

WILLEM HENDRIK NIEMAND V THE STATE
CCT 28/00

PRESS SUMMARY

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

This appeal concerns the constitutional validity of the indeterminate sentence imposed on habitual criminals. This Court addressed the issue whether the provisions of section 286 of the Criminal Procedure Act 51 of 1977 (the CPA) read with section 65(4)(b)(iv) of the Correctional Services Act 8 of 1959 (the CSA) are consistent with the Constitution.

The appellant alleged that such punishment or treatment is cruel, inhuman and degrading and violates the provisions of section 12(1)(e) of the Constitution and it unfairly discriminates between habitual criminals and dangerous criminals. The Court concluded that even when read together the relevant provisions of the CPA and the CSA do not prescribe any maximum period of incarceration. A new Correctional Services Act 111 of 1998 was assented to on 19 November 1998, and that a section thereof now explicitly defines a period of 15 years as the maximum period of detention. It is almost four years since that legislation was passed and it has not yet come into operation. Is this not an indication that the Department of Correctional Services has been neglectful of the fate of those persons who have been declared habitual criminals?

Although the appellant has therefore succeeded in his appeal to the extent of persuading this Court of the constitutional invalidity of section 65(4)(b)(iv) of the CSA as read with section 286 of the CPA, he cannot succeed in the consequential relief sought by him, namely to have the sentence declaring him an habitual criminal set aside. The reading-in order proposed does however fix the maximum term of his imprisonment and makes certain that he cannot be detained for more than 15 years, thereby ensuring that he is not treated or punished in a cruel, inhuman or degrading way

I make the following order:

The order of the High Court in Pretoria made on 26 August 1999 is set aside and for it the following substituted:

- Section 65(4)(b)(iv) of the Correctional Services Act 8 of 1959, read with section 286 of the Criminal Procedure Act 51 of 1977, is declared to be inconsistent with the Constitution.
- Section 65(4)(b)(iv) of the Correctional services Act 8 of 1959 is to be read as though the following words appear therein after “parole;”:
“Provided that no such prisoner shall be detained for a period exceeding 15 years.”
- The order in paragraph 1 only comes into effect from the moment of the making of this order.
- Save for the above the appeal is dismissed.