submits that the determination of his release date must be made with reference to the parole regime applicable at the time the offences were committed, namely May 1999. Relying on *Phaahla v Minister of Justice and Correctional Services and Another*² (*Phaahla*), Mr Laughton submits that parole eligibility is governed by the law in force at the date of the commission of the offence and not by legislation enacted subsequently.³ He accordingly argues that his parole eligibility falls to be determined under the 1959 Act, read with the transitional provisions in section 136(2) of the 1988 Act.

[23] Mr Laughton further relies on section 65(4)(a) of the 1959 Act, read with the credit regime preserved by section 136(2) of the 1998 Act, to contend that he became eligible to be considered for parole after serving one-third of his effective sentence. On his calculation, his earliest parole consideration date is 6 May 2026. His principal submission is founded on the decision of the Supreme Court of Appeal (SCA) in *Price v Minister of Correctional Services*⁴ (*Price*). He submits that *Price* authoritatively interpreted the phrase "date of release" in section 276A(3)(a)(ii) and held:

"The 'date of release' referred to in section 276A(3)(a)(ii) in the CP Act means, for the purpose of a prisoner subject to the provisions of the 1959 Act relating to his or her placement under community corrections, the date

² *Phaahla v Minister of Justice and Correctional Services and Another* 2019 (2) SACR 88 (CC).

³ *Phaahla* para 70.

⁴ *Price v Minister of Correctional Services* 2008 (2) SACR 64 (SCA) (*Price*).

on which such prisoner may be considered for placement on parole or the date on which the prisoner may be released upon the expiration of his sentence, whichever occurs first."⁵

- [24] Mr Laughton accordingly contends that because his earliest parole consideration date is 6 May 2026, that date constitutes his "date of release" for purposes of section 276A(3)(a)(ii). It follows, so the argument goes, that his release date falls within five years and that he qualifies for consideration under section 276A(3)(a)(ii).
- [25] The correctional services respondents dispute Mr Laughton's interpretation of section 276A(3)(a)(ii). They submit that parole and correctional supervision constitute privileges rather than rights and that an offender's eligibility for parole cannot be equated with a right to release. According to these respondents, the fact that an offender may be considered for parole does not mean that he will necessarily be released. They rely on sections 73(1)(a), 73(3) and 73(4) of the 1988 Act. They submit that those provisions demonstrate a legislative intention that a sentenced offender remains incarcerated for the duration of the sentence imposed and is released only when the sentence expires, unless lawfully placed under one of the recognised forms of community corrections.
- [26] The correctional services respondents further contend that the ordinary meaning of "date of release" in section 276A(3)(a)(ii) is therefore the date upon which the sentence expires and not the date upon which the offender first becomes eligible for parole consideration. In support of this submission, they rely on *Swart v Minister of Correctional Services and Others*⁶, where the Court observed that, under the 1998 Act, there is no express indication that parole eligibility should be equated with the date of release for purposes of section 276A(3)(a)(ii). The correctional services respondents emphasize the discussion in *Swart* at paragraphs 14 and 22 and submit that *Price* is distinguishable because it concerned the 1959 Act and the statutory framework then applicable. They

⁵ *Price* paragraph 14.

⁶ *Swart v Minister of Correctional Services and Others* 2011 (2) SACR 217 (WCC)

accordingly argue that Mr Laughton's sentence expires on 4 May 2036, that this date remains more than five years in the future, and that he therefore does not satisfy the threshold requirement contained in section 276A(3)(a)(ii) of the CPA.

[27] The resolution of this issue turns upon the meaning of the phrase "date of release" in section 276A(3)(a)(ii) of the CPA and, in particular, whether Mr Laughton's position is governed by the 1959 Act or by the 1998 Act. In my view, the starting point must be the Constitutional Court's decision in *Phaahla*. The Constitutional Court unequivocally affirmed that parole eligibility is determined by the law applicable at the time of the commission of the offence. The offences in the present matter were committed during May 1999. Mr Laughton's parole position must therefore be determined in accordance with the statutory regime preserved by the transitional provisions applicable to offenders who committed offences before the relevant changes introduced by the 1998 Act.

