



IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NO: CC33/2020

DELETE WHICHEVER IS NOT APPLICABLE	
REPORTABLE: NO	
OF INTEREST TO OTHERS JUDGES: NO	
REVISED	
<u>12 August 2021</u>	
DATE	SIGNATURE

In the matter between:

THE STATE

And

BASSON CLIFFORD

APPLICANT

JUDGMENT- APPLICATION FOR LEAVE TO APPEAL

CORAM: MOGALE, AJ

HEARD ON: 12 AUGUST 2021

JUDGEMENT BY: MOGALE AJ

DELIVERED ON: 12 AUGUST 2021

1. On 19 July 2021, I sentenced the applicant after convicting him as follows:

- a. Count 1: 13 years imprisonment for Murder read with the provisions of Section 51(1) and part I of Schedule 2 of the Criminal Law Amendment Act 105 of 1997.
 - b. Count 4: 10 years imprisonment for Contravention of Section 3 of Act 32 of 2007 of the Criminal Procedure Act 51 of 1977, Sexual Assault.
 - c. Count 6: 3 years imprisonment for Defeating or Obstructing the course of Justice- the murder weapon, which acts defeated or obstructed the administration of Justice
 - d. This court also made an order that the sentence in count 6 to run concurrently with the sentence in count 1 and non-parole period of 5 years was fixed.
2. The Appellant filed leave to appeal against the conviction on 25 July 2021 in terms of Section 316 of the Criminal Procedure Act 51 of 1997. The section requires the application to be brought within 14 days after the passing of the sentence and the current application is brought within the required time limits. The state submitted its arguments opposing the application that was brought by the Applicant
 3. The Provisions of Section 17(1)(a)(c) of the Supreme Court of Act 10 of 2013, provides that as follows:
 - (i) Leave to Appeal may only be given where the Judge or Judges concerned believe that-
 - a. (i) the appeal would have a reasonable prospect of success, or
 - (ii) There is some other compelling reason why the appeal should be heard, including conflicting judgments on the matter under consideration
 - b. the decision sought to be appealed does not fall within the ambit of section 16(2)
- (a)
- c. where the decision sought to be appealed, does not dispose of all issues in the case, the appeal would lead to a just and prompt resolution of the real issues between the Parties.
4. The court when dealing with the issue pertaining to reasonable prospects of success in the matter of **S V Smith 2012(1) SACR 567 (SCA)** at par 7 the court held that,

“when the test of a reasonable prospect of success postulates is a dispassionate decision based on the facts and the law that a court of appeal would reasonably conclude different to that of the trial court. 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 success. 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 categorized as hopeless. There must, in other words, be a sound, rational basis for the conclusion that there are prospects of success on appeal”

5. Applicant’s grounds of appeal are as follows:

- i. That I erred and misdirected myself by convicting the applicant on the count of Murder. That the court relied on the evidence of a single witness, Mr. Randel, a former co-accused who testified falsely against the applicant to secure a plea bargain of 12 years imprisonment. That this court misdirected itself by not accepting the applicant’s version as true and reliable.
- ii. That I erred and misdirected myself to make a finding and convict the applicant for committing an act of sexual assault towards the four years old minor child, Francois Swanepoel. That the complainant was a single witness and made statements to the police that the applicant and his brother sexually penetrated him, but never testified in court about those chargers. This court ought to have considered this contradictions and reject the version of the complainant
- iii. That I erred by accepting the version of Randell that the applicant instructed him to burn the baseball bat used to kill the accused. This court should have accepted the fact that the applicant remain in his caravan during the time when this crimes were committed. The court erred by not considering the appellant’s version as reasonably possibly true

6. The grounds to appeal are to a large extent factual asserting that this court's reasoning was erroneous and that I failed to take into consideration or give sufficient weight to other factors.

7. The applicant did not argue in their notice for leave to appeal that their appeal would have a reasonable prospect of success in another court. It is therefore unnecessary to deal with each of the different grounds individually. Many of the grounds were addressed adequately in the judgment, and there is no need for repetition.
8. Advocate Harmzen for the State argued that the credibility issues and evaluation of both the complainant and the witnesses were dealt with during judgment. That the court evaluated the evidence of both witnesses with caution during its judgment and the judgment is correct. The state argued further that the applicant did not show a reasonable prospects of success on appeal and the leave to appeal against conviction should be dismissed.

EVALUATION

9. I am of the view that this court evenly balanced all the relevant factors. The evidence of young Francois was evaluated with caution and correctly accepted as reasonably possible true. The court correctly accepted corroborated versions by Mr Randall and Mr Bezuidenhout as true and reject the applicant version as false.
10. The applicant failed to argue in his notice of appeal and his heads of arguments that the appeal would have a reasonable prospect of success. In court the applicant argued that the appeal “May” have a reasonable prospect of success. In *Van Heerden v Cronwright & Others* 1985(2) SA 324 (T) at 343H, the word would in the new statute indicates a measure of certainty that another court will differ from the court whose judgment is sought to be appealed against.
11. Based on the applicants submission, it is clear that the use of the word may, indicate that the applicant is not certain that another court will differ from the court whose judgment is sought to be appealed against.
12. I do not believe that the appeal against the conviction has a reasonable prospect of success. Another court is, in my view, unlikely to conclude differently than this one.
13. The application for leave to appeal against conviction, stands to be dismissed.

Order:

In the circumstances the following order is made:

1. The application for leave to appeal against conviction is dismissed

A handwritten signature in black ink, consisting of several vertical, slightly wavy lines of varying heights, with a horizontal line crossing them near the top and a small flourish at the bottom right.

MOGALE AJ

ACTING JUDGE OF THE HIGH COURT