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Typed Judgment for revision

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Case no : 36467/11

Parties : Zuma Vs NDPP

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**IN THE HIGH COURT OF SOUTH AFRICA (SOUTH GAUTENG)**

JOHANNESBURG

CASE NO: 36467/11

DATE: 02.02.2012

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In the matter between

**ZOLANI NTONTELA** Applicant

and

**MINISTER OF CORRECTIONAL SERVICES** Respondent

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JUDGMENT

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SATCHWELL, J: This is the judgment in the matter of Zolani Ntontela applicant versus the Minister of Correctional Services and four other respondents, case number 36467/2011.

Introduction

This is one of four applications brought before this high court under the same case number. It is the application which is in hand manuscript and which is deposed to by the applicant on 8 November

2011. The documents before me do not have a court stamp thereon.

The applicant was convicted of certain contraventions of the Attorney's Act and on 9 February 2009 was sentenced to serve a term of 3 years imprisonment by the Magistrate's Court at Johannesburg.

In terms of Section 73 (4) of the Correctional Services Act of 1998 a sentenced offender, such as the applicant, may "be placed... on parole before the expiration of his... term of incarceration." This was an option also an indulgence which was considered by the relevant authorities and which was actually granted to the applicant.

In terms of the documents before this court and which are common cause I find from one of the other applications brought by the applicant that he was released on parole by the National Commissioner and his servants with effect from 10 August 2010.

In the documentation at annexure JM2 one finds the documentation releasing the applicant on parole and the indication that this is done upon certain conditions (see annexure JM2). On the first page of annexure JM2 there is a fairly illegible manuscript motivation for the decision but it concludes with the word "be placed on parole." That placement is for the period 10 August 2010 to 3 February 2012. The remainder of the document contains advice addressed to the prison/parolee who is the applicant. It is headed "notice to comply with conditions of supervision."

The conditions of supervision as set out in paragraph JM3 include general advice with regard to general conduct, the requirement to perform 180 hours or community service. In this case a cleaning

obligation at the Roodepoort Fire Department on Sundays. It includes the requirement to report once per month to the correctional supervision official in Krugersdorp and advices the parolee that his next appointment would be 10 September 2010 and finally there is advice that there is a period of house detention in that the parolee may not leave his home during certain periods and only for specific purposes. The address to which he is confined is specified in annexure JM3 and being Durban Deep Estate, Durban Deep, Roodepoort.

It is common cause that the applicant did not comply with any one of these conditions. The reasons for his failure to comply with these obligations/conditions are in dispute. The applicant maintains that he was prevented by reasons beyond his control from so complying and avers that in some cases he did comply although there may be no record in respect of full compliance. The attitude of the respondents is that he did not comply. However this is not an issue, which I can be called upon to decide now.

With the view that the applicant had failed to comply with his obligations in terms of his parole the respondents caused, in terms of Section 70 of the Correctional Services Act, a warrant for the arrest of the applicant to be issued. It is dated 9 July 2011 and it is annexure JM13 to the documentation in this court file. Pursuant to such warrant the applicant was arrested.

Section 70 of the Correctional Services Act deals with none compliance by a parolee with parole conditions. In Section 70 (10 the National Commissioner may instruct the person to appear before the

Correctional Supervision Parole Board or may issue a warrant for the arrest of such a person. In this particular instance both actions have been preformed. The applicant has been arrested and he has appeared before the board. Section 70 (2) (b) provides that where a person has been arrested and is detained in terms of such an arrest then "he must be brought before a court within 48 hours after his arrest" and it further provides that "a court must make an order as to the further detention and referral of the person to the authority responsible to deal with this matter."

It is common cause in the present case that the applicant did not appear "a court" and that no court has made an order as to his further detention or referral to the authority responsible to deal with this matter.

Having regard to the provisions of Sections 75 onwards of the Act also having regards to the facts before me I am of the view that the failure to bring the applicant before "a court" within 48 hours after his arrest does not render the warrant of arrest unlawful.

Within 48 hours of his arrest the applicant was actually returned to imprisonment and he appeared before a supervision committee as appears from the proceedings of the 8th and then the decision of 9 July. In other words within 48 hours he was brought before "the authority responsible to deal with the matter" who thereafter remained charged with his fate.

Section 75 (2) (a) of the Correctional Services Act, empowers the National Commissioner acting on the advice of a Supervision

Committee to request a board to "cancel... parole" where the National Commissioner obviously or his delegates or authorised personnel make such a request then in terms of Section 75 (2) (a) this board must consider the matter within 14 days but its recommendations may be provisionally implemented. The board is empowered in terms of Section 75 (2) (b) to "cancel the... parole."

