



CONSTITUTIONAL COURT OF SOUTH AFRICA

Mandlakayise Sithole v The State

CCT 118/23

Date of Judgment: 20 December 2024

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 Friday, 20 December 2024 at 10h00, the Constitutional Court handed down judgment in an application for leave to appeal against a judgment and order of the High Court, KwaZulu-Natal Division, Pietermaritzburg (High Court). The matter concerned the validity of a non-parole order made by the High Court.

The High Court convicted the applicant, Mr Mandlakayise Enos Sithole and one of his co-accused, Mr Mandla Alfred Ndlovu on one count of robbery with aggravating circumstances and four counts of attempted murder. The applicant was sentenced to an effective term of 30 years' imprisonment. Without affording the parties an opportunity to address it on the issue of a non-parole period, the High Court recommended that the applicant should not be considered for parole until he had served a minimum of 20 years of his sentence.

The applicant sought leave to appeal to the Full Court of the Pietermaritzburg High Court against both the convictions and sentences. However, the High Court granted the applicant leave to appeal against the convictions only. On 20 July 2010, the Full Court dismissed the appeal and confirmed the convictions. The applicant thereafter approached the High Court and applied for leave to appeal against his sentence. On 9 September 2011, the application was dismissed.

The applicant petitioned the Supreme Court of Appeal and applied for condonation and special leave to appeal. On 18 July 2016, the Supreme Court of Appeal granted condonation, but dismissed the application for special leave to appeal.

The applicant, who was unrepresented, filed an application in the Constitutional Court for condonation and leave to appeal. On the merits, the applicant primarily attacked the factual findings of the High Court. On sentence, he was aggrieved by the inclusion of an order that he

should serve a minimum sentence of 20 years' imprisonment before being considered for parole. He submitted that the Court was unfair in making that order.

The respondent did not oppose condonation. Further, the respondent conceded that the High Court erred when it imposed the non-parole period as there were no exceptional circumstances warranting that order and the parties were not afforded an opportunity to address the High Court on that point.

In a unanimous judgment penned by Mhlantla J (with Madlanga ADCJ, Kollapen J, Majiedt J, Rogers J, Seegobin AJ, Theron J, Tolmay AJ and Tshiqi J concurring), condonation was granted. However, the Court held that it had no jurisdiction to entertain an appeal against conviction as the applicant complained about the factual findings of the High Court. Therefore, the application for leave to appeal against the convictions was dismissed.

In so far as sentence was concerned, the Court held that the only issue that engaged the Court's jurisdiction was the order concerning the imposition of the non-parole period.

The Constitutional Court stated that it is well established that a trial court may impose a non-parole period only if it establishes the existence of exceptional circumstances which would justify the issuance of the order and has afforded the parties an opportunity to make submissions on the issue. A failure to do so is a misdirection and the non-parole period has to be set aside. The Court held that in the present matter, the High Court failed to give effect to these requirements and the appeal against the sentence had to succeed to the extent that the High Court was not entitled to impose a non-parole period.

In the result, the Constitutional Court granted leave to appeal against the non-parole order issued by the High Court of South Africa, KwaZulu-Natal Division, Pietermaritzburg. The appeal succeeded and the imposition of the non-parole period was set aside. Save as aforesaid, leave to appeal against the convictions and sentences was refused.