

**IN THE HIGH COURT OF SOUTH AFRICA
(BOPHUTHATSWANA PROVINCIAL DIVISION)**

CASE NO.: CA 155/03

In the matter between:

SIMON MOJALEFA PLAATJIE

APPELLANT

AND

THE STATE

RESPONDENT

CRIMINAL APPEAL

DATE OF HEARING: 3 JANUARY 2006

DATE OF JUDGMENT: _____

COUNSEL FOR APPELLANT: ADV C ZWIEGELAAR

COUNSEL FOR RESPONDENT: ADV L VAN NIEKERK

JUDGMENT

LANDMAN J:

[1] The appellant Mr Simon Mojalefa Plaatjie applies for an order in the following terms:

1. Leave is granted to the applicant to lead further evidence on appeal, alternatively for the matter to be remitted to the trial Court for the leading of further evidence regarding

facts which have arisen subsequent to his sentencing on 22 May 1997.

2. Condonation is granted to the applicant for the late-delivery of his heads of argument in support of his appeal against sentence and the application referred to in paragraph 1 (supra).
3. Further and/or alternative relief.

[2] The background to this applicant is briefly the following:

“The applicant was charged in the Regional Court sitting at Mmabatho with the attempted murder of his spouse, Catherine Plaatjie, on 29 December 1996 by shooting her twice with a firearm.

- ii) On 22 May 1997 Mr Plaatjie, being represented by an attorney Mr Mafilika, pleaded guilty to the charge and was duly convicted as charged.
- iii) From evidence lead in mitigation it became clear that Mr Plaatjie, who was employed by Telkom as a Security Officer, had used his service firearm to shoot his wife during an argument. She was shot twice, once below the left eye and once below the breast (it is not clear which breast, left or right).
- iv) As a result of the shot below the left eye she had lost sight of both eyes and was completely blind at the time of the trial. Mr Plaatjie was 33 years old at the time

and a first offender.

- v) His wife, the present representor, did not testify at the trial, nor was there any indication as to what her attitude towards her husband was at that stage. This is of importance in view of the fact that her present attitude seems to be that she had actually never intended to proceed with prosecution against her husband but that the State proceeded without consulting her first.
- vi) Mr Plaatjie was sentenced to eight (8) years imprisonment.
- vii) On 2/6/97 he noted an appeal against sentence and he was granted bail by the court, pending the outcome of his appeal.
- viii) The case record was received by the D. P. P. only on 26/8/03 and this delay has never been explained by anybody. The appeal was then enrolled for 7/11/03 and the Attorneys of Record, Messrs Gura, Tlaletsi & Partners were informed by registered mail, dated 10/9/03.
- ix) On 7/11/03 there was no appearance on behalf of appellant, nor were any Heads of Argument filed. Consequently the appeal was struck from the roll and Mr Plaatjie was subsequently arrested to serve his sentence.

[3] The appellant was on bail at the time the appeal was struck

from the roll. He says he was not aware of the date of the appeal. The appellant gain knowledge of the striking off of the appeal on 6 December 2003, a day before he was to surrender himself to the Correctional authorities.

“I commenced serving my sentence of eight years imprisonment on 7 December – nearly six years and seven months after the imposition of sentence and nearly eight years after I shot and blinded by wife on 29 December 1996.

As appears from Annexure “SMP6” hereto my wife and I had until I started to serve my sentence continued with our marital life together with our children.”

[4] On 14 October 2004 the appellant’s spouse petitioned the State President to pardon the appellant. This led to an investigation into the circumstances of the case culminating in an undertaking by Adv J J Smit SC the DPP’s office for this Province to approach the Justice Centre to aid the appellant to make an application to remove the appeal.

[5] The applicant says:

“As appears from Annexure “SMP6” hereto my wife and I had until I started to serve my sentence continued with our marital life together with our

children.

I confirm that I was indeed the sole breadwinner of our family and that I maintained and supported my wife and children.

I have been advised by counsel that in exceptional circumstances facts which have arisen subsequent to sentencing might be considered by a court of appeal and that as there is a reasonable prospect of my case being considered to be one of exceptional circumstances that I should make application for the leading of further evidence and the hearing of my appeal during which the facts that have arisen after my sentencing can *inter alia* be placed on record.

I also request this Honourable Court to take into account that I have at this stage already served more than one year and nine months of my imposed sentence.

Subsequent to my incarceration my wife was forced to register for a disability grant.

At present her monthly disability grant of R780,00 is the only source of income that my wife and children have.

Mpho has two children whilst Boitshoko also has a child and Irene is presently pregnant.

None of them are married and with the exception of the father of Mpho's youngest child, none of the fathers of my grandchildren are supporting their children.

Botshelo is presently still school-going. He is a Grade 4-learner attending Stadt Primary School at Montshiwa Stadt.

I have been advised by counsel that she phoned my former supervisor at Telkom, Mr Aldo Sada at 0827712998 to ascertain whether there is a possibility of me being re-appointed and that he advised her that although it is not his decision that he will gladly accept me back not only for my good working abilities, but also for my personality.

I respectfully contend that there is sufficient reason to grant me the relief as set out in the notice of motion herein, that I have shown good cause for the granting of such relief and that there are indeed reasonable prospects of success on appeal should condonation be granted to me and my appeal be re-instated on the roll of this Honourable Court.”

[6] The merits of the appeal are detailed in the application for condonation. He says:

“What is not clear from the record of the proceedings is the reason for the argument between my wife and myself on the day of the shooting incident, i.e. 29 December 1996. It was a Sunday.

I was at the time employed as a security officer and issued with a service firearm. I worked night shift the previous evening.

After I knocked off duty I consumed a substantial amount of intoxicating liquor. The argument between my wife and myself started when I wanted to drive our private vehicle.

As my wife was of the view that I was too intoxicated to drive the vehicle with safety she took the keys from me in an attempt to prevent me from using the vehicle.

My wife ran into the house with the keys. I followed her and when I approached her to take the keys from her she hit

A A LANDMAN
JUDGE OF THE HIGH COURT

I agree

R D HENDRICKS
JUDGE OF THE HIGH COURT