IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)

CASE NUMBER: 14495/2017

DATE OF HEARING: 8 NOVEMBER 2018

DATE OF JUDGMENT: 21 DECEMBER 2018

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

2019-02-11
DATE

SIGNATURE

In the matter between:

MARIUS VAN DER HEEVER Applicant

and

MINISTER OF CORRECTIONAL SERVICES First Respondent

CHAIRPERSON, NATIONAL COUNCIL FOR CORRECTIONAL SERVICES Second Respondent

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J U D G M E N T

SUMMARY - Parole review – respondents following wrong approach in considering the applicant's application for parole subjectively – approaching the application on the basis that it is better to err on the side of caution, when considering the prospect of the applicant re-offending – nothing in respondents' papers to suggest that there is a risk that the applicant may re-offend if released on parole – test for consideration of parole is objective and not based on subjective considerations – consideration to include consideration of reports by experts, more particularly the reports of those experts which, on the respondents' specific instruction, provided reports to respondents on whether the applicant may possibly re-offend – the respondents' refusal to release the applicant on parole is not rational on the facts before court

AVVAKOUMIDES, AJ

Introduction

[1] The applicant is a sentenced prisoner currently incarcerated at Kgosi Mampuru II Correctional Centre (formerly Pretoria Central Prison), where he is serving a life sentence, having been convicted on 21 September 1994. The applicant has served 23 years of his sentence. The applicant was convicted of 3 counts of murder, 2 counts of arson, one count of attempted arson, theft of a firearm and the unlawful possession of a firearm and ammunition. The applicant was sentenced to life imprisonment for the murders and custodial sentences in respect of the other convictions.

[2] I will briefly deal with the circumstances of the offences hereunder because in my view, they form the central and pivotal issue clouding the decisions taken and support the approach adopted by the respondents in erring on the side of caution, when considering the applicant's application for parole.

[3] The applicant's applied for review of the decision taken on 22 December 2017 by the first respondent not to approve the applicant's release on parole. It is common cause that the provisions of Act 8 of 1959 are applicable to parole (in particular section 65(6)) to prisoners who were sentenced prior to 1 October 2004, such as the applicant.

[4] The application is anchored on section 6 of the Promotion of Administrative Justice Act, 3 of 2000 ("PAJA") read with section 33 of the Constitution of the Republic of South Africa, Act 108 of 1996 ("the Constitution").

The applicable law

[5] There is no dispute between the parties over the legal position applicable to the applicant however, I deal with such position as succinctly as possible to illustrate why, on the basis of the settled law, coupled with the facts and reports obtained from experts, the respondents materially erred in refusing the applicant's application for parole.

[6] The legal positon was settled in ***Van Vuren v Appellant for Correctional Services and others*** **2010 (12) BCLR 1233 (CC)**. This case finally set out the proper interpretation of section 136 of the Act and concluded that the

provisions of the Correctional Services Act, 1959 (old Act), and the policy and guidelines applied by the former Parole Boards applied to the respondent therein, being a prisoner who is incarcerated for a period longer than 20 years.

[7] Similarly, in Derby-Lewis v Appellant of Correctional Services and Others 2009 (6) SA 205 (GNP) the full court held that only the provisions of section 136 of the 1998 Act are applicable to persons serving life sentences before 1 October 2004. The cases of Van Vuren and Derby Lewis serve as authority for the proper interpretation of section 136 (1) of the 1998 Act.

Applicant's parole applications

[8] During 2012 the applicant's first parole hearing culminated in the first respondent approving the recommendation of the second respondent's decision, not to recommend parole. The recommendations made by the Parole Board were as follows:

"The profile of the offender is to be submitted to Council again in not less than twenty (24) months, subject to the following recommendations:
Steps should be taken to pursue restorative justice between the offender and the families of the victims;
Psychological intervention as recommended by the psychologist are to be implemented to deal in particular with issues of setting things alight after having committed the relevant crimes as well as his own abuse as a child."

[9] After the 2012 decision the applicant launched a review application against the refusal of the first respondent to grant the applicant parole. The application became moot because the first respondent had arrived at a new decision.

