



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

JUDGMENT

Reportable / Not Reportable

Case no: 11060/2024

In the matter between:

JEROME NORMAN CLASSEN

Applicant

and

**BRANDVLEI CORRECTONAL SUPERVISION
AND PAROLE BOARD**

First Respondent

**THE NATIONAL COMMISSIONER:
CORRECTIONAL SERVICES**

Second Respondent

**THE MINISTER OF JUSTICE AND
CORRECTIONAL SERVICES**

Third Respondent

Coram: SLINGERS J et NORTON AJ

Heard: 13 August 2026

Delivered: 08 September 2026

Summary: Administrative Review - Review of Lifelong Parole – Different parole dispensations under Act 8 of 1959- s65(3)(a) provides for lifelong parole for prisoners serving life imprisonment

ORDER

- (i) the condonation application for the late bringing of the review application is granted;
- (ii) the application is dismissed.

JUDGMENT

Slingers J:

Background

- [1] On 9 November 2000 the applicant committed the offence for which he was convicted on 14 March 2002. On 15 March 2002 he was sentenced to life imprisonment and on 20 October 2018 the decision was taken to place the applicant on parole. In accordance with this decision, the applicant was placed on day parole from 4 March 2019 until 3 June 2019 and on 4 June 2019 he was released on lifelong parole.
- [2] The applicant takes no issue with the decision to place him on parole but questions why he was placed on lifelong parole instead of being placed on parole for a limited period after which he would be released unconditionally.
- [3] As a result of his dissatisfaction with being placed on lifelong parole and being of the view that he was unfairly prejudiced thereby, the applicant instituted proceedings in the Equality Court during November 2022. The applicant, having failed to obtain legal assistance drafted and instituted the application on his own.
- [4] On 23 March 2023 the Equality Court application came before Mr Justice Henney who directed that the application be removed from the Equality Court's roll and that the applicant institute review proceedings.

- [5] It is this review application which serves before us and in which the applicant seeks to review and set aside the decision to place him on lifelong parole. Furthermore, the applicant seeks a declarator that the decision to place him on lifelong parole constitutes unfair discrimination against him and that any of the respondents' policies which justify the unlawful discrimination, including Circular 8 of 2019, are invalid and are to be set aside.
- [6] After the matter came before Mr Justice Henney, the applicant unsuccessfully approached the Cape Bar for assistance. Thereafter, the applicant approached Legal Aid South Africa, with his application being approved in January 2024. This resulted in the review application being instituted during April 2024.
- [7] It is common cause that the review application was brought well outside the 180 days provided for in section 7 of the Promotion of Administrative Justice Act 3 Of 2000 (**'PAJA'**). The applicant seeks condonation for this delay.
- [8] The respondents opposed the application for condonation in its answering affidavit and heads of argument. In opposing the condonation application, the respondents argued that the delay in bringing the review application was excessive and that the applicant failed to provide an adequate explanation for the entire extent of the delay in bringing the application. However, during the hearing of the application, the respondents informed the court that they were not persisting with their opposition to the condonation application.

The applicant's case

- [9] The applicant contends that the decision to place him on lifetime parole is not justifiable by a proper application of the respondents' policies nor is it consistent with the proper application of the legislative framework applicable to parole regimes. It is the applicant's case that the decision to place him on lifelong parole was based on an incorrect interpretation of the decisions in *Van Vuuren v Minister of Correctional Service*¹; *Van Wyk v Minister of*

¹ 2010 (12) BCLR 1233 (CC)

*Correctional Services and others*² and *Phaahla v Minister of Justice and Correctional Services*³ and that the decision to do so was irrational, arbitrary, discriminatory and unlawful.

- [10] Furthermore, that the decision to place him on lifelong parole was inconsistent with and not in keeping with how the respondents have dealt with other prisoners serving a life sentence in the same situation as him.
- [11] In support of this contention, the applicant states that he has met and lived with many other offenders who were in the same category such as he was in respect of when the offence was committed, the sentencing period and their eligibility for parole. Put plainly, although these other offenders were subject to the same parole regime as he was in terms of the Correctional Services Act 8 of 1959, they were not placed on lifelong parole but were placed on parole for specific periods, after which they were released unconditionally.
- [12] The applicant does not name any of these other offenders nor does he provide any details pertaining to these allegations which could be followed up on, and which could then either be verified or refuted.
- [13] In support of his claim of the discriminatory application of lifelong parole, the applicant cites the case of Janusz Walus (**‘Walus’**), who was placed on parole for only three years.
- [14] The applicant argues that he duly served his sentence and that he was well behaved in prison, focused on rehabilitation and studied towards his LLB, which he subsequently completed.
- [15] The applicant contends that the provisions of the Correctional Services Act 8 of 1959 were applicable to his parole determination and that he is not aware of any provision thereof that could be interpreted to justify the decision to place him on lifelong parole.

