



CONSTITUTIONAL COURT OF SOUTH AFRICA

Tarr v The State

CCT 07/18

Date of judgment: 27 September 2018

MEDIA SUMMARY

The following explanatory note is provided to assist the media in reporting this case and is not binding on the Constitutional Court or any member of the Court.

On 27 September 2018 at 11h30 the Constitutional Court handed down judgment in an application for leave to appeal in which the applicant, Mr Tarr, asked for his conviction and sentence to be set aside.

On 18 October 2013 Mr Tarr was convicted of murder and sentenced to 15 years imprisonment by the High Court of South Africa, Free State Division, Bloemfontein (High Court). The murder occurred in November 2010. One of Mr Tarr's former employees Mr Mtagha was also tried with Mr Tarr, but he was acquitted. Mr Mtagha gave a statement to a magistrate outside the trial stating that Mr Tarr shot the deceased. The statement was admitted as hearsay evidence in the trial. The trial Judge used the statement to acquit Mr Mtagha and convict Mr Tarr.

Approximately a year and a half after Mr Tarr's conviction, the Constitutional Court handed down the decision of *Nkosi*, which restored the legal position that statements made outside of a trial cannot be used as evidence against a co-accused.

On 19 September 2017 Mr Tarr applied to the High Court for leave to appeal, but the application was dismissed. On 27 September 2017 Mr Tarr applied for leave to appeal to the Supreme Court of Appeal, but that application was also dismissed on the grounds that there were no reasonable prospects of success and no other compelling reason why the appeal should be heard.

In the Constitutional Court, most of Mr Tarr's grounds of appeal concerned factual findings. The remaining grounds concerned the effect of the decision of *Nkosi* and whether Mr Tarr should have been warned about the application of minimum sentencing legislation.

In a judgment written by Froneman J without the need for oral hearing, the Constitutional Court decided that the application for leave to appeal should be dismissed. The application was dismissed because its prospects of success rested on the factual question concerning whether there was a sufficient case for Mr Tarr's conviction absent the statement.

The Constitutional Court held that it would not interfere with the Supreme Court of Appeal's factual findings concerning reasonable prospects of success. The Court also held that the trial judge did not rely solely on the statement and that there was other evidence that established Mr Tarr's guilt. It also stated that the sentence of 15 years was not excessive due to the brutal nature of the murder.