



CONSTITUTIONAL COURT OF SOUTH AFRICA

Paul Francious Van Vuren v Minister for Correctional Services and Others

**CCT 07/10
[2010] ZACC 17**

Date of Judgment: 30 September 2010

MEDIA SUMMARY

The following media summary is provided to assist in reporting this case and is not binding on the Constitutional Court or any member of the Court.

On 30 September 2010, the Constitutional Court delivered a judgment granting the applicant, Mr Van Vuren, direct access but dismissing his application for leave to appeal against the decision of the North Gauteng High Court, Pretoria (High Court).

Mr Van Vuren was sentenced to death in November 1992. When the death penalty was declared unconstitutional, his death sentence was converted in September 2000 to life imprisonment. The sentence was backdated to the date of his original sentence.

When Mr Van Vuren was first sentenced, offenders serving life sentences were required to serve a minimum of 10 and not more than 15 years of their sentence before being considered for parole. Section 136 of the Correctional Services Act 111 of 1998 (Act) is a transitional provision that governs certain minimum periods of incarceration which sentenced offenders must serve before they can be considered for parole. Section 136(1) of the Act relates to offenders' placement on parole or under community corrections and his or her consideration for release in terms of the applicable policies and guidelines prior to 2004. Section 136(3)(a) of the Act creates a mandatory non-parole period of 20 years before a lifer can be considered for release on parole.

The High Court held that section 136(1) of the Act applied to Mr Van Vuren but that he was only eligible to be considered for parole after having served 20 years of his sentence.

In this Court Mr Van Vuren argued that if section 136(3)(a) applies to him, with the consequence being that he would have to serve the prescribed 20 years before being eligible for consideration for parole, then that section would be retrospective in operation and, for that reason, unconstitutional. In his alternative application for direct access, Mr Van Vuren argued that he falls under 136(1) of the Act and that he is, therefore, entitled to be considered for parole in terms of the policies and guidelines applied at the date of his original sentencing.

The respondents, including the Minister for Correctional Services and the Minister for Justice and Constitutional Development, argued that section 136(3)(a) strikes a constitutionally sound balance between Mr Van Vuren's constitutional right, *inter alia*, to freedom and the protection of the interests of society against those who have committed violent crimes. They argued that section 136(1) does not entitle Mr Van Vuren to be considered for parole until he has completed 20 years in detention.

Writing for the majority, Nkabinde J interpreted section 136(1) to refer to any person serving a term of imprisonment, including lifers. The majority held that the phrase "prior to" is broad and, therefore, encompasses the policies and guidelines in existence at any time before 2004. The majority held that subsection (1) preserves all the policies and guidelines that applied before 2004 and that subsection (3)(a) did not. The latter, according to the majority, merely created a new mandatory non-parole period of 20 years. The majority held that the argument that Mr Van Vuren could only be considered for parole after having served 20 years would render the policy and guidelines that applied immediately before 2004 retrospective in effect, a situation that the Court cannot countenance. The majority found that Mr Van Vuren has served far more than 15 years of his sentence and held that he is eligible to be considered for possible placement on parole in terms of the policy and guidelines that existed in 1992 coupled with the fact that the sentencing court antedated his sentence to 1992.

In the minority judgment, Yacoob J interpreted section 136(3)(a) to mean that it is applicable to Mr Van Vuren and that he would, therefore, have to serve 20 years in prison before becoming eligible for parole.