[10] On 22 August 2014 the first respondent made a new decision relating to the applicant's placing on parole. The decision entailed a refusal of the granting of parole and was based on the following reasoning:

> "A further profile of 24 (twenty-four) months is hereby approved.
>
> In the interim:
>
> The offender is encouraged to participate in further psychological intervention to assist him gain insight in the crime committed as well as the impact of his offending behaviour on the families of the victim.
>
> The offender should be encouraged to participate in further intensive sexual offenders programme.
>
> The Department is to solicit the assistance of community-based organisations as well as NGOs in the tracing of the victim's families."

[11] Following this decision, a further review application was brought. Pending the application, the applicant's attorney and the State Attorney, and in an attempt to resolve the issues at hand then, agreed to jointly appoint Dr Henk Swanepoel, an independent psychologist to assess the applicant and to report to the court on his findings.

[12] Dr Swanepoel's risk assessment described the applicant as a medium to low risk to society. Dr Swanepoel concluded that the applicant no longer possesses a danger to the public and recommended the applicant's release on parole under strict conditions which should include continued psychotherapy outside prison.

[13] The report of Dr Swanepoel was furnished to the applicant's attorney on 15 November 2015 and not considered by the respondents and accordingly the review application was not prosecuted. Of importance is that the applicant abided by the requirements arising from the report and the decision of the first respondent based thereon. He completed the further sexual offenders' course and underwent further psychotherapy as required. This is common cause.

[14] During 2016, a further parole review process was initiated and the Parole Board recommended a further profile based on three grounds only:

> "The offender is still faced with the same stressors and circumstances like before; and
> The offender still needs some further intensive, individual psychotherapy;
> The offender still needs to undergo intensive sexual offenders programme."

[15] These concerns alarmingly appear to relate back to previous feedback requests from the Minister's office in previous parole refusals. From the recommendation it is clear that the Parole Board, in compiling its report, and signed on 4 August 2016, took no cognisance of, and gave no consideration

to, the report and conclusions of Dr Swanepoel and the fact that the applicant had fully complied with the requirements of the 2014 decision of the first respondent. The board further had received Dr Swanepoel's report prior to furnishing its decision. The Parole Board refused to consider the representations of the applicant's attorney.

[16] The applicant's attorney made further representations to the second respondent detailing therein a complete and thorough contextualisation of the relevant evidence which the second respondent was duty bound to consider.

[17] On 22 December 2016 the second respondent resolved not to recommend the placement of the applicant on parole and, in the interim, made the following observations regarding the applicant:

> "1.1 The offender needs to be referred to a Clinical Psychologist in DCS to assess him for the possibility of psychotherapy.
>
> 1.2 The offender should undergo intensive individual psychotherapy as recommended by the Psychologist.
>
> 1.3 The offender should participate in further intensive Sexual Offender's programme.
>
> 1.4 The offender should be evaluated by a Criminologist to ascertain risk, if any, in the event the offender is placed on parole.
>
> 2. Updated Social Worker and Psychologist reports should be attached when the profile is resubmitted."

[18] On 22 December 2016 the first respondent approved the decision of the second respondent. Noticeably, the recommendation includes the examination of the applicant by a Criminologist on the question of the possibility of re-offending whilst a Criminologist would not ordinarily be the suitably professional to opine on such an issue, not being a medically qualified professional.

Grounds of review

[19] The grounds of review may be summarized as follows: the actions taken by the first and second respondents took into account irrelevant considerations, *alternatively*, that relevant considerations were not considered, *alternatively* that the actions so taken were prompted by unwarranted dictates of the Chairman of the Parole Board Chairman, by imposing his personal views upon the applicant, as substantive requirements which both respondents accepted, *alternatively* mistake of fact, *alternatively* arbitrary decision making, *alternatively* error of law and *alternatively* decision making was irrational - (s6(2)(e)(iii), s6(2)(e)(iv), s6(2)(e)(vi), s6(2)(f)(ii), s6(2)(d) of PAJA.

