



## THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

### MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

**FROM** The Registrar, Supreme Court of Appeal  
**DATE** 01 October 2015  
**STATUS** Immediate

*Please note that the media summary is for the benefit of the media and does not form part of the judgment.*

***Minister of Correctional Services v Tony Phakiso Seganoe (20507/2014) [2015] ZASCA 148 (01 October 2015)***

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#### **MEDIA STATEMENT**

Today, the Supreme Court of Appeal (SCA) upheld an appeal by Minister of Correctional Services (the Minister), against an order by the Gauteng Local Division, Johannesburg. The high court had found that the respondent, a sentenced offender currently serving two determinate sentences of 15 and 7 years imprisonment for two separate offences which were committed during 2001 and 2002, was eligible to be considered for placement on parole in terms of the repealed Correctional Services Act 8 of 1959 (the 1959 Act), which was operative at the time of the commission of the offences but had been repealed by the Correctional Services Act 111 of 1998 (the 1998 Act) at the time that the respondent was sentenced.

Section 22A of the 1959 Act created a system for the allocation of credits to offenders for their compliance with the rules of the correctional institution and their active participation in programmes which were aimed at their treatment, training and rehabilitation. These credits were taken into account in determining the date on which the parole board may consider the placement of such an offender on parole. The 1998 Act created a new system for the release of offenders on parole and repealed the credit system in respect of those offenders who do not fall under the provisions of its s 136, who were sentenced after the coming into effect of Chapter VII of the 1998 Act ie, 1 October 2004. The provisions of s 136 of the 1998 Act retains the credit system in respect of certain categories of offenders, who had been serving a determinate sentence of imprisonment immediately before the commencement of Chapters IV, VI and VII of the 1998 Act.

The respondent contended that his application for placement on parole should be determined in terms of the policies and guidelines governing parole in terms of the 1959 Act because the offences for which he was convicted were committed during its operation. The court a quo agreed with this contention. Overturning this decision, the SCA found that the applicable statutory regime to consider placement on parole in respect of convicted offenders sentenced at the commencement of the 1998 Act, is the 1998 Act and that the provisions of s 136 of the 1998 Act do not apply to his category of offenders ie, those sentenced after the commencement of Chapter VII of the 1998 Act. The SCA held that the provisions of s 136 are intended to preclude prejudice to offenders sentenced under the 1959 Act by the retrospective application of the provisions of the 1998 Act which takes away the credit system. The SCA also held that it could not have been the intention of the legislature to include the respondent's category of offenders under the provisions of s 136 of the 1998 Act as this section deals expressly with offenders serving imprisonment immediately before the commencement of Chapters IV, VI and VII of the 1998 Act, which excludes the respondent. The SCA concluded that the respondent's category of offenders was governed by the provisions of s 73(6)(a) of the 1998 Act which provides for the consideration for placement on parole in terms of a stipulated period, or half of the sentence where there is no stipulation of a period.