

CHAPTER 27

ILLEGAL TRANSACTIONS WITH PRISONERS

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CHAPTER 27

ILLEGAL TRANSACTIONS WITH PRISONERS

1. INTRODUCTION

This Chapter deals with corruption and illicit relationships between warders and prisoners in contravention of the Correctional Services Act and Prison Regulations.

In several parts of this report the Commission has highlighted the dangers of Correctional Officers fraternizing or engaging in agreements or activities with inmates that are contrary to Departmental policy.

All temptations should be resisted by members if they are to preserve their independence. If such officers fail to do so they will soon discover that they have surrendered their power to the prisoners who will by cohesive means ensure that the officer is trapped in a continuous cycle of illegal activities.

On the other hand, members should not abuse their position of authority. At no time should they prey on the vulnerability of inmates by extracting money from them on the pretext of delivering some form of benefit for the inmate.

The allegations against Mr Jacobus Derek Voges, a warder employed by the Department, are that he deposited R2 200 into a prisoner's account and also supplied foodstuffs and other items to a prisoner, Mr Maxwell Nguyuzza. This matter was initially investigated by Mr Johan Fourie on the instructions of Mr Hunt, the Assistant Head at Pretoria C-Max Prison. Mr Fourie took statements from both Mr Voges and Mr Nguyuzza before the matter was handed over to the Commission's investigators. Mr Fourie further obtained a receipt for R2 200,

which proved that this amount was deposited by Mr Voges into the prisoner's prison account on 21 December 2003.

2. EVIDENCE LED

Evidence in support of these allegations is set out as follows:

2.1 Mr Maxwell Nguyuzza

Mr Nguyuzza is a prisoner at Zonderwater Prison serving a life sentence for robbery and murder. Before being transferred to Zonderwater Prison, he was incarcerated at Pretoria C-Max Prison, where he was befriended by a warder, Mr Oosthuizen, who later introduced him to Mr Voges. He developed a very close relationship with Mr Voges, who began doing him favours by bringing him food. He told Mr Voges how he had escaped from Odi Prison in 1996 and went England but was re-arrested when he came back to South Africa to fetch his family. Mr Voges promised to assist him if he wanted to escape again for payment of R20 000.

Mr Nguyuzza arranged through his mother and father to bring R20 000 to the prison. An initial amount of R5 000 was brought into the prison by his girlfriend with the assistance of Mr Oosthuizen, who gave the money to Mr Voges. The balance was to be paid later. He was initially incarcerated in cell A3 but was later transferred to A4 section to facilitate his escape. While there Mr Voges and Mr Oosthuizen supplied him with everything he wanted, including food and phone cards. The Head of the section, Mr Phaladi, was aware that both Mr Voges and Mr Oosthuizen were friendly towards him.

When he asked Mr Voges how his escape plan was coming along he was told that there had been a change of plan and that he had to wait. At one stage, Mr Voges offered to refund the R5 000 to Mr Nguyuzza but he refused as he suspected that they would come back later and steal it. By that time he realised that the escape plan had failed and that they could not face him and tell him so.

Towards the end of 2002, he asked both Mr Voges and Mr Oosthuizen about the plan for his escape and they told him that they were still working on it. During 2003, Mr Nguyuzza realised that his term at C-Max Prison had come to an end and that they had still not done anything about his escape. Mr Nguyuzza told Mr Voges that as he was about to leave C-Max, he wanted his R5 000 back. Mr Voges said he could not pay it while he was still at C-Max because they would be asked why they were giving him money. Mr Voges told him that he was going on leave until 21 January 2004. Mr Nguyuzza said he would have been transferred by then and told Mr Voges to bring the money to whichever prison he was in. Mr Voges gave him his cell phone number, his work phone number and his home phone number, as well as his home address and his identity number. He told Mr Voges that if he did not bring his money, he would file a complaint with the Case Management Committee (CMC). While still at C-Max Prison, he tried to phone Mr Voges on his cell phone number but it was on voicemail.

On the 3 December 2003, Mr Nguyuzza was transferred from C-Max Prison to Zonderwater Prison. He phoned Mr Voges who said he would bring him R2 200 and would pay the balance later.

On 21 December 2003, Mr Voges came to Zonderwater Prison, bringing ten (10) packets of cigarettes, five (5) R20 phone cards, pap, steak and a can of Coca-Cola. Mr Voges deposited R2 200 in Mr Nguyuzza's 'Snoopy' account at reception and was given a receipt. Mr Voges said he did not know when he would be able to return to Zonderwater to pay the balance. Mr Nguyuzza then told Mr Voges he wanted to be transferred to Mafikeng Prison and he wanted the rest of his money by 26 December 2003 or he would report Mr Voges. He also asked Mr Voges to bring him a tracksuit, takkies and a pair of sunglasses.

While he was talking to Mr Voges, Mr Theart, the Assistant Head of Prison of Zonderwater, came in and Mr Voges hid himself. Mr Voges said he did not want

to be seen by Mr Theart because he was an informer and would report him, and he could be fired.

There is documentary proof that Mr Voges visited Mr Nguyuzza at Zonderwater on 21 December 2003, that R2 200 was deposited in Mr Nguyuzza's 'Snoopy' account, and that Mr Nguyuzza received the goods mentioned. Mr Voges, did not deny any of this in his evidence.

Mr Nguyuzza again phoned Mr Voges on 22 and 23 December 2003 and told him that he must leave his items at reception, as he did not have any visit credits left.