[20] In compiling the report, the Chairman of the Parole Board arrived at the following conclusions:

"The offender is still faced with the same stressors and circumstances like before; and

The offender still needs some further intensive, individual psychotherapy; and

The offender still needs to undergo intensive sexual offenders programme."

[21] Counsel for the applicant submitted that, regard being had to the reports which served before the Parole Board, it is clear that no rational basis existed for the conclusion made by the Chairman of the Parole Board. I am inclined to agree. Counsel for the applicant emphasized that:

21.1 the Case Management Committee confirmed that the applicant had met all the requirements in respect of the decision made by the first respondent on 22 August 2014;

21.2 the social worker of the Department of Correctional Services confirmed that the applicant has addressed all the outstanding issues and reoffending is not expected and therefore parole is recommended;

21.3 the report of Dr Swanepoel, jointly appointed, confirmed that the applicant no longer poses a danger to society and adjustment challenges can be addressed with further psychotherapy and accordingly he may be released on condition that psychotherapy be continued;

21.4 the clinical psychologist confirmed that the applicant has undergone all courses and programs including the Sexual Offenders Programme required by the first respondent and that the applicant is considered to be ready for release on parole; and

21.5 the Parole Board failed to objectively consider the reports in favour of the placement of the applicant on parole and similarly unilaterally decided to reject the submissions of the applicant's attorney.

[22] Counsel for the applicant submitted further that:

22.1 the reasons advanced by the Parole Board are wholly based on the personal views and conclusions of the Chairman of the Parole Board and is not supported by the reports before the Parole Board; and

22.2 the reasons advanced by the Parole Board are new requirements which are a clear overreach of the authority of the Parole Board and are further irrelevant considerations; and

22.3 the reasons postulate an error of law and arbitrary decision making.

22.4 inasmuch as the procedural grounds of review are concerned, these include the absence of the applicant being given adequate notice of the nature and purpose of the proposed administrative action and a reasonable opportunity to make representations inter alia. See ***Sokhela v MEC for Agriculture and Environmental Affairs (Kwa-Zulu Natal)*** **2010 (5) SA 574 (KZP)**.

22.5 the applicant ought to have been given an opportunity to make representations and further submissions on the final proposal. The

respondents were in possession of material which may be prejudicial to the applicant and it would have been unfair not to disclose that information to the applicant and to permit him an opportunity to deal with it. See ***Earth Life Africa (Cape Town) v Director General: Department of Environmental Affairs & Tourism*** **2005 (3) SA 156 (C);** ***Yuen v Minister of Home Affairs*** **1998 (1) SA 958 (C);** ***Du Bois v Stomp Drift-Kamanassie Besproëingsraad*** **2002 (5) SA 186 (C);** ***Tseleng v Chairman Unemployment Insurance Board*** **1995 (3) SA 162 (T);** ***Foulds v Minister of Home Affairs*** **1996 (4) SA 137 (W).**

22.6 new facts in possession of the respondents would have to have been disclosed to the applicant in order for him to answer thereto. See ***Huysman v Minister of Local Government Housing & Works (House of Assembly)*** **1996 (1) SA 836 (A);** ***Earth Life Africa (Cape Town) v Director General – Department of Environmental Affairs & Tourism supra,*** at para 64.

22.7 the failure by the Parole Board Chairman to afford the applicant the right of reply prior to filing the record with the first and second respondents falls foul of the provisions of PAJA which guarantees the right to procedurally fair administrative action.

22.8 advice, findings or recommendations of a statutory body can affect the rights or legitimate expectations of a person. See De Ville *Judicial Review of Administrative Action in South Africa*, 2003 Butterworths at

page 24. The *audi alteram partem* rule is applicable to such enquiries. See ***Grundlingh v Van Rensburg NO* 1984 (4) SA 204 (A)** at 687F.

[23] The recommendation of the chairman of the Parole Board is significant in the parole process and such recommendation amounts to the exercising of a public power or the performance of a public function in terms of the empowering legislation, and is therefore of administrative nature and subject to procedural fairness. See ***Janse van Rensburg NO and another v Minister of Trade and Industry and another NNO* 2001 (1) SA 29 (CC)**.