[28] Once that conclusion is reached, the decision in *Price* becomes directly relevant. The issue before the SCA in *Price* was precisely the interpretation of the phrase "date of release" in section 276A(3)(a)(ii). After examining the statutory context and the provisions of the 1959 Act relating to community corrections and parole, the SCA rejected the contention that the phrase necessarily referred only to the expiry of sentence. The SCA ultimately held, in clear and unequivocal terms, that for prisoners subject to the provisions of the 1959 Act:

"The 'date of release' referred to in section 276A(3)(a)(ii) ... means ... the date on which such prisoner may be considered for placement on parole or the date on which the prisoner may be released upon the expiration of his sentence, whichever occurs first."⁷

[29] That pronouncement is directly applicable to the facts before this Court. The correctional services respondents' reliance on *Swart* does not alter the position. First, *Swart* is a decision of a single Judge of the High Court and cannot prevail over a clear pronouncement of the SCA. Secondly, *Swart* itself recognised the significance of the distinction between the 1959 Act and the 1998 Act. The

⁷ See *Price* at fn. 5.

reasoning in *Swart* was premised largely upon the absence, within the 1998 Act, of statutory language analogous to that considered in *Price*. Properly understood, *Swart* did not purport to overrule or qualify *Price*; nor could it.

[30] The respondents' interpretation further encounters a conceptual difficulty. If Mr Laughton remains subject to the parole regime applicable under the 1959 Act, then the very question answered in *Price* has already been settled by the SCA. The phrase "date of release" for such offenders does not mean only the date of ultimate sentence expiry. It includes the date upon which the offender first becomes eligible for parole consideration, where that date occurs earlier than the sentence expiry date. The correctional services respondents' interpretation would, in effect, require this Court to depart from the binding ratio of *Price*. There is no basis in law for doing so.

[31] I therefore find that: Mr Laughton's offences were committed in May 1999; in accordance with *Phaahla*⁸, Mr Laughton's parole eligibility must be determined with reference to the law applicable at the time the offences were committed; he accordingly falls to be considered under the parole regime preserved by the transitional provisions relating to the 1959 Act.

[32] I further find that the interpretation adopted by the SCA in *Price* is directly applicable. The phrase "date of release" in section 276A(3)(a)(ii) means, in relation to an offender subject to the 1959 Act regime, the date upon which the offender may first be considered for parole or the date of sentence expiry, whichever occurs first. If Mr Laughton's earliest parole consideration date is 6 May 2026 as he contends, he satisfies the temporal jurisdictional requirement contained in section 276A(3)(a)(ii) of the Criminal Procedure Act.

[33] In that case, the correctional services respondents' contention that only the sentence expiry date of 4 May 2036 is relevant cannot be sustained. Mr Laughton's interpretation accords with the binding authority of the SCA and must be preferred.

⁸ See *Phaahla* at fn. 3.

The nature of section 276A(3) proceedings and the role of the Director of Public Prosecutions

[34] I determine the nature of section 276A(3) proceedings and the role of the DPP with reference to the applicable statutory provision. Section 276A(3) provides as follows:

“276A Imposition of correctional supervision, and conversion of imprisonment into correctional supervision and *vice versa*

(3)(a) Where a person has been sentenced by a court to imprisonment for a period-

- (i) not exceeding five years; or
- (ii) exceeding five years, but his date of release in terms of the provisions of the Correctional Services Act, 1959 (Act 8 of 1959), and the regulations made thereunder is not more than five years in the future, and such a person has already been admitted to a prison, the Commissioner or a parole board may, if he or it is of the opinion that such a person is fit to be subjected to correctional supervision, apply to the clerk or registrar of the court, as the case may be, to have that person appear before the court *a quo* in order to reconsider the said sentence.

(b) On receipt of any application referred to in paragraph (a) the clerk or registrar of the court, as the case may be, shall, after consultation with the prosecutor, set the matter down for a specific date on the roll of the court concerned.

(c) The clerk or registrar of the court, as the case may be, shall for purposes of the reconsideration of the sentence in accordance with this subsection-

- (i) within a reasonable time before the date referred to in paragraph (b) submit the case record to the judicial officer who imposed the sentence or, if he is not available, another judicial officer of the same court: Provided that if the evidence in the case has been recorded by mechanical means, only such

parts of the record as may be indicated as necessary by such a judicial officer, shall be transcribed for the purposes of this subsection;

(ii) inform the Commissioner or the parole board in writing of the date for which the matter has been set down on the roll and request him or it to furnish him with a written motivated recommendation before that date for submission to the judicial officer; and

(d) Whenever a court reconsiders a sentence in terms of this subsection, it shall have the same powers as if it were considering sentence after conviction of a person and the procedure adopted at such proceedings shall apply *mutatis mutandis* during such reconsideration: Provided that if the person concerned concurs thereto in writing, the proceedings contemplated in this subsection may be concluded in his absence: Provided further that he may nevertheless be represented at such proceedings or cause to submit written representations to the court.

