

THE SEPTEMBER JUDGMENT

A FACT SHEET



WHAT WAS THE CASE ABOUT?

Jade September is a transgender woman who was serving a 15-year sentence inside the Malmesbury Correctional Centre, a men's prison, at the time of the judgment. While in prison:

- She was not allowed to identify or express herself as a woman, and was punished for doing so
- Her personal belongings – small bits of make-up, mirrors, and feminine items – were taken away
- She was forced to cut off her long hair
- She was verbally abused and harassed by prison officials
- Prison staff refused to use "she" and "her" when talking with or about Ms September

Once, officials even put Ms September in a cell on her own, only allowing her to exercise in a small cage and to shower while being watched, as punishment for refusing to "behave like a man". She was isolated for 17 days - 10 days longer than what is legal for this kind of punishment.

Represented by Lawyers for Human Rights, Ms September filed a **human rights case in the Equality Court** against the Minister of Justice and Correctional Services, as well as the Helderstroom and Malmesbury Correctional Centres, for harassment and unfair discrimination based on her gender identity and expression. She also requested the court to order correctional services officials to allow all transgender prisoners and detainees to express their gender identity.

The trans rights organisation, **Gender Dynamix**, supported this case with important information as a friend of the court, represented by the **Legal Resources Centre**.

HOW DID THE STATE RESPOND?

The Department of Correctional Services tried to argue that because Ms September was anatomically male, and her ID said she was male, what they had done and how they treated her was not unfair discrimination. The Department also claimed that their actions were for her own "safety".

This was a nonsensical excuse for the violent victimisation of Ms September. It also showed a **complete lack of understanding** of what it means to transition, and that gender affirming health care is not part of everyone's journey. In fact, even for those who want to access it, gender affirming health care and the process of changing the gender marker in one's ID, are far beyond the reach of most transgender people in South Africa because of socio-economic inequality and poor service delivery by the state.



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WHAT DID THE COURT SAY?

On 23 September 2019, the Equality Court ruled that the correctional services officials' treatment of Ms September was unfair discrimination and harassment. The officials' conduct was unlawful and unconstitutional, and it violated her *constitutional rights to equality, human dignity, freedom of expression, dignified detention, and the right not to be punished or treated in a way that is inhumane.*

The Court ordered that the Department of Correctional Services must allow transgender prisoners, like Ms September, to express their gender identity safely and securely. The court ordered the prison officials to return her personal belongings, and to allow her to use them; to allow her to wear her hair long and in feminine styles; and to use her correct female pronouns when talking with her, or about her, at all times.

Finally, the Court also ordered the Department of Correctional Services to *introduce transgender sensitivity training for all their existing and new employees*, as part of induction and ongoing training, within 12 months of the date of the judgment.

WHAT DOES IT MEAN FOR THE LAW?

- The Department of Correctional Services has a confirmed **legal duty to recognise, accommodate, and protect all transgender people** in prisons and other places of detention.
- All people in detention **must be allowed to express their gender identity** safely and securely, without harassment or victimisation, even when that gender identity is not the same as most others in that prison or facility.
- Transgender people are entitled to the same Constitutional rights as any other person. The **Department of Correctional Services must respect, protect, and promote the human rights of transgender people**, as the Constitution requires.
- **Being incarcerated** and being punished for crimes, **does not cancel basic rights** to dignity and freedom of expression.



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