² 2012 (1) SACR 159 (GNP)

³ 2019 (2) SACR 88 (CC)

- [16] It is the applicant's case that the decision to place him on lifelong parole was communicated to him verbally and that he was informed that it was a decision taken by higher officials. He was also advised that the decision to place him on lifelong parole was based on the policies of the Department of Correctional Services.
- [17] The applicant says he was threatened to be very careful as the first respondent could still recommend that the decision to grant him bail be refused and he could be sent back to prison when he pressed for answers and/ or reasons for placing him on lifelong parole.
- [18] The applicant states that the manner in which the respondents have treated him displays a serious lack of regard for human rights. When the officials from the Department of Correctional Services visit his place of abode with their marked vehicles, which are easily recognisable as are the officials' brown uniforms, it impacts on him emotionally and even physically.
- [19] During one visit during 2022, Correctional Services officials arrived in the dead of night, cordoned off the road with their vans and instead of knocking on the applicant's door, an official shouted out his name and surname in the road as loudly as possible. This incident caused the applicant's landlord to request that he vacate the premises. The applicant is regularly searched in public, which he avers, is motivated to humiliate him.

The answering affidavits

- [20] The respondents state that during the applicant's sentence, a number of challenges to the Correctional Services Act 111 of 1998, being the successor to Act 8 of 1959, were made. These challenges resulted in the decisions of *Van Vuuren v Minister of Correctional Service*; *Van Wyk v Minister of Correctional Services and others* and *Phaahla v Minister of Justice and Correctional Services*. Importantly, the decision of *Phaahla v Minister of Justice and Correctional Services* determined that the date on which offenders committed the offence and not the date on which they were sentenced would determine eligibility for parole.

[21] These cases resulted in different parole dispensations for prisoners sentenced to life imprisonment between 1987 and 1 March 1994 and those sentenced to life imprisonment between 2 March 1994 and 30 September 2004. Those sentenced to life imprisonment between 1987 and 1 March 1994 were subject to a parole dispensation which provided for a parole period of two years while those sentenced to life imprisonment between 2 March 1994 and 30 September 2004 were subject to a parole dispensation which provided for lifelong parole.

[22] The answering affidavit is deposed to by Mr Alister Adonis, who was the chairperson of the Brandvlei Parole Board (**'Adonis'**) at the time the decision was taken to place the applicant on lifelong parole. Adonis states that this decision was:

- (i) rationally connected to the information before him at the time;
- (ii) a reasonable decision taken in accordance with the law and was consistent with the requirements of the controlling legislation; and
- (iii) was not taken because of irrelevant considerations or because relevant considerations were ignored.

[23] Adonis goes on to state that he duly explained all the conditions applicable to his parole to the applicant and advised him that it was in accordance with the parole policy applicable to the applicant. This is not denied by the applicant in his replying affidavit.

[24] In addressing the position of Walus, the respondents state that the determination of his parole had to be dealt with under a different parole dispensation because Walus was sentenced to life imprisonment prior to March 1994. The applicant falls under the parole dispensation governing those sentenced to life imprisonment during the period 2 March 1994 to 30 September 2004 whereas Walus fell under the parole dispensation governing offenders who were sentenced between 1987 and 1 March 1994.

- [25] In the matter of *Walus v Minister of Justice and Correctional Services and Others*⁴ the court held that Walus would only be required to serve two years of his sentence on parol. Prior to March 1994 and the coming into operation of section 65 of the 1959 Act, the period to be served on parole was governed by Chapter VI (5) (k) (v) of the Correctional Services B-Order. This determined that the parole of offenders sentenced to incarceration for crimes committed prior to 1 March 1994 (including offenders sentenced to life incarceration), would not exceed three years, less any period of amnesty or special remission of sentence which would be deducted from the three-year parole period.
- [26] The parole policy applicable to the applicant's parole, as preserved by section 136(1) of the 1988 Act, provided that offenders who were sentenced to life imprisonment when placed on parole would be placed on parole for life.⁵ Furthermore, the respondents aver that the applicant enjoyed the same benefits and protection of the law and was treated in the same manner as other parolees in his position.⁶
- [27] It is the respondents' contention that parole is an extension of the applicant's sentence in the form of community corrections. Support for this contention is found in *Phaahla* where the Constitutional Court accepted that parole is a manner of serving out one's sentence and that it remains punishment although a lesser one than imprisonment. However, it still amounts to a deprivation of liberty for a set period, albeit outside of prison. Parolees remain subject to the supervision and authority of the Department for the remainder of their sentence.⁷
- [28] The respondents agree with the applicant that his parole stood to be determined under the Correctional Services Act of 1959 and the policies relevant thereto. However, they disagree with his contention that there is