(e) After a court has reconsidered a sentence in terms of this subsection, it may-

- (i) confirm the sentence or order of the court *a quo*;
- (ii) convert the sentence into correctional supervision on the conditions it may deem fit; or
- (iii) impose any other proper sentence:

Provided that the last-mentioned sentence, if imprisonment, shall not exceed the period of the unexpired portion of imprisonment still to be served at that point.

(4) (a) A court, whether constituted differently or not, which has imposed a punishment referred to in subsection (1) or (2) on a person or has converted his sentence under subsection (3) (e) (ii), may at any time, if it is found from a motivated recommendation by a probation officer, the Commissioner or the parole board that that person is not fit to be subject to correctional supervision or to serve the imposed punishment, reconsider that punishment and impose any other proper punishment.

(b) The procedure referred to in subsection (3) shall apply *mutatis mutandis* to the reconsideration of any punishment under this subsection."

[35] The heading or popular description of the process may suggest that the court is only asked to determine whether imprisonment should be converted into correctional supervision. However, the actual powers conferred by the subsection are materially wider. Section 276A(3)(d) provides that on reconsideration:

"[the court] shall have the same powers as if it were considering sentence after conviction of a person and the procedure adopted at such proceedings shall apply *mutatis mutandis*".

[36] Section 276A(3)(e) unequivocally empowers the court to confirm the original sentence; convert it to correctional supervision; or "impose any other proper sentence". The phrase "any other proper sentence" is very broad. The court is therefore not confined to choosing between imprisonment and correctional supervision. It is effectively re-seized with the sentencing discretion, *albeit* within the limits imposed by the subsection, including the *proviso* relating to a further imprisonment sentence. This indicates that the legislature envisaged something more akin to a sentencing hearing than a conventional application procedure.

[37] That said, I would be hesitant to characterise these proceedings as civil motion proceedings merely because an "application" initiates them. The subsection does not contemplate a notice of motion, affidavits, respondents and applicants in the ordinary civil sense. Instead, the Commissioner or parole board applies to the clerk or registrar; the matter is set down on the court roll; the criminal record is placed before the judicial officer; a recommendation is submitted; the court exercises sentencing powers equivalent to those exercised after conviction.

[38] Most significantly, section 276A(3)(d) expressly imports the procedure applicable when sentence is considered after conviction. That, in my view, strongly suggests a *sui generis* criminal proceeding rather than a civil application in motion court. The proceeding occurs before the criminal court which imposed

sentence (or another judicial officer of that court), and involves the exercise of criminal sentencing powers. The strongest textual support for the DPP's contentions is found in s 276A(3)(b) which provides that:

"the clerk or registrar ... shall, after consultation with the prosecutor, set the matter down..."

- [39] Therefore, the legislature specifically requires consultation with the prosecutor before enrolment. That provision would be difficult to explain if DPP had no legally cognisable interest in the outcome. While consultation is not identical to joinder, it demonstrates a legislative expectation that the prosecution is a participant in the process. Further, once one reaches section 276A(3)(d), the imported sentencing procedure would ordinarily entail an opportunity for the State Advocate to address the court on sentence. It would be highly irregular for a court to exercise sentencing powers afresh without hearing the prosecution.
- [40] Therefore, applying the usual test for joinder, the question is whether the DPP has a direct and substantial interest in the order sought. In my view, given that the main relief sought is the conversion of sentence in terms of section 276A(3), the DPP meets the usual test for joinder as the proceedings are akin to sentencing proceedings. At such proceedings, the prosecution advances the State's case, and the order sought may replace the original sentence; maintain it; reduce it through correctional supervision; or substitute another sentence entirely.
- [41] The State is the party that prosecuted Mr Laughton and obtained the conviction and sentence represented by a DPP official. The proposed reconsideration directly affects the criminal order obtained in those proceedings. More importantly, because the court may impose "any other proper sentence", the State has an obvious interest in making submissions concerning the seriousness of the offence; the original sentencing rationale; subsequent conduct and circumstances; victim interests where relevant; and the appropriateness of any substituted sentence. Absent the participation of the prosecuting authority, the court would hear only the recommendation of the Correctional Services

authorities and whatever representations are advanced on behalf of Mr Laughton. That would sit uneasily with the adversarial sentencing model contemplated by section 276A(3)(d).

