REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG

APPEAL NO: 21/35658

(1) REPORTABLE: YES/NO
(2) OF INTEREST TO OTHER JUDGES: YES/NO
(3) REVISED: YES/NO

Date: ....

In the application between :

ERWIN SMITH Applicant

and

MINISTER OF JUSTICE AND CORRECTIONAL SERVICES First Respondent

NATIONAL COMMISSIONER FOR THE DEPARTMENT OF CORRECTIONAL SERVICES Second Respondent

DEPARTMENT OF CORRECTIONAL SERVICES GAUTENG MANAGEMENT AREA, REGIONAL MANAGER Third Respondent

DEPARTMENT OF CORRECTIONAL SERVICES KRUGERSDORP CORRECTIONAL CENTRE HEAD OF PRISON Fourth Respondent

DEPARTMENT OF CORRECTIONAL SERVICES LEEUKOP CORRECTIONAL CENTRE HEAD OF PRISON Fifth Respondent

JUDGMENT

STRYDOM J :

[1] The applicant is a sentenced prisoner serving a sentence.

[2] Apart from the first respondent, the Minister of Justice and Correctional Services, and the second respondent who is cited as the National Commissioner for the Department of Correctional Services the parties cited are in control of correctional services. The applicant brought a review application against the decision which was made at the Leeuwkop Correctional Centre. For sake of convenience I will refer to the respondents collectively as the respondent.

[3] At the centre of this application lies the applicant’s dissatisfaction how a remission of sentence of 24 months granted to prisoners by the President of the Republic of South Africa was applied in relation to his sentence.

[4] The application of the 24 months remission became relevant at this stage as the President has, in terms of section 84(2)(j) of the Constitution of the Republic of South Africa, 1996, (“the Constitution”), read with section 82(1)(a) of the Correctional Services Act 1998, Act No. 111 of 1998 (“the CSA”) and for the purpose of addressing, managing and combatting the spread of the Covid-19 virus in all Correctional Centres in the Republic, authorised the consideration and placement on parole of qualifying sentenced offenders in terms of certain criteria, who are or would have

been incarcerated on 27 April 2020 subject to such conditions as may be approved by the Head of a Correctional Centre or Correctional Supervision and Parole Board under whose jurisdiction such sentenced offenders may fall.

[5] The condition which was important for the purposes of this matter was that sentenced offenders who have or would have reach their Minimum Detention Period (MDP) within a period of 60 months from 27 April 2020 would have qualify for this placement on parole. In this judgment, this special parole will be referred to as ("the Covid parole").

[6] For the applicant to have qualified for this parole his DMP should have been calculated to see whether it stretched beyond 26 April 2025. This is a period of five years after the announcement of the Covid parole which was made on 27 April 2020.

[7] The calculation of the DMP is affected by the effect that the 2019/2020 24 months remission of sentence had on the applicant's sentence.

[8] The applicant appeared in person but filed an application and heads of argument.

[9] The matter was dealt with in court on a previous occasion and on 17 September 2021, Dippenaar J made orders to provide for the filing of further affidavits and heads of argument. The respondents were ordered to provide the policy document in terms of the Covid parole together with a full record of all documents placed before the decision-maker at the time the decision was made when it concluded that the applicant did not qualify

for the Covid parole. The respondents were to provide an affidavit containing explanations in relation to the current position in terms of the applicant and whether he qualifies for parole presently.

[10] These steps were taken and further affidavits were filed plus the record of the decision. The respondents persisted that the applicant did not qualify for the Covid parole.

[11] The applicant remained dissatisfied with the determination and the reasons provided by the Correctional Supervision and Parole Board ("the Parole Board").

[12] He again approached this urgent court, pursuant to a further notice of motion and founding affidavit in which the following relief was sought:

> *"1. The applicant is granted urgency in terms of Rule 6(12)(a) of the Uniform Rules of Court, and that the normal forms and service provided for in the Uniform Rules be dispensed with.*
>
> *2. That the applicant is granted access to this Court based on order 7 of the judgment on Case No: 35658/2021.*
>
> *3. The decision by the parole board is reviewed and set aside.*
>
> *4. It is declared and confirmed that the applicant qualifies for the Covid-19 special remission of sentence.*
>
> *5. That the respondents are given one month to complete the parole release process of Mr Erwin Smith.*
>
> *6. Any further and/or alternative relief the Court deems fit."*

[13] The applicant's main contention is that the method of calculation, with reference to Circular 13, guideline 5.3.1 which was adopted by the Parole Board, was incorrect.