⁴ [2021] ZAGPPHC 96 at para 37

⁵ Vol 1, page 86, para 27 of the answering affidavit

⁶ Vol 1, page 87, para 29; see also page 89, para 37

⁷ 2019 (2) SACR 88 (CC) at para 35

nothing under the 1959 Act that a person in the position of the applicant should be placed on lifelong parole.

[29] The policy applicable to the applicant's parole dispensation provided that the term '*life*' meant exactly what the word implied and therefore, offenders who were sentenced to life imprisonment, when placed on parole, would be placed on parole for the duration of their natural life in the community under supervision.

[30] The applicant incorrectly states that there is no legal justification for the decision to place him on lifelong parole.

Discussion

[31] In *Bel Porto School Governing Body and Others v Premier, Westerns Cape and Another*⁸ the court held that:

'[87] The role of the Courts has always been to ensure that the administrative process is conducted fairly and that decisions are taken in accordance with the law and consistently with the requirements of the controlling legislation. If these requirements are met, and if the decision is one that a reasonable authority could make, Courts would not interfere with the decision.'

[32] In *Pharmaceutical Manufacturers Association of SA and Others; In Re: Ex Parte application of President of RSA and Others* the Constitutional Court held that:

'As long as the purpose sought to be achieved by the exercise of public power is within the authority of the functionary, and as long as the functionary's decision, viewed objectively, is rational, a Court cannot interfere with the decision simply because it disagrees with it or considers that the power was exercised inappropriately. A decision that is objectively irrational is likely to be made only rarely but, if this does occur, a Court has the power to intervene and set aside the irrational decision.'⁹

⁸ 2002 (3) SA 265 (CC)

⁹ *Pharmaceutical Manufacturers Association of SA and Others; In Re: Ex Parte application of President of RSA and Others* 2000 (2) SA 674 (CC) at para 90

[33] The written heads of argument filed on behalf of the applicant state that the review is brought on the grounds set out in section 6(2)(a)(i), (ii), (c), (d), (e)(i), (iii) –(v), (f)(ii)(bb), (cc) and (i) of PAJA.¹⁰

[34] Section 6(2)(a)(i) and (ii) provide that:

‘(2) A court or tribunal has the power to judicially review an administrative action if-

(a)the administrator who took it-

- (i) was not authorised to do so by the empowering provision;*
- (ii) acted under a delegation of power which was not authorised by the empowering provision.’*

[35] Section 6(2)(c) to (e)(i) and (iii) to (v) provide that:

‘(c)the action was procedurally unfair;

(d)the action was materially influenced by an error of law;

(e)the action was taken-

(i)for a reason not authorised by the empowering provision;

(ii)...

(iii) because irrelevant considerations were taken into account or relevant considerations were no considered;

(iv) because of the unauthorised or unwarranted dictates of another person or body;

(v) in bad faith; or’

[36] Section 6(2)(f) (ii) (bb) and (cc) provide that:

‘(f) if the decision itself-

(i) ...

(ii) is not rationally connected to –

(bb) the purpose of the empowering provision;

(cc) the information before the administrator’

[37] Section 6(2)(i) provides that:

¹⁰ Paragraph 46 of the applicant's heads of argument read with footnote 37. This is the first time the grounds of review are set out explicitly.

‘(i) the action is otherwise unconstitutional or unlawful.’

[38] A decision must be objectively capable of furthering the purpose for which the power was given and for which the decision was purportedly taken, and it must be supported by the evidence and information before the administrator as well as the reasons given for it.¹¹

[39] Prior to the repeal of Act 8 of 1959, section 65 thereof provided that:

‘65 Release of prisoners and placement of prisoners on parole

(1) A prisoner shall be released upon the expiration of the term of imprisonment imposed upon him.

(2) A prisoner may, in accordance with the provisions of this section be placed on parole before the expiration of his term of imprisonment if he accepts the conditions of such placement.