[24] Counsel for the applicant, in my view correctly, submitted that the decision of the respondents fell short of s 6(2)(b), alternatively 6(2)(c) of PAJA and furthermore, section 6(2)(d), the latter based on an action which is materially influenced by an error of law. See ***Governing Body Micro-Primary School v Minister of Education Western Cape* 2005 (3) SA 504 (C)**; ***Ehrlich v Minister of Correctional Services* 2009 (2) SA 373 (E) at para 40**; ***Tantoush v Refugee Appeal Board* 2008 (1) SA 232 (T) at para 81**; ***Johannesburg Metropolitan Municipality v Gauteng Development Tribunal* 2010 (6) SA 182 (CC) at para 92**; ***ICS Pension Fund v Sithole NO* 2010 (3) SA 419 (T)** at para 94.

[25] Based on the facts of this case, it must follow that the decision in ***Pepcor Retirement Fund v FSB* 2003 (6) SA 38 (SCA)** finds application because a decision which is based on incorrect material facts, or a decision made in the absence of facts material to the decision, is reviewable.

[26] Section 6(2)(f)(ii) of PAJA states that a decision is not rational if it is not rationally connected to the purpose for which it was taken; the purpose of the empowering provision; the information before the administrator; and the reasons given for it by the administrator.

[27] Rationality is defined as follows:

> "This means in essence that a decision must be supported by the evidence and information before the administrator as well as the reasons given for it. It must also be objectively capable of furthering the purpose for which the power was given and for which the decision was purportedly taken. The question to be asked is the following: 'Is there a rational objective basis justifying the conclusion made by the administrative decision-maker between the material property available to him and the conclusion he or she eventually arrived at?" See Hoexter: *Administrative Law in South Africa*, 2nd Ed, p340; ***Carephone (Pty) Ltd v Marcus N.O.* 1999 (3) SA 304 (LAC)** at para 37.

[28] It must follow that the decisions taken by the respondents are clearly decisions which are not supported by the evidence that served before the respondents. The test demands merely a rational connection, not perfection or ideal rationality. There ought to be a rational justification for the administrator's finding. Rationality is founded in reason, not arbitrariness. See ***Scalabrini Centre and others v Minister of Home Affairs and others* 2013 (3) SA 531 (WCC); *Minister of Home Affairs v Somali Association of SA* 2015 (3) SA 545 (SCA)** para 18.

[29] I am mindful of the decision in ***Bato Star Fishing (Pty) Ltd v Minister of Environmental Affairs*** **2004 (4) SA 490 (CC)** wherein the following appears:

> "In treating the decisions of administrative agencies with the appropriate respect, a court is recognising the proper role of the executive within the Constitution. In doing so a court should be careful not to attribute to itself superior wisdom in relation to matters entrusted to other branches of government. A court should thus give due weight to findings of fact and policy decisions made by those with special expertise and experience in the field. The extent to which a court should give weight to these considerations will depend upon the character of the decision itself, as well as on the identity of the decision-maker. A decision that requires an equilibrium to be struck between a range of competing interests or considerations and which is to be taken by a person or institution with specific expertise in that area must be shown respect by the courts. Often a power will identify a goal to be achieved but will not dictate which route should be followed to achieve that goal. In such circumstances a court should pay due respect to the route selected by the decision-maker. This does not mean however that where the decision is one which will not reasonably result in the achievement of the goal, or which is not reasonably supported on the facts or not reasonable in the light of the reasons given for it, a court may not review that decision. A court should not rubber-stamp an unreasonable decision simply because of the complexity of the decision or the identity of the decision-maker."

[30] I find that the personal views of the Parole Board Chairman are wholly irrelevant and tainted the ongoing process. The purpose of the empowering provision providing for parole is to determine whether a person has become rehabilitated to the extent that he should be placed on parole and the conduct of the Chairman and the acceptance thereof by the respondents undermines

the principle and application of the empowering provision. The information that served before the administrator was information of a positive nature and the applicant fully complied with the requirements of the first respondents' decision of 2014.