[42] I therefore find that a section 276A(3) proceeding is essentially a criminal sentencing reconsideration process, not an ordinary civil motion proceeding. The court's powers extend far beyond merely converting imprisonment to correctional supervision. Since the court enjoys the same powers as at sentence and may impose "any other proper sentence", the participation of the prosecuting authority is necessary. Whether one labels that requirement as "joinder" in the strict legal sense may be debatable, but the DPP certainly has a direct and substantial interest in the outcome and ought to be joined in the present proceedings.

[43] That said, it is necessary to clarify that in a criminal sentencing reconsideration process, the conventional joinder issue does not arise. What arises is more of a question of the prosecution authority's statutory participation and *audi alteram partem* within a criminal sentencing reconsideration process. This formulation seems more firmly grounded in the wording of section 276A(3)(b) and (d) and is consistent with the nature of section 276A(3) proceedings.

Applicable statutory processes and the need for judicial intervention

[44] Mr Laughton submits that he initiated the statutory process for consideration of the conversion of his sentence by repeatedly engaging the relevant correctional authorities. According to Mr Laughton, the correspondences he addressed to the CMC did not elicit any response from the correctional authorities. He relies on correspondence dated 18 April 2024 in which the Head of Centre allegedly advised his attorney to approach the Court regarding the conversion of his sentence.

[45] Mr Laughton accepts that the discretion contemplated in section 276A(3) of the CPA ultimately vests in the Commissioner and, where applicable, the sentencing court. Ultimately, his complaint is not that he is presently entitled to conversion

of sentence, but that the officials charged with administering the statutory process failed to consider his request at all. In those circumstances, he submits that he exhausted the avenues reasonably available to him and was left with no alternative but to seek judicial intervention compelling the correctional services respondents to perform their statutory functions.

[46] Mr Laughton relies on the constitutional principle that public power must be exercised lawfully, reasonably and procedurally fairly and that a failure by public officials to make a decision where they are required to do so may justify judicial intervention.⁹ In this regard, Mr Laughton submits that the correctional services respondents were not entitled simply to ignore his requests but were obliged to exercise the powers and perform the functions entrusted to them under the applicable correctional services legislative framework.

[47] The correctional services respondents contend that Mr Laughton has failed to establish the jurisdictional requirements for consideration under section 276A(3) of the CPA. They submit that conversion of a sentence to correctional supervision does not commence merely upon an offender addressing correspondence to the CMC. The statutory scheme requires the Commissioner of Correctional Services or a duly authorised delegate first to form the opinion that the offender is suitable for reconsideration of sentence before any application may be directed to the sentencing court. Reliance is placed on section 276A(3)(a) and (b).

[48] The correctional services respondents further rely on section 42 of the 1998 Act and section 63 of the 1959 Act, which contemplate an evaluative process involving the CMC and Correctional Supervision and Parole Board before recommendations are made concerning placement under correctional supervision. According to the correctional services respondents, Mr Laughton failed to place before the relevant authorities sufficient information regarding rehabilitation, correctional programmes, community support, accommodation, employment prospects and other factors relevant to suitability. They contend that

⁹ *MEC for Environmental Affairs and Development Planning v Clairison's CC* 2013 (6) SA 235 (SCA) (*Clairison's CC*) paragraph 18-22.

Mr Laughton effectively seeks to bypass the statutory process and obtain relief directly from the court.

- [49] The correctional services respondents also place reliance on their determination of Mr Laughton's release date being 4 May 2036 and that he falls outside the category of offenders who may presently be considered for the conversion of sentence contemplated in section 276A(3)(a)(ii). They submit that the statutory requirements governing release mechanisms must be satisfied before a court may intervene and that the existence of the necessary jurisdictional facts is a prerequisite to the exercise of statutory powers. Given my earlier finding on the meaning of "date of release" in section 276A(3)(a)(ii), this cannot justify their failure to consider and make a decision on Mr Laughton's request.
- [50] The dispute is not whether Mr Laughton is presently entitled to an order converting his sentence into correctional supervision. Ultimately, Mr Laughton expressly accepts that such relief falls outside the powers of this Court in the present proceedings and that the relevant statutory discretion rests with correctional authorities in the first instance. The question is whether the correctional services respondents were obliged to consider and respond to Mr Laughton's request and whether their failure to do so constitutes a failure to perform a statutory duty.
- [51] The legislative scheme created by section 276A(3), read with section 42 of the 1998 Act and section 63 of the 1959 Act envisages an administrative process involving assessment, investigation and recommendation by correctional authorities before a matter can be referred to the sentencing court. The process is not triggered automatically, nor does an offender enjoy an automatic right to conversion of sentence. The relevant authorities retain a discretion based upon the offender's eligibility and suitability. However, the existence of such a discretion does not mean that correctional authorities may simply ignore a request brought to their attention. A statutory discretion must be exercised. It cannot be defeated by administrative inaction.
- [52] In *Clairison's CC*, the SCA emphasised that where legislation confers a power coupled with a duty to consider whether its exercise is warranted, a failure to