(3) (a) A placement contemplated in subsection (2) shall be subject to the conditions mentioned in the warrant for such placement and shall extend for the period between the date of such placement and the expiration of the term of imprisonment. (own emphasis)

(b) When the Commissioner, a parole board or the court approves placement on parole, or when a parole board submits a report as contemplated in section 63 (2), he or it may in addition to any other condition which may be determined or recommended, also determine or recommend that the prisoner-

- (i) be subjected to such monitoring as he or it deems fit;*
- (ii) be placed under house arrest;*
- (iii) does community service;*
- (iv) seeks employment;*
- (v) takes up employment and remains employed;*
- (vi) takes part in treatment, development and support programmes;*
- (vii) be restricted to one or more magisterial districts;*
- (viii) lives at a fixed address;*
- (ix) refrains from going to any specific place;*
- (x) refrains from contacting any specific person by word or action.*

(c)

(d)

¹¹C Hoexter and G Penfold *Administrative Law in South Africa* 3rd edition (2021) at 464

(4) (a) A prisoner serving a determinate sentence shall-

(i) if a non-parole-period was fixed, not be considered for placement on parole unless he has served the non-parole-period or half of his term of imprisonment, whichever is the longer;

(ii) if a non-parole-period was not fixed, not be considered for placement on parole unless he has served half of his term of imprisonment:

Provided that no such prisoner shall serve more than 25 years before being considered for placement on parole.

(b) A person who has been sentenced to-

(i) periodical imprisonment, shall be detained periodically in a prison in the manner prescribed by regulation;

(ii) imprisonment for corrective training, may be detained in a prison for a period of two years and shall not be placed on parole unless he has served at least 12 months of his sentence;

(iii) imprisonment for the prevention of crime, may be detained in a prison for a period of five years and shall not be placed on parole unless he has served at least two years and six months of his sentence;

(iv) an indeterminate sentence, by virtue of his having been declared an habitual criminal, shall be detained in a prison until, after a period of at least seven years, he is placed on parole;

(v) life imprisonment, shall not be placed on parole until he has served at least 25 years of his sentence: Provided that he may be placed on parole when he has reached the age of 65 years and he has served at least 15 years of his sentence;

(vi) imprisonment contemplated in section 52 (2) of the Criminal Law Amendment Act, 1997, shall not be placed on parole unless he has served at least four fifths of the terms of imprisonment imposed or 25 years, whichever is the shorter:

Provided that the court when imposing such imprisonment may order that the prisoner be considered for placement on parole after he has served two thirds of the term of imprisonment.

(5) (a) If any parolee fails to comply with any condition of his parole the Commissioner may issue a warrant for the arrest of the parolee, which may be executed by a peace officer as defined in section 1 of the Criminal Procedure Act, 1977 (Act 51 of 1977), and which shall serve as authority for the detention of the parolee.

(b) Within 72 hours after the arrest of the parolee and after the Commissioner has ascertained all the relevant facts and is still of the opinion that the parolee has

breached the conditions of his parole the Commissioner shall refer the matter to the parole board, if the parolee was placed on parole by a parole board.

(c) The Commissioner or the parole board, as the case may be, may, if it is in the interest of the parolee in respect of his treatment, rehabilitation or integration into the community or if it is in the interest of the community-

- (i) cancel the parole;*
- (ii) amend any condition of the parole; or*
- (iii) add any condition.*

(d) Before acting in terms of paragraph (c) the Commissioner or the parole board shall make the reasons for the proposed action known to the prisoner and shall afford him an opportunity to submit oral or written representations in regard thereto: Provided that the prisoner may be represented as provided for in section 63 (6) (b).

(e) If the prisoner does not accept the amended or new conditions, his placement on parole shall be cancelled, after which he shall be detained in a prison for the unexpired period of his sentence of imprisonment: Provided that the Commissioner or the parole board may at a later date again place such prisoner on parole should the prisoner accept the amended or other conditions.

(6) If a person serving a sentence of life imprisonment has breached a condition of his parole the Commissioner shall refer the matter to the court which sentenced the prisoner, which shall determine the period of imprisonment that such a prisoner shall serve before the prisoner may again be considered for parole.

(7)

(8)

(9)

[40] It is evident from section 65(3)(a) that the parole period shall be the period from the placement on parole until the expiration of the term of imprisonment that was imposed during sentencing. By way of example if an offender was sentenced to 12 years' imprisonment and was placed on parole after serving 10 years of such sentence, then in accordance with section 65(3)(a), the offender would be placed on parole for the two years remaining from that offender's sentence.

