



IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

Case number: CC66/2023

(1)	REPORTABLE: YES/NO
(2)	OF INTEREST TO OTHER JUDGES: YES/NO
(3)	REVISED: YES/NO
[REDACTED SIGNATURE]	
SIGNATURE	28/08/2024 DATE

In the matter between:

CHRIS MABITA

APPLICANT

V

THE STATE

RESPONDENT

JUDGMENT

MOSOPA J

1. The applicant was sentenced to a period of 18 years imprisonment after pleading guilty to one count of murder read with the provisions of section 51(2) of Act 105 of 1997 on the 11 March 2024.

2. The applicant is aggrieved by such sentence and brings an application for leave to appeal against such sentence in terms of the provision of section 316(1) of Act 51 of 1977 and/ or section 17(1)(a) - (c) of Act 10 of 2013 ("SC Act"), to either the Supreme Court of Appeals or Full Court of this Division. The application is opposed by the State.
3. The applicant as stated supra was found guilty on the strength of his guilty plea. The applicant was legally represented during trial by Ms Augustine from the Legal Aid South Africa and in these current proceedings is represented by the same Counsel. It is for this reason that, at the time of his guilty plea accused knew what sentencing regime was applicable to the charge he was pleading to by virtue of the fact that he was appraised by this court and most importantly that he was legally represented.
4. Despite listing a number of grounds that the applicant is of the view that this court erred on, the applicant relies on the fact that there are reasonable prospects in his appeal matter and that another court may come to a different conclusion in respect of the sentence imposed by the trial court.
5. The concept "reasonable prospects of success," is not statutorily defined. In **S v Smith 2012 (1) SACR 567 at 570 par 7**, the court when dealing with the concept of reasonable prospects stated;

"[7] What the test of reasonable prospects of success postulates is a dispassionate decision, based on the facts and the law, that a court of appeal could reasonably arrive at a conclusion different to that of the trial court. In order to succeed, therefore, the appellant must convince this court on proper grounds that he has prospects of success on appeal and that those prospects are not remote, but have a realistic chance of succeeding. More is required to be established than that there is a mere possibility of success, that the case is arguable on appeal or that the case cannot be categorised as hopeless. There must, in other words, be a sound, rational basis for the conclusion that there are prospects of success on appeal."

6. Criticism was levelled to the fact that a sentence of 18 years imprisonment is more than the prescribed sentence of 15 years imprisonment and the sentence was imposed without identifying specific aggravating circumstance of the case. This criticism has no merit as I considered the Victim Impact Statement by Mr Micheal Teko who is the father of the deceased, who verified the fact that the deceased left behind an 11-year-old minor and the parents of the deceased, who are both pensioners are currently taking care of the child. The child currently experiences nightmares, there is a change in her sleeping pattern, and she has now become a sickly person. This manifested after the death of the deceased. All other aggravating circumstances can be clearly gleaned in the sentence judgment.
7. The cause of death is recorded as "consistent with the asphyxial death." This indicates the painful death that the deceased was met with in the hands of the applicant. Section 51(2) of the Act 105 of 1997 provides that;
- "[51] (2) Notwithstanding any other law but subject to subsections (3) and (6), a regional court or a High Court shall sentence a person who has been convicted of an offence referred to in-
- (a) Part II of Schedule 2, in the case of-
- (i) A first offender, to imprisonment for a period not less than 15 years;
- Provided that the maximum term of imprisonment that a regional court may impose in terms of this subsection shall not exceed the minimum term of imprisonment that it must impose in terms of this subsection by more than five years."
8. In ***S v Kekana 2019 (1) SACR 1 (SCA) at par 22***, the court when dealing with the sentence where accused pleaded in terms of section 51(2) of Act 105 of 1997 stated;
- "[22] There is another reason why the suggestion, that the court's power to consider the prescribed minimum sentence in terms of s 51(1) can be ousted simply by mere reference to s 51(2) in a plea

explanation, is untenable. The provisions of the CLAA do not create different or new offences, but are relevant to sentence. Thus, murder remains murder, as a substantive charge, irrespective of whether s 51(1) or s 51(2) applies. Simply put, there is no such charge as 'murder in terms of s 51(1) or s 51(2)'. It follows that there can never be a plea to such a non-existent charge.

9. Ms Augustine relied on the matter of ***Director of Public Prosecutions, Free State v Mokati 2022 (2) SACR 1 (SCA)***, where the court said that if a sentence exceeding the prescribed minimum sentence is to be imposed, the court ought to forewarn the accused. The *Mokati* matter is totally distinguishable from the current matter for the following:
 - 9.1. In this matter, the court did not exceed the prescribed minimum sentence and accused was correctly sentenced within the provisions of the law,
 - 9.2. This is based on the fact that section 51(2) has a provision which makes this court competent to exceed the prescribed sentence of 15 years with an additional period of imprisonment of 5 years, and
 - 9.3. The trial court did not exceed the prescribed 5 years period, in terms of the provision but only added 3 years to the prescribed minimum sentence of 15 years imprisonment.
10. The prescribed minimum sentence was exceeded with three years imprisonment for reasons stated in my judgment on sentence. In cross-examination in mitigation of sentence, the applicant on his own was prepared to accept a sentence of more than 20 years imprisonment based on his conduct that led to the death of the deceased.
11. I have stated reasons why the trial court did not find any substantial and compelling circumstances in the case of the appellant during the sentence stage and I stand by those reasons.

12. It is reiterated that the mere fact that the applicant pleaded guilty is not a sign of remorse, but a neutral factor. The fact that the applicant was the last person to be seen with the deceased, makes the evidence to be overwhelming against him. The fact that he attempted to end his own life after killing the deceased and finally that he confessed the allegations against him to a Magistrate after his discharge from the hospital, all shows how strong is the state's case against the accused.

13. When sentencing the applicant his personal circumstances were adequately taken with consideration more in particular his age, number of children the applicant has and the role he played in his community. It is therefore my considered view that applicant does not meet the test laid in Smith, and this application ought to not succeed.

ORDER

14. As a result, the following order is made;

14.1. Application for leave to appeal against sentence, is hereby refused.



MJ MOSOPA

**JUDGE OF THE HIGH
COURT, PRETORIA**

Date of hearing: 16 August 2024

Date of judgment: 28 August 2024

APPEARANCES

For the Appellant: Advocate Augustyn

Instructed by: Legal Aid South Africa

For the Respondent: Advocate Lalane

Instructed by:

Director of Public Prosecution, Pretoria