



IN THE NORTH WEST HIGH COURT, MAFIKENG

CASE NO: CC 152/02

JOSEPH OLIPHANT

Applicant

and

THE STATE

Respondent

APPLICATION FOR LEAVE TO APPEAL

DATE OF HEARING : 11 FEBRUARY 2011

DATE OF JUDGMENT : 11 FEBRUARY 2011

COUNSEL FOR THE APPLICANTS : ADV SKIBI

COUNSEL FOR THE RESPONDENT : ADV NONTENJWA

JUDGMENT

HENDRICKS J

[A] Introduction:-

- [1] This is an application for leave to appeal to the Full Bench of this division against the sentence of twenty five (25) years imposed by the court *a quo* for murder. Coupled with this application for leave to appeal is an application for condonation for the late filing of the application for leave to appeal.

[B] Condonation:-

- [2] The Applicant was convicted and sentenced on 28th November 2002, approximately eight (08) years and three (03) months ago. In applying for condonation, it is incumbent upon the Applicant to show good cause for the inordinate delay, consisting of a satisfactory and acceptable explanation. The prospects of success on appeal should also be considered to determine whether or not condonation should be granted. The greater the prospect of success on appeal, the more likely a court will grant condonation.

- [3] Having perused the Applicant's affidavit in support of his application for condonation, I am of the view that it does not disclose in detail the cause for and accurate account of the delay. However, the matter does not end there. The court still has to consider the prospect of success on appeal.

[C] Prospect of success on appeal:-

- [4] In an application for leave to appeal such as this, the Applicant must prove the existence of reasonable prospects of success on appeal. Put differently, the Applicant must show that a reasonable possibility exist that another court may come to a different decision to what the trial court had arrived at based on the facts presented.
- [5] In this case, where it concerns only the sentence, the Applicant must prove that a reasonable possibility exist that another court (as court of appeal) may arrive at a different conclusion of what an appropriate sentence will be having regard to all the facts and circumstances relevant for the impositioning of an appropriate sentence.
- [6] I have carefully considered the facts of this case as well as all the factors relevant for the impositioning of an appropriate sentence and I am of the view that a reasonable possibility exist that another court may conclude differently with regard to what a suitable sentence will be under the circumstances of this case.
- [7] The provisions of Section 51 (2) of the Criminal Law Amendment Act, Act 105 of 1997 and the prescribed minimum sentence therein is applicable to this particular type of offence. Furthermore, it must also be determined whether or not there are any substantial and compelling circumstances justifying the impositioning of a sentence lesser than the sentence prescribed

by the legislature.

[D] Conclusion:-

[8] In my view, there are indeed reasonable prospects of success on appeal and leave to appeal to the Full Bench of this division must therefore be granted.

[E] Order:-

Consequently, the following order is made:-

[1] Condonation for the late filing of the application for leave to appeal is granted.

[ii] Leave to appeal to the Full Bench of this division against the sentence imposed is granted.

R D HENDRICKS

JUDGE OF THE HIGH COURT