[41] Similarly, if an offender was sentenced to life imprisonment and was placed on parole, then that offender would be placed on lifelong parole.

- [42] In terms of the parole dispensation applicable to the applicant, the only discretion the appeal board had was whether or not to place the applicant on parole. The period on which he was to be placed on parole was governed by section 65(3)(a) of Act 8 of 1959.
- [43] In *Van Wyk v Minister of Correctional Services and Others*¹² the court found that Order BVI (1A)(22), which was the policy directed at providing guidelines for parole in respect of prisoners sentenced to life imprisonment, was unconstitutional. Following *Van Wyk*, the respondents determined the applicant's parole in accordance with the predecessor of Order BVI (1A)(22). This policy provided that the term lifelong meant exactly that- the duration was lifelong.
- [44] The applicant argues that it is not clear why the predecessor of Order BVI (1A) (22) would have applied to the determination of his parole placement when, on the facts, it was clear that it had been replaced by Order BVI (1A)(22) which had been struck down.
- [45] A comparison of section 65(3)(a) with the parole policy which governed the applicant's parole dispensation shows that the policy sought to give effect thereto. Thus, even if the policy was found to be invalid or inapplicable, the decision to place the applicant on lifelong parole would have been authorised by section 65(3)(a) of Act 8 of 1959.
- [46] As set out earlier, the applicant was sentenced after March 1994, on 15 March 2000 for an offence committed on 9 October 2000. In accordance with the decision of *Van Wyk*, the applicant's parole dispensation was that applicable to offenders who had been sentenced to life imprisonment after 1 March 1984.

¹² [2011] ZAGPPHC 125, 2012 (1) SACR 159 (GNP)

- [47] The condition of lifelong parole is authorised by section 65(3)(a) of Act 8 of 1959. The imposition of lifelong parole is also consistent with the principle that parole is an extension of the applicant's sentence of imprisonment for life.
- [48] Objectively viewed, the decision to place the applicant on lifelong parole was rational and authorised in terms of the applicable legislation.
- [49] The applicant alleged that he has been treated differently and less favourably than other offenders who fall under the same parole dispensation as he does. However, the applicant has provided no factual basis for this allegation. He compared his case to that of Walus, but as shown above, Walus fell under a different parole dispensation.
- [50] In the circumstances, the applicant has not made out a case to review the decision to place him on lifelong parole and to set it aside.
- [51] The applicant raised serious issues pertaining to his treatment at the hands of officials from the Department of Correctional Services. These issues fall outside the scope of what this court has been called upon to determine. The applicant is advised to report any mistreatment and/or abuse by the officials of Correctional Services to the Judicial Inspectorate for Correctional Services.

CONDONATION

- [52] As correctly contended for by the respondents, the applicant's explanation for the delay in bringing the review application fell short of an explanation for the entire duration of the period of delay. However, the court was mindful that the applicant had for most of the delay been self-represented. While he was self-represented, the applicant had done what he could to ventilate the matter in court. After the applicant obtained legal representation, the review application was prepared and instituted.
- [53] Furthermore, at the hearing of the application, the respondents did not persist with their opposition to the condonation.

[54] It was also not the applicant's original intention to institute review proceedings. He did so after his application before the Equality Court was removed and he was directed to institute review proceedings.

[55] The abandonment of the opposition to the condonation could be considered as consenting thereto. Thus, in terms of section 9(1) of PAJA the 180 period within which to bring the review application has been extended.

[56] In the event that the respondent's decision not to persist with their objection to the condonation application cannot be considered as consent in terms of section 9(1) of PAJA, after considering the matter holistically, it cannot, in my view, be said that the applicant was wilful and/or negligent in advancing his matter. And it would be in the interest of justice to grant the application for condonation in terms of section 9(2) of PAJA.

Costs

[57] During the hearing of the application, the respondents' legal representative advised the court that they were not pressing for costs. The court is also of the view that this is not a matter where costs should follow the result.

[58] Therefore, no order will be made in respect of costs.

Conclusion

[59] In the circumstances, I make the following orders:

- (iii) the condonation application for the late bringing of the review application is granted;
- (iv) the application is dismissed.

HM SLINGERS
JUDGE OF THE HIGH COURT

I agree.

ML NORTON
ACTING JUDGE OF THE HIGH COURT

Appearances

For applicant: Mr Nduli
Instructed by: Legal Aid, SA

For respondent: Mr Van Wyk
Instructed by: State Attorney, Cape Town