[14] Circular 13 of 2019/20: Granting of special remission of sentence (amnesty) is a document provided to prison authorities under the signature of the Chief Operations Commissioner dated 17/12/2019. It was sent to all Regional Commissioners in which they were informed about the fact that the President has granted special remission of sentence in terms of the powers vested in him by section 84(2)(j) of the Constitution to certain categories of sentenced offenders who were or would have been incarcerated or serving sentences within the system of community corrections on 16 December 2019. Part of the document that was provided included guidelines on how to deal with this remission.

[15] The Circular is a directive issued by the Chief Operations Commissioner. The CSA makes provision for regulations to be passed as well as delegations of authority to the Commissioner by the Minister. There is no need for this court to refer to the terms of the CSA or the regulations promulgated suffice to refer to regulation 134(2) which determines that the National Commissioner may issue orders, not inconsistent with the CSA and the regulations made thereunder, which must be obeyed by all correctional officers and other persons to whom such orders apply. These orders, as per sub-section 2(pp) will be in relation to all matters necessary or expedient for the application of the CSA and the regulations.

[16] Circular 13 of 2019/20: GRANTING OF SPECIAL REMISSION OF SENTENCE (AMNESTY) was such an order or directive by the Commissioner. The Guidelines as to how the remission should be applied by those persons applying the remissions on individual cases of prisoners.

[17] There is no need to deal with all the guidelines as it is common cause that the applicant qualified for 24 months remission of sentence but for purposes of this judgment, Guideline 5.3 which deals with concurrent sentences should be referred to. The reason for this is that the Parole Board and its advisors relied on this Guideline for its decision to find that the applicant did not qualify for the Covid parole. This Guideline reads as follows:

> *"5.3* ***Concurrent sentences***
>
> *5.3.1 Where two sentences run concurrently and the dominant sentence (furthest date in the future) expires earlier than the next sentence due to the allocation of the special remission, the special remission must be allocated pro-rata on both sentences to ensure that there is not a remaining period to be served on <u>one of the warrants</u>. The same principle applies to probationers / parolees in the system of community corrections. In such cases the following procedure must be followed:*
>
> *Step 1: allocate special remission on the dominant sentence to the effect that the sentence expiry date of both sentences are the same;*
>
> *Step 2: divide the remaining period special remission by 2 and allocate on each of the sentences."* (my underlining)

[18] The Guidelines then provide examples how this Guideline should be applied.

[19] The manner in which the Parole Board applied the two year remission, further alluded to later in this judgment, meant that the applicant's MDP was set to be 30 September 2025, which is a date after the threshold date

of 26 April 2025 ("the threshold date"). This meant that the applicant was not eligible to receive the Covid parole.

[20] On the method of calculation proffered by the applicant, his MDP expired before this threshold date and according to him he became eligible for the Covid parole.

[21] It is clear that the manner in which the calculation to determine the MDP is done would have a marked effect on the period of incarceration of the applicant.

[22] What the court is dealing with is a review application to consider whether the decision of the Parole Board is reviewable on any ground mentioned in the Promotion of Administrative Justice Act, 3 of 2000 ("PAJA"). The court is further required to deal with an application for declaratory relief. This further relief is subject to the setting aside of the decision of the Parole Board.

[23] The decision of the Leeukop Parole Board was to the effect that the applicant did not qualify for the Covid parole as in his case his MDP as at 27 April 2025 was 30 September 2025 which is a date beyond the required date of 26 April 2025.

[24] In a letter dated 22 November 2021 from the Chairperson of the Parole Board, Leeukop, the applicant was informed that his MDP was 30 September 2025 and the cut-off date was 26 April 2025 and that he did not qualify.

[25] The reason which was advanced read as follows: “ *Parole Board discovered according to the SAP69C (Previous Convictions) you have four (4) case awaiting trials and one (1) suspended sentence to be put into operation.”*

[26] This reason is based on factual inaccuracies. Applicant had no awaiting trials but was already sentenced. That is why the convictions appear on his SAP 69. Further, the suspended sentence was not to be put into operation. The suspended sentence related to a conviction on a count of fraud committed during December 2015/January 2016. The condition of the suspension was the applicant should not have been convicted of fraud committed during the period of suspension. The further conviction of the applicant was in relation to fraud committed during 2013.