make a decision may itself constitute reviewable conduct. Likewise, the Constitutional Court in *Masetlha v President of the Republic of South Africa* affirmed that the exercise of public power must comply with the principle of legality.¹⁰ The principle of legality requires not only that public powers be lawfully exercised, but also that statutory powers and functions be performed when the occasion for their performance arises.

- [53] Mr Laughton's uncontested evidence is that he addressed three separate communications to the CMC between May and July 2023. No substantive response was provided. There is similarly no evidence that the request was formally considered, rejected as premature, referred for assessment, or dealt with in accordance with any recognisable administrative process.
- [54] The correctional services respondents seek to justify this failure largely on the basis that Mr Laughton's release date is supposedly 4 May 2036. As already stated, that contention cannot stand in light of my earlier finding that if Mr Laughton's release date is 6 May 2026 as he contends, he meets the requisite temporal statutory requirements. Whether Mr Laughton ultimately meets the requirements for referral under section 276A(3) is a matter for the correctional authorities to determine in the first instance. What they were not entitled to do was simply fail to consider the request altogether.
- [55] That said, Mr Laughton's application succeeds only to a limited extent. Although he has established administrative inaction, he has not established that the jurisdictional requirements for conversion of sentence have already been satisfied. The other statutory requirements for the conversion of sentence cannot be disregarded and the existence of the relevant jurisdictional facts remains a necessary precondition to the exercise of the statutory powers concerned.
- [56] Section 276A(3)(a)(ii) does not permit this Court to determine whether Mr Laughton is suitable for correctional supervision, whether all relevant reports have been compiled, whether rehabilitative requirements have been met, or

¹⁰ *Masetlha v President of the Republic of South Africa* 2008 (1) SA 566 (CC) paragraph 81.

whether the Commissioner ought ultimately to form the opinion envisaged in section 276A(3)(a). Those are matters entrusted by statute to correctional authorities and not to the Court. The Court's role is therefore confined to ensuring that the statutory process is undertaken lawfully and that Mr Laughton receives a decision.

- [57] I am satisfied that Mr Laughton took reasonable steps to place his request before the relevant correctional authorities. I am further satisfied that the correctional services respondents failed to provide any meaningful response to that request. Their explanation for that failure rests substantially on an incorrect understanding of Mr Laughton's release date. In light of the finding regarding Mr Laughton's release date, the suggestion that consideration of his request was unnecessary because his release lay many years in the future cannot be sustained.
- [58] Mr Laughton has nevertheless not established that he is entitled to conversion of his sentence or that the jurisdictional requirements contemplated by s 276A(3) of the CPA have already been met. Those are matters that remain for consideration by the correctional authorities in accordance with the statutory framework. What Mr Laughton has established is that the correctional services respondents failed to perform the less onerous but nonetheless important obligation of considering his request and communicating a decision thereon. To that extent judicial intervention is justified.
- [59] Accordingly, while the Court cannot direct that Mr Laughton's sentence be converted or that he be found suitable for correctional supervision, it is appropriate to order the relevant correctional authorities to consider Mr Laughton's request in accordance with the applicable legislative framework and to communicate their decision, together with reasons, within a reasonable period.
- [60] Mr Laughton sought, as primary relief, an order converting the sentence of direct imprisonment imposed by Ranchod J on 6 June 2016 into a sentence of correctional supervision in terms of section 276A(3)(a)(ii) of the Criminal Procedure Act 51 of 1977. In the alternative, Mr Laughton seeks an order directing the correctional services respondents, within a specified period, to consider his request and to provide a written and motivated recommendation

indicating whether he is fit to be subjected to correctional supervision and, if so, the conditions that should govern such placement. Mr Laughton further seeks leave to supplement his papers once such recommendation has been furnished, together with an order for costs.

