

IN THE HIGH COURT OF THE  
REPUBLIC OF BOTSWANA

Court of Appeal CA 48/83  
High Court CT 52/1982  
Mag/F/Town F. 107/1982

In the matter between:

NOTTY CHISOMA

Appellant

and

THE STATE

Respondent

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Reasons for Decision

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The Appellant was convicted of the offence of murder on the 24th November 1982. Extenuating circumstances were found to exist. He was sentenced to 15 years imprisonment. Reasons for sentence<sup>do</sup>/not appear. These were given at the time sentence was pronounced and should have been recorded by the court reporter. However the reasons for imposing the sentence are to be seen in the judgment.

The point now taken by the Applicant is that an awaiting trial period of 9 months spent in prison was not taken into account when 2/...

determining sentence. The sentence was not back-dated to the commencement of that period and I am nearly certain that I made no allowance for that period otherwise.

I concede that in many respects a remand prisoner is worse off than a convicted prisoner for the conditions of his incarceration are more trying in that he is not allowed to leave the small area in which he is confined, gets no exercise, is subject to boredom and has to undergo the fears, anxieties and apprehensions which are normally attendant upon the uncertainties of outcome of a trial where conviction may mean death. This must be regarded as mental suffering of a high order and should be taken into account when determining sentence.

In the circumstances leave to appeal out of time is granted.

A handwritten signature in black ink, consisting of a large, stylized initial 'P' followed by 'E. J. Corduff' in a cursive script. The signature is written over a horizontal dashed line.

Francistown  
29.11.83

P. E. J. Corduff  
PUISNE JUDGE