[27] It was common cause in this matter that the applicant was sentenced on 31 January 2018 after being convicted on four counts of fraud as follows – on count 1 to 15 years imprisonment; and on counts 2 and 4 to 15 years imprisonment on each count; on count 3 to 10 years imprisonment which was wholly suspended for a period of five years on the condition already referred to.

27.1 On annexure “A”, which was attached to the warrant sent to the Head of Krugersdorp Prison, and as part of the sentence it was stated as follows:

“In terms of section 282 of Act 51 of 1977 the court orders that the sentence of 15 years imprisonment on count 2 and 4 shall be served concurrently with the sentence of 15 years imprisonment on count 1.

A total of 15 years imprisonment shall therefore be served."

("first warrant")

27.2 On 6 December 2018, the applicant was sentenced to three years direct imprisonment in terms of section 276(1)(i) of Act 51 of 1977 ("second warrant").

27.3 The 15 year and 3 year imprisonments were not ordered to be served concurrently. Consequently, the three years prison sentence would have been served consecutively, i.e. the one after the other. The applicant has to first serve his 15 year sentence, after possible deduction as a result of remission and parole, and, thereafter the three year sentence. Also possibly reduced by remissions or being placed under correctional supervision. In total the appellant had to serve 18 years imprisonment unless these sentences were shortened as stated.

27.4 As indicated above, the applicant served his sentences under two different warrants.

27.5 As far as the 15 year imprisonment sentence was concerned, the applicant had to serve at least half of the sentence pursuant to the terms of section 73 of the CSA.[1]

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[1] Section 73(6) reads as follows:

"*6(a) Subject to the provisions of paragraph (b), a sentenced offender serving a determinate sentence or cumulative sentences of more than 24 months may not be laced on day parole or parole until such sentenced offender has served either the stipulated non-parole period, or if no non-parole period was stipulated, half of the sentence, but day parole or parole must be considered whenever the sentenced offender has served 25 years of a sentence or cumulative sentence."*

27.6 As far as the three year sentence was concerned, the applicant had to serve one-sixth of this sentence before correctional supervision could have been considered. This is determined by section 73(7)(a) of the CSA.[2]

27.7 The applicant became entitled to the 24 months remission of sentence as per Circular 13 of 2019/20.

27.8 As at 27 April 2020, the date when the remission was provided, the applicant had already served two years, one month and 27 days of his 15 year sentence.

[28] After the previous Court Order, the case management committee (CMC) engaged with the applicant and considered his queries and suggested method of calculation of his 24 months remission and MDP. The CMC made its own calculations which informed the decision of the Parole Board. These calculations were provided to the applicant.

[29] How the CMC decided the 24 months remission should be applied can be gleaned from the submissions on behalf of the applicant and the replies thereto before the decision was made. The method of calculation and the decision was further set out in the further answering affidavit filed on behalf of the respondents.

[30] The respondents' calculation was made on an interpretation of guideline 5.3.1 of Circular 13 which serve as a guideline how the remission should, under given circumstances, have been applied. The calculation of the

[2] *"7(a) A person sentenced to incarceration under section 276(1)(i) of the Criminal Procedure Act, must serve at least one-sixth of his or her sentence before being considered for placement under correctional supervision, unless the court has directed otherwise."*

respondents was premised on a revision back to the individual sentences which was ordered by the trial court and stipulated in the first warrant to be served concurrently. The three convictions and individual sentences were unbundled and treated as 3 separate sentences, which of course it was but the concurrent serving was ignored for applying the 24 months remission. It comes down to the following:

30.1 It was explained that the 24 months remission could not have been deducted from the sentence of 15 years on count 1 (the dominant sentence) as this would have left a sentence of 13 years imprisonment.

30.2 The other two sentences on counts 2 and 4 remained 15 year each which would have meant that these sentences could not be served concurrently with the now reduced sentence of 13 years as this sentence would have been completed before the 15 years imprisonment on the other two counts.

[31] As stated, what the CMC did was to ignore the order that the sentences were to run concurrently and that the effective sentence was 15 years imprisonment.

[32] The CMC then deducted the 24 months special remission *pro rata,* with reference to the three different sentences, by deducting eight months from each one of the sentences. Each individual sentence was reduced from 15 years to 14 years and 4 months and this term was then divided by 2 to get the MDP of this sentence. The one-sixth of the sentence to be served on warrant 2 calculated to six months, which is one-sixth of three years,

and that was added to the previous date to obtain the MDP which was established to be 30 September 2025.

