



Understanding Oscar's sentence: Sentencing under Section 276(1)(i) of the Criminal Procedure Act

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INTRODUCTION

The recent announcement of the imminent, and subsequently suspended, release on correctional supervision of Oscar Pistorius has attracted significant media attention. For many his possible release is confusing as he was sentenced to a maximum of five years imprisonment for culpable homicide and in addition a concurrent three-year prison term, suspended for five years, for the separate offence of reckless endangerment for firing a firearm in a restaurant. However, after serving only ten months, he was about to be released. The answer to this apparent confusion lies in the sentencing provisions of the Criminal Procedure Act¹ (i.e. s 276(1)(i)) when read together with a provision in the Correctional Services Act (i.e. s73(7)(a)). This CSPRI Fact Sheet explains how this particular sentence works.

S276 (1)(i) OF THE CRIMINAL PROCEDURE ACT

After the conviction of an accused the Judge or Magistrate, as the case may be, hands down a sentence in terms of the sentencing provisions in the Criminal Procedure Act (s276(1)). Which sub-section the Judge or Magistrate selects for sentencing ultimately determines the non-parole period the person must serve if a custodial sentence is imposed. If a person is sentenced to imprisonment in terms of s276(1)(i) of the Criminal Procedure Act (as was the case with Oscar Pistorius), it means that he or she will serve a prison term from which he or she 'may be

placed under correctional supervision in the discretion of the National Commissioner of Correctional Services.'²



Correctional supervision is a conditional community-based sentencing option which an offender serves in the community.³

S73(7)(a) OF THE CORRECTIONAL SERVICES ACT

The Correctional Services Act,⁴ the principal legislation governing parole and correctional supervision, in section 73(7)(a), says that a person sentenced to imprisonment under section 276(1)(i) of the Criminal Procedure Act, must serve at least one sixth of his or her sentence in prison before being considered for placement under correctional supervision, unless the court has directed otherwise. Section 73(7)(a) refers to "being considered for placement" under correctional supervision, indicating that it is not an automatic right. For persons serving sentences of two years or longer, the discretion lies with the Correctional Supervision and Parole Board (CSPB), with the exception that life imprisonment cases are determined by the Minister.

Release dates for persons serving sentences under two years are determined by the National Commissioner, who often delegates this function to Heads of Centres.⁵

In the Pistorius case, the court did not provide any other sentencing directions or remarks around parole and Pistorius therefore qualified for the one-sixth provision in section 73(7)(a). Since he was sentenced in terms of section 276(1)(i) he was thus required to serve 10 months (one sixth of 60 months) in prison before being 'considered' for placement under correctional supervision.

WHAT QUALIFIES A PERSON TO BE CONSIDERED FOR PLACEMENT UNDER CORRECTIONAL SUPERVISION?

An offender would be found suitable for placement if he/she is not a danger to the community, complies with the expectations of imprisonment including compliance with the sentence plan (if there was one), adaptation and good behaviour. Specific attention is given to the type of crime committed, the length of the sentence and the gravity thereof, which must be counter-balanced with other factors for consideration, including circumstances surrounding the commission of the crime and the views of the victim, if applicable.⁶ The conduct of the offender, his or her adaptation in a correctional centre and his or her progress on the way to rehabilitation and correcting offending behaviour will also play an important role when considering possible placement under correctional supervision.⁷

In respect of the victims' views when considering the placement of an offender on parole, day parole or correctional supervision, a few remarks are warranted. Section 299A of the Criminal Procedure Act states that when a court sentences an offender for certain violent crimes⁸, it must inform the complainant or immediate relative of the deceased that he or she has a right to make representation when the offender is considered for placement on parole, day parole or correctional supervision. Should the victim or complainant make representation, the weight attached to such views is relative to the other information that is being considered.⁹

An offender may be placed under correctional supervision, on a date determined by the Correctional Supervision and Parole Board¹⁰ and in the case of an offender sentenced to life incarceration, on a date determined by the Minister.¹¹

A decision by the CSPB is final except that the Minister, the National Commissioner or the Inspecting Judge may refer the matter to the Correctional Supervision and Parole Review Board for reconsideration, in which case the decision of the Board is suspended pending the outcome of the decision of the Correctional Supervision and Parole Review Board.¹² A decision referred to the Correctional Supervision and Parole Review Board must be finalised within 4 months of such referral.¹³

CONDITIONS FOR PLACEMENT UNDER CORRECTIONAL SUPERVISION

It is important to note that an offender placed under correctional supervision in terms of the Correctional Services Act is subject to a conditional release.¹⁴ As a condition to release, he/she may be subjected to house detention, monitoring, or taking part in treatment, development and support programmes; be restricted to one or more magisterial districts or to living at a fixed address; and be required to refrain from using alcohol or illegal drugs, committing a criminal offence, visiting a particular place or making contact with a particular person or persons.¹⁵ In the event that an offender violates any correctional supervision conditions, he or she may be required to appear before a Supervision Committee in terms of section 58 of the Correctional Services Act. The Supervision Committee will advise the CSPB or the National Commissioner, as the case may be, on the desirability of applying for a change in the conditions imposed on such person; or applying for or issuing a warrant for the arrest of such a person.¹⁶

¹ Criminal Procedure Act 51 of 1997.

² 276 (1)(i) of the Criminal Procedure Act 51 of 1997

³ Correctional Supervision and Parole Boards.

Available at:

<http://www.dcs.gov.za/Services/CorrectionalSupervisionandParoleBoards.aspx>

⁴ Correctional Services Act 111 of 1998.

⁵ 2.1.2 Department of Correctional Services B Orders

⁶ Correctional Supervision and Parole Boards.

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<http://www.dcs.gov.za/Services/CorrectionalSupervisionandParoleBoards.aspx>

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⁷ Correctional Services Act 111 of 1998.

⁸ These are murder or other intentional killing; rape and compelled rape; robbery involving a firearm or dangerous weapon; sexual assault, compelled sexual assault, compelled self-sexual assault; kidnapping, and the conspiracy, incitement or attempt to commit any of these offences.

⁹ Directives: Complainant Participation in Correctional Supervision and Parole Boards, Issued by the Commissioner: Correctional Services in terms of the stipulations of Section 299A of the Criminal Procedure Act, 1977 (Act 51 of 1977) and was tabled in Parliament on 27 September 2005.

¹⁰ Section 73 (5) (a) (i) and 75 (1) Correctional Services Act 111 of 1998.

¹¹ Section 73 (5) (a) (ii) and 75 (1) (c) Correctional Services Act 111 of 1998.

¹² Section 75 (8) (a)) Correctional Services Act 111 of 1998.

¹³ Section 75 (10) Correctional Services Act 111 of 1998.

¹⁴ Section 52 Correctional Services Act 111 of 1998

¹⁵ Section 52 (1) (a) – (r) Correctional Services Act 111 of 1998.

¹⁶ Section 58 (6) (a) –(b) Correctional Services Act 111 of 1998.