

IN THE HIGH COURT OF SOUTH AFRICA (Northern Cape Division)

Case No: K/S 8/2005

Heard: 13/09/2006

Delivered: 15/09/2006

In the matter:

Billy Phakathi

Applicant

and

The State

Respondent

JUDGMENT ON APPLICATION FOR LEAVE TO APPEAL

Tlaletsi AJP:

1. This is an application for leave to appeal against sentence. The applicant was convicted on one count of Housebreaking with intent to steal and theft (count 1) and two counts of Rape (count 2 & 3) of the same woman. For count one he was sentenced to three years imprisonment and the two counts of Rape were taken together for the purpose of sentence and was sentenced to 18 years imprisonment.
2. The applicant was sentenced on 22 February 2006. He noted his application for leave to appeal on 2 March 2006 and was received by the Registrar's Office on 14 March 2006. There is no doubt that the delay was caused by the postal services. He cannot be blamed for the delay as it cannot be expected of him to be released from prison to attend to service of the application.
3. The grounds of appeal are:
 - 3.1 The court erred by imposing an effective sentence of

18 years which is under the circumstances shockingly inappropriate;

- 3.2 The court erred by overemphasizing the seriousness of the offences and the interests of the community over his personal circumstances;
 - 3.3 The court erred by not ordering that half of the 18 years imprisonment should run concurrently with the other half. By this he means that he should only serve an effective sentence of 9 years imprisonment for the two rapes;
 - 3.4 The court ignored the fact that the complainant did not sustain serious bodily injuries and that he (the applicant) is a “good citizen” capable of rehabilitation.
4. I have in my judgment on sentence dealt in much detail all factors taken into account for purposes of sentence. I do not wish to burden this judgment with the repetition of the judgment. Suffice to state that the applicant and his co-perpetrator broke into the house where the complainant was sleeping in order to steal. To their surprise when they noticed the presence of the complainant, they raped her. The co-perpetrator raped her once and the applicant raped her twice. They both ransacked the house and stole some items belonging to the complainant’s boyfriend. The applicant’s co-perpetrator testified for the state and corroborated the complainant and the other state witness. This was after he had pleaded guilty and his trial separated from that of the applicant.
 5. The applicant was a candidate for life imprisonment. I found that there are substantial and compelling circumstances. In my view the applicant should instead regard himself fortunate to have escaped life imprisonment and only serve 18 years for all his criminal deeds. I am not persuaded that there are prospects of success on appeal against sentence. On the contrary he runs the risk of increase in sentence. Mr Cloete who appeared on behalf of the applicant could also not point any misdirection that would cause an appellate court to interfere with sentence to the benefit of the applicant.

In the result I make the following order:

L P TLALETSI
ACTING JUDGE PRESIDENT
NORTHERN CAPE DIVISION

For the Applicant:
Instructed by:

Adv P J CLOETE
Legal Aid Board

**For the Respondent:
Instructed by:**

Adv T BARNARD
Director of Public Prosecutions