

SOUTH AFRICA / JUDGMENT

Conradie v S (KS 18/2020) [2023] ZANCHC 3 (20 January 2023)

[2023] ZANCHC 3

COURT

Northern Cape High Court, Kimberley

BEFORE

Lever

CASE / FILE NUMBER

KS 18/2020

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IN THE HIGH COURT OF SOUTH AFRICA

(NORTHERN CAPE DIVISION, KIMBERLEY)

Case No: KS 18/2020

Reportable: NO

Circulate to Judges: YES

Circulate to Magistrates: NO

Circulate to Regional Magistrates: NO

In the matter between:

PAUL CONRADIE

Applicant

and

THE STATE

Respondent

Coram: Lever J

JUDGMENT:

APPLICATION FOR LEAVE TO APPEAL

Lever J

1. This is an application for leave to appeal on sentence only. The applicant was convicted on two counts. The first being the rape of his mother. The second being the murder of his mother. In respect of both of these convictions the provisions of section 51(1) of the Criminal Law Amendment Act[1] applied. This is not placed in contention by the applicant.
2. The basis for the application for leave to appeal was that this court erred in finding that there were no substantial and compelling reasons to depart from the minimum prescribed sentence of life imprisonment on both counts and that the sentence of life imprisonment was proportionate in the circumstances.
3. The life sentences imposed in respect of both the rape charge and the murder charge were ordered to run concurrently.
4. The applicant's argument for leave to appeal is that, taken cumulatively with the applicant's personal circumstances, the following considerations render the imposition of life imprisonment disproportionate in the circumstances of the case:
 - 4.1. The applicant was intoxicated when he committed both offences;
 - 4.2. The applicant was in custody awaiting trial for a period of 2 years and 8 months at the time of conviction and sentencing; and
 - 4.3. The applicant is a person who can be rehabilitated.
5. The test to be applied in determining whether an application for leave to appeal should be granted or not is governed by s 17 of the Superior Courts Act[2] which stipulates:

"(1) Leave to appeal may only be given where the judge or judges concerned are of the opinion that –

 - (a) (i) the appeal would have reasonable prospects of success; or
 - (ii) there is some other compelling reason why the appeal should be heard, including conflicting judgments on the matter under consideration;
 - (b) The decision sought on appeal does not fall within the ambit of s 16(2)(a); and
 - (c) Where the decision sought to be appealed does not dispose of all issues in the case, the appeal would lead to a just and prompt resolution of the real issues between the parties."
6. The aforementioned test requires a greater measure of certainty envisaging a different outcome on appeal. Bertelsmann J in *The Mont Chevaux Trust (IT 2012/28) v Tina Goosen*[3] made the following insightful remarks:

“It is clear that the threshold for granting leave to appeal against a judgment of a High Court has been raised in the new Act. The former test whether appeal should be granted was a reasonable prospect that another court might come to a different conclusion. The use of the word “would” in the new statute indicates a measure of certainty that another court will differ from the court whose judgment is sought to be appealed against.”

7. The arguments raised by the applicant in his application for leave to appeal, have already been raised in argument prior to sentencing and I have already dealt with such arguments in my judgment on sentence. Accordingly, I will only deal with the arguments presently raised, very briefly.
8. In respect of the intoxication, the evidence showed that some 4 to 5 hours had passed since the last drink and that both the applicant and the victim (his mother) had eaten a meal in the intervening period. In these circumstances, I found that intoxication played a minor role and to this extent I accepted it as a mitigating fact in favour of the applicant to be weighed up together with any other mitigating factors against any aggravating factors to determine if the personal circumstances of the applicant taken together with all of the other mitigating factors could constitute substantial and compelling circumstances to depart from the prescribed minimum sentences.
9. The issue of the applicant being in custody for some 2 years and 8 months before conviction and sentencing, must be considered in the context of him facing a prescribed minimum sentence of ‘life imprisonment’. This is an indeterminate sentence, time spent in custody awaiting the completion of the trial does not directly affect the period spent in custody after sentencing. In this context see *S v M*[4]. I accepted and still accept that detention during and up to completion of the trial is a mitigating factor that can be weighed up together with all of the other factors to determine the proportionality of the prescribed minimum sentence to the facts of the case under consideration. The applicant was given the benefit of this consideration. However, it cannot be taken out of the context set out above, and not too much can be made of it.
10. Finally, on the issue of the applicant’s potential for rehabilitation, I accepted and still accept that lack of remorse is not an aggravating factor. An accused person is entitled to maintain and assert his innocence, even after conviction. However, if applicant had shown remorse, it would certainly have assisted his case in this context. If remorse had been shown by the applicant, I would have considered it an important mitigating factor. I accepted and still accept that the applicant has potential for rehabilitation. However, lack of remorse on the part of the applicant meant that this possibility of rehabilitation had to be considered as somewhat distant and remote. My approach to the question of rehabilitation was guided by the approach of Bam J in the case of *S v Hewitt*[5] and the decision of Maya DP (as she then was) in the Hewitt case on appeal to the SCA.[6]

11. None of the grounds dealt with above considered individually and cumulatively, together with the applicant's personal circumstances constitute 'substantial and compelling' grounds to depart from the prescribed minimum sentence of life imprisonment.
12. The applicant has not shown, as he is required to do, that he has reasonable prospects that the appeal court 'would' come to a different conclusion. In all of these circumstances, the application for leave to appeal stands to be dismissed.

In the circumstances, the following order is made:

- 1) The application for leave to appeal is dismissed.

Lawrence Lever

Judge

Northern Cape Division, Kimberley

REPRESENTATION:

Applicant:

Mr Steynberg oio LEGAL AID SOUTH AFRICA,

KIMBERLEY

Respondent: Adv Hollander oio OFFICE OF DIRECTOR OF PUBLIC

PROSECUTIONS

Date of Hearing: 19 January 2023

Date of Judgment: 20 January 2023

[1] Act 105 of 1997.

[2] Act 10 of 2013

[3] (Unreported, LCC case no LCC14R/2014, dated 03 November 2014)

[4] *S v M* 2007(2) SACR 60 (W) particularly para's [111] as read with [113].

[5] *S v Hewitt* 2015 JDR 1924 (GP) particularly at para 27.

[6] *S v Hewitt* 2017 (1) SACR 309 (SCA).

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