[31] In my view the decision of the first and second respondents undermined all imperatives relating to rehabilitation and was disproportionate and unduly onerous. There is no reason why the applicant should remain incarcerated. Principles of rehabilitation should outweigh retribution at this stage where the applicant has already been incarcerated for so long. See Hoexter *Administrative Law*, 2nd ed p343 – 346 for a discussion of proportionality and ***Minister of Health v New Clicks South Africa (Pty) Ltd* 2006 (2) SA 311 (CC)** at para 637 and ***Prophet v National Director of Public Prosecutions* 2007 (6) SA 169 (CC)**.

The respondent's contentions

[32] The respondents submitted that the issue for determination is whether the decision at hand was in accordance with the law and whether it was reasonable and fair under the circumstances.

[33] The respondents conceded that the applicant is entitled to be considered for day parole and parole after he has served 20 years of the sentence, having been so sentenced on 25 September 1994.

[34] The respondents agree that Dr Swanepoel recommended that the applicant be released on parole under strict conditions, which shall include continuous psychotherapy. The respondents view however is that it will not be feasible for the applicant to be released and to attend psychotherapy outside of prison without being monitored. No mention is made by the respondents of the adopted parents of the applicant who have made clear that they will offer the applicant a home, work and care for him, if released on parole. This has been dealt with by the relevant experts and not disputed, questioned or challenged by the respondents. Thus, the main contention by the respondents is that the applicant will benefit from therapy whilst incarcerated because only they have the resources to do so. This is untenable and loses sight of the facts.

[35] The respondents contend that the applicant failed to disclose who will monitor his therapy sessions, whether he will suffer a relapse and whether the applicant will indeed attend psychotherapy. I cannot align myself with this argument. The respondents' duty is to determine whether the applicant is entitled to parole and if so, to set such parole conditions as they deem appropriate and justifiable on the facts. This duty does not extend to questioning ahead of any decision whether the applicant will attend therapy suggested by the experts. This is putting the cart before the horse.

[36] The respondents submitted that there is no evidence before the court about of who will monitor and offer treatment or psychotherapy treatment once the applicant is released on day parole. Again the respondents lose sight of the

adopted parents' role and what was submitted to the parole board in his regard, and in the papers.

[37] The respondents submitted that, although the court that sentenced the applicant on 21 September 1994, did not accept the submission made by counsel for the State that he should be classified as a serial killer or serial murderer, "*the fact of the matter remains that if all his eggs are put into one basket and if anything goes wrong in that relationship, his whole release plan is shattered*". I find no basis for this in the papers, neither was it dealt with in argument, that the applicant is indeed a serial killer. The three murders were not linked in any manner to suggest this classification of the applicant and nothing turns on this allegation.

[38] The insistence by the respondents that the applicant should be examined by a criminologist to determine whether he is a potential risk to society is ill placed. I have dealt with this above. A criminologist is not a suitably qualified for this purpose and this was not disputed in argument.

[39] The respondents, in their main heads of argument, contend that the applicant has not been rehabilitated and that therefore he should not be released on parole. This submission is unfounded and takes no cognisance of the facts and the various reports submitted, particularly that of Dr Swanepoel. The submission that the applicant is a danger to society is similarly not supported by any facts. The report of Dr Swanepoel is specific in describing the

applicant as a medium to low risk to society insofar as the possibility of re-offending is concerned.

[40] The respondents submitted that the murders committed were brutal and that the first two murders was premeditated. One cannot dispute that the three murders were gruesome and brutal. That is not the point however. The issue for determination is, whether on all the facts before court and regard to the experts' reports, there is sufficient reason to permit the applicant to be released on parole.

[41] The respondents submitted that the Minister deemed it desirable (notwithstanding the favourable comments regarding the applicant's rehabilitation in the various psychological reports) that the Department of Correctional Services appoint a criminologist to determine risk in the event of the applicant being placed on parole. It is this action by the Minister that I do not follow. The suitably qualified practitioners had already opined on the risk at hand and there was, in my view, no reason to require the opinion of a criminologist in this regard. Such opinion would not arise from a medical examination of the applicant but from empirical information which is not necessarily applicable to the applicant, bearing in mind the opinions of the medical experts.