[33] A further calculation was done using a different method and this was done by deducting the 24 months special remission from the sentence of three years as per warrant 2 leaving a sentence of one year. The MDP for warrant 1 if half was to be served remained to be 30 July 2025 and the MDP was extended by 2 months as only one-sixth of the one year sentence had to be served. As this two months period had to be served consecutively after the sentence on warrant 1 the MDP remained to be 30 September 2025.

[34] It should be noted at this stage that it becomes very important for the applicant to determine from which sentence the 24 months remission should be deducted. The reason for this is that in the case of the 15 years sentence he will have to serve half the sentence and in the case of the three years sentence, he will only have to serve one-sixth. The more which is deducted from the fifteen year sentence the more advantages the remission would become.

[35] The first question to be decided is if Guideline 5.3.1 was applicable to the situation of the applicant, and if so, was the calculation done according to its terms. If it is decided that Guideline 5.3.1 is not applicable to the situation of the applicant, the question remains how should the calculation be done to afford the applicant the 24 months remission.

[36] The applicant challenged the method of calculation of the CMC by arguing that Guideline 5.3.1 and the examples provided clearly distinguishes

between two warrants pertaining to a sentence from one warrant which was ordered to run concurrently with a sentence from another warrant. He argued that this was not the situation in his case and therefore this Guideline was not applicable to the calculation of his remission.

[37] In a letter of reply the CMC stated as follows:

> *"The principle of two or more sentences / counts on one or more than one warrant / counts remains the same. The example that was used in circular 13 was of two warrants and applicable on all warrants with multi-counts as indicated in warrant 1."*

[38] It is not clear what this reply was attempting to indicate. But it seems what was said was that although the example provided in the Circular referred to two warrants the same principle will apply in a case where there are more convictions and sentences on one warrant. This may be a correct summation if sentences on one warrant are not ordered by a court to run concurrently. But what we are dealing with here is sentences which were ordered by court to run concurrently.

[39] On behalf of the respondents it was argued that the entire application turned on one point, i.e. whether sentences that run concurrently have the effect of creating one conviction. This in my view, is not the issue. Without a doubt the fact that sentences are ordered to be served concurrently does not mean that the convictions become one. What becomes one is the effective term of the sentence which must be served. Remission and parole will be considered in relation to the length of a term of imprisonment.

[40] In my view, the parole board was bound to apply these guidelines, but this could only be done if the guidelines covered the present factual situation or if, by way of analogy, it could have been applied.

[41] In my view both the calculations used by the CMC and provided to the Parole board and applicant are not sanctioned by Guideline 5.3.1. The method of applying these Guidelines is flawed as will be fully explained hereinafter.

[42] When a court orders that sentences are to run concurrently, the effective sentence would be the concurrent sentence. This is what is stipulated on the warrant and the warrant serves as an order to the Department of Correctional Services. Annexure "A" to the first warrant of the applicant specifically refers to section 280(2) of the CPA which deals with concurrent sentences and the court ordered that the sentences of 15 years imprisonment on counts 2 and 4 should be served concurrently with the sentence of 15 years imprisonment on count 1. The court stated that a total of 15 years imprisonment should be served by the applicant. The respondents should implement this sentence and should not be further concerned about the individual sentences on each count.

[43] Turning to Guideline 5.3.1 which deals with concurrent sentences, reference is made to "*one of the warrants*" which is a clear indication that there should more than one warrant. This interpretation is further supported by the example which was provided by the person who drafted the examples. The example referred to two warrants issued at different dates. According to the example, in the case of a second warrant, the

court ordered that the second sentence should have been served concurrently with the first sentence.

[44] The reference to "*where two sentences run concurrently*" caters for the situation where a subsequent court sentenced the defendant to a further term of imprisonment and orders that this further sentence should be served concurrently with the longer sentence of the two referred to as the dominant sentence. In casu, the subsequent sentence was not ordered to run concurrently with the 15 years effective sentence of the applicant on the first warrant.

[45] The Guidelines simply did not provide for a situation where sentences in terms of two warrants are to be served consecutively or cumulatively. Neither did the examples which was provided.

[46] To revert back to the separate sentences on the first warrant and then to apply the period of remission *pro rata* leads to an absurd result. This would mean that the applicant who received a 24 months remission only gets the advantage of 8 months remission as the other 16 months are allocated to two sentences that run concurrently with the sentence on count 1, the dominant sentence. One can think of a scenario were multiple sentences are ordered to run concurrently. If the remission is applied pro-rata it may end in a situation where virtually no remission is provided.