- [61] Ultimately, the primary relief Mr Laughton sought in his notice of motion was not seriously pursued, in my view, correctly so. As appears from the above discussion he succeeded in establishing that correctional authorities failed to properly consider and determine his request. He did not, however, establish that the statutory requirements necessary for the direct conversion of his sentence have been met. The appropriate remedy is therefore not the primary relief sought, but relief directed at ensuring that the statutory process contemplated by s 276A(3) is properly undertaken.

Costs

- [62] As to costs, Mr Laughton has achieved substantial success in relation to the principal issue requiring determination. He has established that his release date for purposes of section 276A(3)(a)(ii) falls within the period contemplated by the section and that the correctional services respondents failed to properly consider and determine his request for referral under the applicable legislative scheme. Although Mr Laughton has not succeeded in obtaining the primary relief of conversion of his sentence, the failure of the correctional services respondents to perform their statutory functions necessitated the present litigation. Had they properly considered his request and communicated a decision thereon, these proceedings may well have been avoided. In those circumstances Mr Laughton achieved substantial success on the issues that ultimately warranted judicial intervention. There is no reason to depart from the general principle that costs should follow the result.

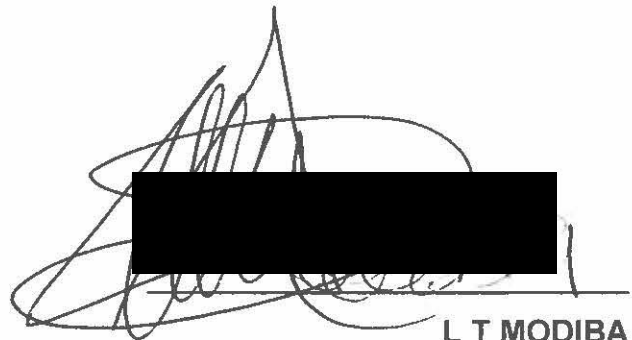
- [63] However, there is no basis for an award either in favour of or against the DPP. While these proceedings were instituted by way of civil process, the relief sought concerns the statutory reconsideration of a criminal sentence and is therefore fundamentally criminal in character. Costs orders are not ordinarily made in

criminal matters. Mr Laughton's lack of success in obtaining conversion of his sentence does not, in my view, provide a sufficient basis for departing from that principle. Nor would it be appropriate to require him to pay the costs of the DPP merely because the prosecuting authority opposed relief in which it had a legitimate legal interest. The interests of justice are best served by making no order as to costs in favour of the DPP.

Order

1. The applicant's claim for an order converting his sentence of direct imprisonment to correctional supervision is dismissed.
2. It is declared that, for purposes of section 276A(3)(a)(ii) of the Criminal Procedure Act 51 of 1977 (CPA), the applicant's release date is the date on which he may be considered for placement on parole or the date on which he may be released upon the expiration of his sentence, whichever occurs first.
3. The relevant correctional authorities are directed, within 30 days of the date of this order, to consider the applicant's request for referral in terms of section 276A(3) of the CPA in accordance with the applicable legislative framework.
4. The *respondents* shall, within the same period, communicate to the applicant a written decision confirming the applicant's release date as contemplated in paragraph 2 of this order and determining his request for conversion of his sentence, together with reasons, indicating:
 - 4.1 whether the applicant is considered suitable for referral under section 276A(3);
 - 4.2 whether the Commissioner or duly authorised functionary is of the opinion that the applicant is fit to be subjected to correctional supervision; and

- 4.3 if such opinion is formed, the recommendation and proposed conditions to be placed before the sentencing court.
5. The applicant is granted leave, should it become necessary, to supplement his papers after receipt of the decision contemplated in paragraph 4 and approach this court for further relief.
6. The respondents are ordered, jointly and severally, the one paying the others to be absolved, to pay the applicant's costs including the costs of counsel on scale C.

A handwritten signature in black ink, appearing to be 'L T Modiba', is written over a solid black rectangular redaction box. The signature is fluid and cursive.

L T MODIBA
JUDGE OF THE HIGH COURT
JOHANNESBURG

Appearances

For the applicant:	Advocate L Metser
Instructed by:	M Strydom Attorneys
For the third to sixth respondents:	Advocate MV Magagane
Instructed by:	State Attorney
For the seventh Respondent:	Advocate VS Sinthumule
Date of hearing:	16 February 2026
Date of judgment:	31 July 2026

This judgment is handed down electronically by circulation to the parties' legal representatives by email and publication on Caselines and SAFLII. The date for the handing down is deemed 4pm on 31 July 2026.