[42] Counsel for the respondents submitted that the first respondent took into consideration the various positive factors in favour of the placement of the applicant on parole. These factors include the following:

42.1 the behaviour and adjustment of the applicant during his incarceration;

42.2 the commendable efforts made by the applicant towards his rehabilitation (including the multi-disciplinary programmes attended by him);

42.3 the availability of support systems to the applicant, together with his offer of employment in the event of his being placed on parole;

42.4 the academic achievements of the applicant during his incarceration;

42.5 the favourable comments regarding the extent to which the applicant has become rehabilitated contained in the psychological reports of the following Clinical Psychologists:

42.5.1 Dr Henk Swanepoel;

42.5.2 Dr J C Coetzee;

42.5.3 Dr Kobus Truter (his second report, dated 19 November 2009);

42.5.4 Ms Precious Sedumedi;

42.5.5 Ms Mona Heyns;

42.5.6 Mr Ivan de Klerk; and

42.5.7 Ms Lindiwe Bayi.

[43] The respondents' submissions are not supported by the facts when they contend that, despite the positive facts listed by the relevant experts, the Minister weighed up these factors against the negative factors and concluded that the applicant is not suitable for parole. The so called negative factors are summed up by one consideration and that is the risk factor which clouded the respondents' consideration. The respondents find support in their reasoning by alleging that they possess the resources to provide psychotherapy and to monitor the applicant whilst being incarcerated. In my view, the respondents have failed to show that their decision was rational on the facts before court.

[44] The respondents contended that, irrespective of whether or not the respondents' decision falls to be reviewed and set aside, none of the grounds contended for by the applicant exist for the court to substitute the respondents' decision with an order placing the applicant on parole, as opposed to referring the matter back to the respondents. I disagree. The reason is simply that such submission is not supported by the facts of this case.

[45] The applicant submitted that if the court does find that the respondents' decision stands to be reviewed and set aside, the court should rather make an

order substituting the respondents' decision, instead of referring the matter back to the respondents, because:

45.1 the end result is a foregone conclusion;

45.2 it will be a waste of time to order the Minister to reconsider the matter, which is obvious;

45.3 much time has unjustifiably and unreasonably been lost in the process which has prejudiced the applicant, and a further delay that a referral back to the Minister would cause;

45.4 the actions of the Minister show bias and/or incompetence with reference to consideration of the relevant facts and expert records;

45.5 the court is in as good a position as the Minister to make the decision;

45.6 in the light of the fact that he has been incarcerated for a long period of time, time is of the essence in this matter.

[46] The respondents submit that the applicant has not made out a case for the court to substitute the Minister's decision with an order of the court placing the applicant on parole. The respondents submitted that if the matter was referred back to the Minister, the Minister would make a decision within a short period of time and in terms of the Minister's decision, the applicant would have been

due for a new profile by 21 December 2018. I find the submission inappropriate and nonsensical, given the date of the hearing of the application and the date of this judgment.

[47] The court is empowered, in terms of section 8(1)(c)(ii)(aa) of PAJA, to substitute its decision for that of the administrator in exceptional cases. In my view and given the facts, I am of the view that this case warrants an order of court to substitute the decision of the respondents.

Decision and order

[48] What remains to be decided is the order that I intend granting, given the facts. I have dealt with the rehabilitation of the applicant and the reports of the various experts. There is nothing to gainsay the opinions of the experts. That there is no absolute certainty that the applicant will not re-offend or integrate into society successfully is true. Equally true is that the probabilities favour an approach that he will not re-offend, again based on the reports of the experts. In summary the applicant has, in my view, made out a case for the relief sought. The difficulty is to make an order that will assist the applicant in integrating back into society successfully. Having considered all of the facts and submission of the parties, it is my view that the applicant should be placed on parole under strict conditions, which I will deal with hereunder.

