

SOUTH AFRICA / JUDGMENT

Rudman v S (CA&R103/2013)

[2017] ZAECHGC 79 (6 July 2017)

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COURT

Eastern Cape High Court, Grahamstown

BEFORE

NG Beshe

CASE / FILE NUMBER

CA&R103/2013

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IN

THE HIGH COURT OF SOUTH AFRICA

(EASTERN

CAPE DIVISION, GRAHAMSTOWN)

CASE

NO.: CA&R103/2013

In

the matter between:

ROYDEN

RUDMAN Applicant

And

THE

STATE Respondent

JUDGMENT

BESHE J:

- [1] This is an application for extension of bail pending a petition to the Supreme Court of Appeal for leave to appeal the dismissal of applicant's appeal against sentence by this court (Roberson J et Malony AJ).
- [2] The history of this matter is succinctly narrated in Roberson J's judgment. The following emerges therefrom:

The applicant and one Mr Adrian Botha were charged with twenty eight (28) counts of fraud and one count of contravening Section 11 of the Banks Act 94 of 1990. This was before the Regional Court, Port Elizabeth. The trial commenced on the 6 June 2006. Applicant was convicted on the 7 March

2008, after which he applied to this court for a review of the proceedings before the Regional Court. He was unsuccessful in this

regard and was accordingly sentenced on the 8 August 2012. He was subsequently granted leave to appeal against the sentence of nine (9) years imprisonment in respect of counts one to twenty eight (Fraud) upon petitioning the Judge President of this court for such leave. This was followed by an application for leave to appeal against the conviction from the trial court, the Judge President of this court, the Supreme Court of Appeal and the Constitutional Court. He was unsuccessful on all these bids. Applicant was released on bail pending the appeal processes at the time when he had served eleven months of his sentence. It is that bail that he seeks to have extended. His appeal against sentence was finally heard in this court. This too was successful.

[3] As would appear from the judgment sought to be appealed against, applicant sought to have further evidence introduced with regard to sentence. Mainly evidence relating to how he has been conducting his life since his release after the eleven months he spent in jail. Based on the trite principle that an appellate court must decide the question of sentence according to the facts that existed at the time when the sentence was imposed, the court refused to admit such evidence.

[4] It appears from applicant's affidavit in support of this application that applicant assails this court's judgment

(Roberson J's) on the basis that she erred in finding that further evidence that was sought to be introduced was irrelevant. That there are reasonable

prospects that another court may hold otherwise.

[5] In my view there are no reasonable prospects of another court finding that such evidence is relevant and therefore admissible for purposes of an appeal against sentence.

[6] In terms of Section 16 (1) (b) of the Superior Courts Act 19 of 2013

"Subject to section 15 (1), the Constitution and any other law –

(b) an appeal against any decision of a Division on appeal to it, lies to the Supreme Court of Appeal upon special leave having been granted by the Supreme Court of Appeal."

In applicant's affidavit, there is no mention of application for special leave having been applied for from the Supreme Court of Appeal. This prompted Mr De Villiers for the respondent to contend that this application is flawed.

- [7] In the notice of motion in respect of the application that is too serve before the Supreme Court of Appeal there is no prayer for special leave to be granted. All that is sought is leave to appeal against sentence.
- [8] I am therefore constrained to agree with Mr De Villiers that the application for leave to appeal is doomed for failure. See in this regard the matter of Potgieter v S (20109/2014) [2015] ZASCA 15 (17 March 2015). In this matter it was held that an appeal to the Supreme Court of Appeal against the decision of a court of appeal lies only with the special leave of the Supreme Court of Appeal.
- [9] For the reasons stated above, the application for the extension of applicant's bail pending the outcome of his petition to the Supreme Court of Appeal for leave to appeal is dismissed.

NG BESHE

JUDGE OF THE HIGH COURT

APPEARANCES

For the Appellant : Adv: Barker

Instructed by : GREGORY CLARK AND ASSOCIATES INC.

C/o NETTELTONS ATTORNEYS

118A High Street

GRAHAMSTOWN

Tel.: 046- 622 7149

Ref.: Mr Nettelton

For the Respondent : Adv: WJ De Villeirs

Instructed by :

NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS

Woolboard Building

Grahamstown Road

PORT ELIZABETH

Tel.: 041 - 502 5327

Ref.: Mr W De Villiers

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