On 26 December 2003, which was a public holiday, he was approached by Mr Fourie who said he wanted to take a statement from him. He was suspicious, not believing that Mr Fourie was from Head Office as he claimed, and gave him a false statement under oath. He also denied at the time threatening Mr Voges or his wife and family. In this first statement he said the payment of R2 200 was for work done by his family members in fixing documentation relating to a motorbike that Mr Voges had bought.

When the Commission investigators approached him and told him that Mr Voges and Mr Oosthuizen were being investigated, he then gave them a second, different statement. The investigators were already in possession of his first statement and he told them that it was incorrect and that the R2 200 payment was related to Mr Voges's motorbike.

2.2 Mr Dennis Johannes Theart

Mr Theart is the Assistant Head of Prison of Zonderwater. His evidence mainly relates to the documentary evidence he collected in support of the allegation that Mr Voges visited Mr Nguyuzza at Zonderwater Prison on 21 December 2003. His evidence included the visitors' register, the receipt for R2 200, and

the receipt for goods. These documents are attached to Mr Theart's affidavit and the evidence is not in dispute.

2.3 Mr Jacobus Derek Voges and Mr Oosthuizen

Mr Voges and Mr Oosthuizen both elected to exercise their constitutional right to remain silent when they were invited to present their side of the case.

Mr Voges was, however, called by the Evidence Leader and gave the following evidence. He had purchased a motorbike from a Mr Gouws who was having financial difficulties. Mr Gouws had approached him at a nightclub and said he could have the motorbike, which was standing outside, for R25 000. Mr Voges said he had that amount at home and would fetch it. The motorbike did not have the proper registration papers and Mr Oosthuizen's brother, a police inspector, checked that it was not stolen.

Mr Voges said that Mr Nguyuzza must have overheard him talking to a colleague about the motorbike and told him he had a family member working at the Johannesburg Traffic Department. They had thereafter arranged that the prisoner's family member would arrange the registration papers for the motorcycle at a fee of two thousand two hundred rands (R2 200.00), which Mr Voges later paid to Mr Nguyuzza.

Mr Gouws later made contact with him in 2004, took his motorbike back and repaid Mr Voges his money

3. EVALUATION OF EVIDENCE

Most of the facts of this matter are common cause between the parties, save for the reason why an amount of two thousand two hundred rands (R2 200) was deposited into Mr Nguyuzza's 'Snoopy' account. Mr Voges admitted visiting Mr Nguyuzza at Zonderwater Prison on 21 December 2003 and depositing two

thousand two hundred rands (R2 200) into Mr Nguyuzza's 'Snoopy' account. He also admitted giving certain other items, including cigarettes, phone cards and foodstuff to the prisoner.

This evidence is corroborated by documentary evidence and the evidence of Mr Theart. The evidence given by Mr Nguyuzza is that Mr Voges and Mr Oosthuizen had promised to arrange his escape for twenty thousand (R20 000). He made the initial payment of five thousand rands (R5 000) but it later appeared that the plan to escape was abandoned or rather did not materialize. Mr Nguyuzza then demanded his money back from Mr Voges and threatened to report him to the CMS. It is clear that Mr Voges was unable to pay back the total amount of five thousand rands (R5 000) and decided to pay two thousand two hundred rands (R2 200) as part repayment.

On the other hand, Mr Voges's version is that he had arranged with the prisoner that his family member who worked at the Traffic Department would arrange the registration documents for the motorbike he bought from Mr Gouws

It is unthinkable that the warder, Mr Voges, would rely upon a prisoner to arrange for the registration of his motorbike. The whole of Mr Voges's version is full of improbabilities and unbelievable. It is unlikely, bearing in mind what warders are paid, that he had twenty five thousand rands (R25 000) at home, and used it to purchase the motorbike.

Even if Mr Voges's version could be believed, his conduct in paying two thousand two hundred rands (R2 200) into a prisoner's account is in itself a violation of the Correctional Services Act. His further conduct in supplying a prisoner with certain items is also in violation of the Correctional Services Act. By his own admission, Mr Voges contravened the provisions of the Correctional Services Act.

There appears to be no reason why the evidence of Mr Nguyuzo, and in particular the evidence relating to the reason why Mr Voges paid money into his account, should not be preferred to that of Mr Voges.

4. RECOMMENDATIONS

4.1 Mr Jacobus Derek Voges

There is sufficient proof that the conduct of Mr Voges amounts to a violation of both the Department's Disciplinary Code and the Correctional Services Act No. 111 of 1998.

Accordingly, the Commission recommends that:

4.1.1 He be charged with contravening:

- (a) Clause 4.1 Column A of the Department's Disciplinary Code – Bribery and Corruption.
- (b) Clause 4.7 Column A of the Department's Disciplinary Code – Receiving or claiming money from a prisoner.
- (c) Clause 4.5 Column A of the Department's Disciplinary Code – Theft of money from prisoners.
- (d) Section 118(2)(b) of the Correctional Services Act 111 of 1998 (pecuniary dealings between warders and prisoners).
- (e) Section 119 of the Correctional Services Act 111 of 1998 (supplying articles to prisoners).

4.2 Mr Oosthuizen

No recommendations are made against Mr Oosthuizen.

5. RECOMMENDATIONS ON DISCIPLINARY INQUIRIES

For the reasons set out in the First Interim Report and several other reports already filed by the Commission, it is recommended that the disciplinary inquiry against Mr Voges be dealt with by a Special Task Team contemplated by the Commission.