

SUMMARY – SD WATERS V MR TLADI NO

1. Applicant was convicted in the Commercial Crimes Court of numerous counts of fraud and sentenced to serve a term of eight years imprisonment. From his place of confinement, he brings an application to review the decision of the first respondent (in his capacity as Chairman of the Parole Board) in which the Parole Board declined to recommend an application to the Regional Court, in terms of section 276A(3)(a)(ii) of the Criminal Procedure Act, that the custodial sentence imposed on applicant be converted to one of correctional supervision.
2. Applicant operated as an insurance advisor and, over a period of time, had committed multiple counts of defrauding a client who was an elderly lady resulting in her almost destitution. Applicant was sentenced to serve a term of five years imprisonment plus a further term of three years imprisonment suspended in whole on condition that applicant's repay to the victim the capital amount of R 400 541.00 plus interest before 1 March 2011. The learned magistrate stated that *"If for one or other reason the monies are not forwarded to the account that I specified you will serve another three years in prison."* Payment of the specified sum was not made in accordance with the order of the magistrate. The result is that applicant is currently serving a sentence of eight years imprisonment.
3. A year later, on 24th February 2012, payment of the aforesaid sum was made by or on behalf of appellant and immediately thereafter a meeting at the office of the Head of the Prison in which applicant is incarcerated was convened. A request was made that the Case Management Committee approach convicting and sentencing magistrate for applicant's sentence to now be endorsed as being five and not eight years. Notwithstanding visits by applicant's legal representatives, the learned magistrate declined to alter the sentence.
4. The Case Management Committee was thereafter requested to bring an application in terms of Section 276 (3)(a) of the CPA to ask for condonation of the late payment of the fine and for an order that the magistrate to reduce the sentence period from eight to five years which application was, in part, based upon the CMC own recommendation.
5. The basis of the recommendation of the Case Management Committee give rise to a number of concerns: the report refers to "the offender serving the sentence for armed robbery" which is clearly incorrect; there is reference to "the offender shows remorse for committing fraud. He paid the money he defrauded the victim" but there is not indication of any remorse and correspondence makes it clear that the payment was made with the sole intention of reducing the sentence; comments by the CMC appear to be rather naïve and superficial – viz - "the offender feel that being in prison has robed him to maintain his family", "the offender enjoys the support of his family, who has undertaken to continue their support should he be released".
6. It was argued in this application that factors taken into account and/or the reasons given by the Parole Board are confined to those which are 'aggravating' ie which conduce towards a custodial sentence. I fail to see why this approach is, per se, objectionable. These are exactly the factors and considerations which are relevant to the imposition of sentence.
9. Applicant says that the Parole Board should have taken into account the period of time he had spent in prison "both as an awaiting trial prisoner". Why? This is what is done by the court

when determining an appropriate sentence. Applicant says that his conduct in prison has been “exemplary”. That is what is expected by judicial officers – it should be the norm not the exception. Applicant says that he has a “warm, lovely and stable family and permanent resident”. One must then ask why he stole over R400 000 from an old lady over a period of time – clearly, this family environment was no deterrent to planned crime. He refers to his repayment of the R 400 000. That does not conduce towards a change in sentence. It was not done in advance of trial nor during the trial nor within the time period ordered by the magistrate. It was done for his own benefit not because it was the moral thing to do. Applicant states that his evidence to the Parole Board is that “I am remorseful at what I did”. The Parole Board expressed its own views on this as did the learned magistrate. The correspondence and meetings to which have referred above are also instructive in this regard. Applicant complains about the granddaughter of his victim in declining to be involved in either discussing or supporting this application. Applicant appears to have some difficulty in appreciating what he has done, the results thereof and the (dis)regard in which third parties are entitled to hold him.

11. I do not see that the decision of the Parole Board is one which is indicative of any bias against Waters. None was argued. He appears to have been treated as would any applicant. I was not alerted to inadmissible considerations to which the Parole Board gave any or undue weight. It has not been suggested that the Parole Board failed to take into account relevant considerations.
12. The only criticisms of the Parole Board at the hearing were that it failed to follow the recommendation of the Case Management Committee and that it focussed on the ‘aggravating’ factors. I see no merit in either of these arguments. The CMC makes recommendations not decisions. As one sees in the reasons of the Parole Board, the Parole Board takes into account, not only the recommendations of the CMC but also forms its own views – hence it heard from Waters and formed a view with regard to his approach to his current predicament. The Parole Board is certainly not bound by any ‘recommendation’ of the CMC.