[47] The purpose of Guideline 5.3.1 as stated in this guideline was to:

> *"ensure that there is not a remaining period to be served on one of the warrants".* (my underlining)

[48] This was not the case of the applicant as he served two different sentences, one after the other. There could not have been any remaining period on one of the warrants to be served.

[49] Moreover, as stated above, this ignores the wording of the Guideline which refers to "*one of the warrants*".

[50] In *State v Jimmale* 2016 (2) SACR 691 (CC) at paragraph 1 it was found as follows:

> *[1] Parole is an acknowledged part of our correctional system. It has proved to be a vital part of reformative treatment for the paroled person who is treated by moral suasion. This is consistent with the law; that everyone has the right not to be deprived of freedom arbitrarily or without just cause and that sentenced prisoners have the right to the benefit of the least severe of the prescribed punishments."*

[51] The interpretation applied by the CMC and adopted by the Parole Board violates this principle. This principle to serve the least severe of the prescribed punishments has been adopted in section 35(3)(n) of the Constitution, albeit pertaining to a different factual basis.

> *"Every accused person has a right to a fair trial, which includes the right –*
>
> *(n) to the benefit of the least severe of the prescribed punishments if the prescribed punishment for the offence has been changed between the time that the offence was committed and the time of sentencing."*

[52] To apply the remission in such a way that the applicant only get a partial benefit will also infringe upon the right of the applicant to equality before the law as guaranteed in section 9(1) of the Constitution.[3] Some sentenced offenders, according to the evidence before this court, received a full benefit of the 24 months remission while the applicant, as a result of how his matter was dealt with was afforded a much lesser benefit. The applicant was granted a remission of sentence of 24 months but was effectively only given remission of 8 months.

[53] In using the second method of calculation suggested by the CMC the 24 months was deducted from the sentence imposed as per the second warrant. The sentence was one of three years in terms of section 276(1)(i) of the CPA. As previously referred to applicant had to serve at least one-sixth of his sentence before being considered for being placed under correctional supervision. Without any remission, the applicant would have become eligible for consideration for placement under correctional supervision after six months. In the case of applicant this would have been served after the fifteen years imprisonment was served. By deducting the two years remission from the three years, one year remained. In effect, the applicant has then have to serve one-sixth of one year imprisonment, i.e. two months. The effective remission of sentence is then only four months instead of 24 months. As a result of the different obligatory serving periods this resulted in the same MDP as in the case of the pro rata deduction from the first warrant.

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[3] "*9(1) Everyone is equal before the law and has the right to equal protection and benefit of the law.*"

[54] Moreover, this second method of calculation cannot be sustained by the wording of the Guideline 5.3.1. The aim of the Guideline was to ensure that there is not a remaining period to be served on one of the warrants. If the two years remission is deducted from the second warrant, then there will still be a period of two months left on the second warrant.

[55] The decision to apply the remission on the second warrant is arbitrary and not in terms of the Guideline, which is in any event not applicable to the applicant's situation.

[56] Guideline 5.3.1 did not apply to the factual situation of the applicant where he was sentenced to two sentences in terms of two warrants which was not ordered by a court to run concurrently. To apply the guideline in a case where there was more than one sentence on one warrant but the sentences were ordered to run concurrently was not covered by guideline 5.3.1. It could also not be used by way of analogy as the wording of the Circular was clear to be applicable to a situation where there is more than one warrant. Even if it could be used as a guideline than it was used in a way that limited the benefit of the remission which was provided to sentenced prisoners.

[57] If the methods of applying the two years remission which was used to calculate the MDP was flawed and the calculations were of the applicant wrong. The Parole Board based its decision on a wrong calculation which caused it to rely on an irrelevant consideration as envisaged in section 6(2)(e)(iii) of PAJA.

[58] The action of the Department was not rationally connected to the purpose for which it was taken i.e. to apply a remission of 24 months in reduction of the sentence which the applicant had to serve. This is in contravention of section 6(2)(f)(ii) of PAJA.

[59] The action is so unreasonable that no reasonable person could have come to the decision which is accordingly in contravention of section 6(2)(h) of PAJA.

[60] Lastly, the action was unconstitutional and unlawful as the applicant was not given the benefit of the less severe of the punishment he had to serve. This whilst other sentenced offenders obtained the full benefit of the 24 months remission of sentence. This is in conflict with the equality clause in the Constitution.