In the present instance it is no longer in dispute by reason of a decision of Judge Weiner of this division that the Supervision Committee me to consider this matter (as per annexure JM14) on 8 July and made certain recommendations. The recommendation as appears at the bottom of page JM14 is "revocation of sentence." The Parole Board then considered the matter and made a finding that the applicant did not comply with his conditions of parole and "the inmate failed to adhere to conditions of parole" and accordingly the Parole Board dated 11 August 2011 revoked or to use the terminology of the legislation cancelled his parole.

The applications before the court

There are four applications before this court. The remaining applications for determination are as follows. There is a review application, which is not proceeded with now before this court. There is an application concerning the calculation as to the correct time still to be served or correct period of imprisonment still to be undergone by the applicant. That is not before me now. There is the application, which is the most recent application before me (as I said the manuscript application), which asks me to declare the warrant of arrest and his

continuing arrest unlawful.

I appreciate the difficulty for the applicant he had hoped for his release from incarceration next week, that is the period when his 3 year sentence imposed by the Magistrate of the Johannesburg Court would have been complete. His concern is now that the Department of Correctional Services intend not to release him next week but intends to achieve a full period of 3 years incarceration by adding on the period, not necessarily when he was "out of prison" on parole but the period when he was "an absconder."

I understand his concern. However I offered that I would hear the review application and the application to set aside the warrant in the next motion court, which is in two weeks time. He did not wish this to take place he wished to proceed now. I can understand his sense of urgency.

The application to declare the warrant unlawful

The applicant has represented himself. He is not a legal representative hence his conviction and sentence. He certainly knows the language of the law, he uses the right jargon, he is clearly an educated and intelligent man and he is aliquant.

His first argument is a point *in limine* in which he relied upon the existence of Section 117 of the Correctional Services Act. That Section deals with persons who have escaped from custody or who have absconded and who are therefore guilty of an offence and liable on conviction to either a fine or incarceration. He refers to me to Section 117 (e), which refers to a person who "is subject to community

corrections and where he absconds and therefore avoids being monitored." There is no dispute that in terms of the definitions section of the Act a person who is placed on parole is a person who is released on parole is a person who is subject to "a form of community corrections." Accordingly at first glance it would appear that all persons who have "absconded" from parole are liable to prosecution in terms of Section 117.

Advocate Helm suggested that the provisions of the Correctional Services Act to be found in Section 75 onwards deal with the none compliance of parole conditions and do not involve a criminal sanction, whereas Section 117 is concerned with a criminal sanction.

In the present case the applicant does not face a criminal prosecution. Therefore any issue of duplication of penalty is of no import in this matter.

Further in the present case the applicant has been confronted with a revocation or cancellation of his parole. This is not a sanction for criminal conduct imposed by the Department of Correctional Services. It is a withdrawal of an indulgence. The indulgence was one granted by the Department of Correctional Services in respect of a criminal sanction imposed by a court of law. All the Department of Criminal Services i.e. the National Commissioner through his servants has done is to restore the position to that which it was, prior to exercising their discretion to grant an early release on parole and conditions to the applicant.

As I said the applicant has not been confronted at the present

time with a charge or a prosecution under Section 117. There is no possibility of duplication of penalty. It also seems to me that the provisions of Section 117 are far broader than dealing with persons who are in breach or parole, it deals with none-sentenced prisoners who have escaped from custody. It also deals with persons who have not been taken into custody but who assist such persons.

The applicant has spent several hours today addressing me on the merits of the decision taken by Correctional Services authorities that he is a "absconder" i.e. that he did or did not fail without reason to live in the designated residence, that he did or did not without reason fail to report to the appropriate authorities and that he did or did not without reason fail to carry out his community service.

I have pointed out that this court has no power to usurp the authorities of the Supervision Committee or the Correctional Services Parole Board. This court has no power to interfere with the actions taken or the decisions made by those authorities.

I have explained to the applicant that this application is not one to decide the merits of the revocation or cancellation of his parole. It is simply to determine whether or not his warrant was unlawful.

If he wishes to proceed with his application for review of the decision of the board then one would have to determine whether or not the board took into account matters which were not properly before it or failed to take into account those matters were relevant ore whether the board was actuated by reasons of malice of biased but I have not been asked to do this today.

In part this difficulty is because there are so many applications before this court. The applicant has been very diligent in preparation but regrettably in respect of many applications.

This court cannot decide the merits. This court cannot decide whether he violated his obligations. Accordingly I cannot hear evidence it would be inappropriate to look for oral evidence at this stage.

This court is not deciding as to whether he did or not remain in the allocated residence and how many days he did or did not inform the authorities and whether or not they had regard thereto etcetera, etcetera, etcetera.

In the result this particular application is dismissed, there is no order as to costs.

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CASE NO: 36467/11

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In the matter between

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O R D E R

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SATCHWELL, J: In as far as the review application it may be set down.