[49] I make the following order:

49.1 The decision of the respondents dated 22 December 2017 not to place the applicant on parole is hereby reviewed and set aside.

49.2 The applicant is hereby placed on day parole with immediate effect, from 08h00 daily to 15h00, for a period of 3 (three) months, on the following conditions:

49.2.1 the applicant shall attend psychotherapy treatment, preferably from Dr Henk Swanepoel, twice every week or so often as the relevant therapist may require, per week; and

49.2.2 the applicant shall as soon as practically possible, after such therapy sessions furnish proof that he has attended psychotherapy treatment to the person in charge of the applicant at Correctional Services; and

49.2.3 written record shall be kept of the psychotherapy sessions by both the Correctional Services and the applicant; and

49.2.4 in the event of the applicant not abiding by the conditions of his day parole, his release shall be withdrawn immediately and the respondents, more particularly

Correctional Services, are hereby authorized to return the applicant to prison for incarceration.

49.3 Providing that the applicant has attended psychotherapy treatment sessions in terms of sub paragraph 2 above, and the therapist involved has not furnished any report to either the applicant or the Correctional Services or to the respondents, to the effect that the applicant may not be placed on full parole for an reason, or that the applicant is not ready for full parole, the applicant shall be placed on full parole after 3 (three) months, on the following conditions:

49.3.1 the applicant shall attend psychotherapy treatment, preferably from Dr Henk Swanepoel, once every week or so often as the relevant therapist may require, per week; and

49.3.2 the applicant shall as soon as practically possible, after such therapy sessions furnish proof that he has attend psychotherapy treatment to the second respondent, more specifically the person in charge of the applicant at Correctional Services; and

49.3.3 written record shall similarly be kept of the psychotherapy sessions by both the Correctional Services and the applicant; and

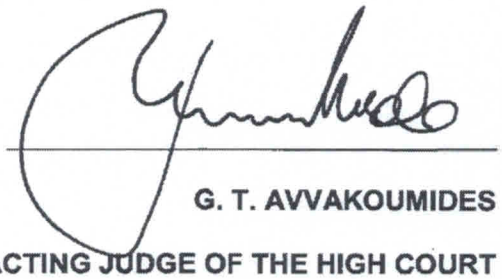
49.3.4 in the event of the applicant not abiding by the conditions of this his full parole, his release on full parole shall be withdrawn immediately and the respondents, more particularly Correctional Services, are hereby authorized to return the applicant to prison for incarceration.

49.3.5 in both the instances of day and full parole the applicant is ordered to furnish a written report of the particular therapist to Correctional Services on a monthly basis detailing the progress of the applicant's therapy.

49.4 The parties employed the services of two counsel. Both parties requested an order for costs against the other and that such order include the costs of two counsel. The applicant moved for a cost order against the respondents on the scale as between attorney and client because of the manner in which the respondents dealt with the parole application on 22 December 2017. I am inclined to agree that the respondents failed, on the facts, to deal with the parole application adequately and in the light of the various reports failed to properly consider the application. In my view an attorney and client cost order is justified. The respondents are therefor ordered to pay the costs of this application on the scale as between attorney and client, which costs shall include the costs of two counsel.

49.5 Lastly, I recognize that there may very well be practical difficulties with the order that I am unable to foresee at this stage, warranting consideration to

adjust the order in order to address such practical difficulties. The parties are therefore granted leave to approach the court in this event, on prior notice to the Deputy Judge President and if necessary to arrange for this court, instead of another court, to hear representations in this regard. In granting such leave I make it clear that the parties will not be permitted to a rehearing of the application and the leave granted is confined to addressing practical difficulties which may arise, to implement, and give effect to, the order.



G. T. AVVAKOUMIDES

ACTING JUDGE OF THE HIGH COURT

GAUTENG DIVISION, PRETORIA

Representation for Applicant:

Counsel:	R Du Plessis SC
	L Kellermann SC
Instructed by:	Julian Knight Incorporated

Representation for the Respondents:

Counsel:	M T K Moerane SC
	H L Ngomane
Instructed by:	State Attorney