[61] Having found that the calculation of the CMC as accepted by the Parole Board was taken on the basis of a wrong application of Guideline 5.3.1 and a wrong method of calculation of how the two years remission should have been applied, which again led to a wrong determination of the MDP, this decision should be reviewed and set aside. The decision that the applicant did not qualify for the special parole dispensation as at 27 April 2020 his MDP was 30 September 2025 should be reviewed and set aside.

[62] During argument before this court it became common cause that if this court finds that the manner in which the 24 months remission was applied to the sentence of the applicant was wrong then the applicant will have met the threshold date to become eligible for the Covid Parole. The finding of the court is that Guideline 5.3.1 was not applicable to the

calculation but this begs the question as to what the lawfully correct, fair and reasonable calculation should be. The matter should be referred back to the Parole Board to consider whether applicant's MDP fell within the 60 month period calculated from 27 April 2020 taking into consideration the findings of this court .

[63] The applicant also sought an order that it is declared and confirmed that the applicant qualifies for the Covid-19 special remission of sentence.

[64] To make this finding the court will have to make a finding on how the 24 months remission should have been applied by the Parole Board. This is a function of the Parole Board and not of the court. The court will however suggest a calculation method which will not be binding on the Parole Board.

[65] As indicated above, the starting point should be that the applicant should get the full advantage of the 24 months remission. The advantage is ultimately reflected in his MDP. What complicates the calculation to some extent is the fact that as far as the sentence of 15 years imprisonment is concerned, the applicant is entitled to be placed on parole after he served half of his sentence. As far as the sentence to three years correctional supervision is concerned, the applicant had to serve one-sixth of this sentence before he could have been considered for placement under correctional supervision.

[66] The total sentence which the applicant was to serve was 18 years. If the 24 months remission was deducted from this sentence, it would leave a sentence of 16 year imprisonment. The problem with this method of

calculation to obtain a MDP is that, in relation to portion of this 16 years, half the sentence must be served and in relation to another portion, albeit the lesser portion, one-sixth has to be served.

[67] To provide for the difference and to simultaneously provide that the applicant receives the full benefit of the 24 months remission, the 24 months must be subtracted from the two sentences as per the two warrants in relation or pro rata to their duration. This requires a mathematical calculation. The 15 years sentence is five times longer than the three years sentence. Accordingly the relation is 5 : 1; 3 multiplied by 5 is 15. If this equation is applied to 24 months, 20 months should be deducted from the 15 years sentence and four months should be deducted from the three years sentence. The 15 years sentence is then reduced to 13 years and 4 months and the 3 year sentence to 2 years and 8 months respectively.

[68] In relation to the 13 year and 4 months sentence, if half is served it will mean 6 years and 8 months should be served.

[69] One-sixth of the 2 year and 8 month sentence (or 970 days for ease of calculation) is 162 days. This means 23 weeks and 1 day.

[70] As we are dealing with sentences which should be served consecutively, it means that the applicant had to serve 6 years and 8 months and thereafter 23 weeks and 1 day (4 months and 22 days). If these periods are added then the applicant had to serve 7 years and 22 days. The applicant's MDP was then 7 years and 22 days in the future, calculated

from the day of the first sentence, i.e. 31 January 2018. This calculate to 22 February 2025.

[71] If the applicant's MDP was 22 February 2025 he would have had less than 5 years left of his minimum sentence to be served as at 27 April 2020. If it was less than five years he became entitled to the Covid parole.

[72] According to this calculation the Covid parole would have been applicable to the applicant. The court already found that the method used by the CMC and the Parole Board was incorrect and unlawful. This suggested method of calculation could be considered by the Parole Board in the exercise of their discretion to place the applicant on parole and correctional supervision. Consequently, the matter should be referred back to the Parole Board to consider to place the applicant on parole.

[73] The court do not intend to make a cost order in this matter as the applicant appeared in person and there is no application for cost.

[74] The following order is made:

(1) The decision of the Parole Board that the applicant did not qualify for the Covid parole is reviewed and set aside.

(2) The Parole Board is ordered to within 30 days of this order reconsider whether applicant could be placed on parole without reliance being placed on the methods of calculation which was found to be wrong by this court.

(3) No order as to costs.

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RÉAN STRYDOM J
JUDGE OF THE HIGH COURT
GAUTENG LOCAL DIVISION
JOHANNESBURG HIGH COURT

Date of Hearing:	02 February 2022
Date of Judgment:	11 February 2022

Appearances:

On behalf of the Applicant:	In Person
On behalf of the Respondent:	Adv. M. Sekhethela
Instructed by:	State Attorney