

IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE HIGH COURT, CAPE TOWN)

CASE NO: SS183/2003

DATE: 25 FEBRUARY 2009

5 In the matter between:

SIYABONGA SIKRENYA Applicant

and

THE STATE Respondent

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JUDGMENT

(Application for Leave to Appeal)

GRIESEL, J

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The applicant in the present case, together with two co-accused, was convicted among other things of murder and robbery with aggravating circumstances. He was convicted on 11 August 2003 and he now applies for condonation for the late noting of his application for Leave to Appeal.

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The applicant for condonation was not opposed by the State and the question of the merits of the application was thereupon addressed by counsel for the applicant who I may add did not

appear for him at the trial. As appears from the judgment on the merits the present applicant was accused number 1 and was the ringleader of the three accused in that case, who robbed the deceased of his father's brand new minibus taxi, and shot him in
5 the back, thereby killing him.

The Court, in convicting the applicant and his co-accused, held with regard to the murder that it was planned or premeditated, that the death of the victim was caused by the accused in committing
10 or attempting to commit or having committed, robbery with aggravating circumstances as defined, and that the offence was committed by a group of persons or a syndicate acting in the execution or furtherance of a common purposes or conspiracy. The minimum sentence provisions of Act 105 of 1997 were
15 therefore triggered three times.

In considering the question of sentence I came to the conclusion that there were no substantial and compelling circumstances to justify the imposition of less than the prescribed sentence of life
20 imprisonment. In arguing the application for leave to appeal Mr Smith submitted that the Court in fact erred in so doing by placing insufficient emphasis on the relative youthfulness of the applicant and by overemphasizing the seriousness of the offences and also by not giving sufficient weight to the element of mercy.

I have carefully considered these submissions and the grounds raised in the notice of application for leave to appeal, but I am not persuaded that there is any prospect that another Court may come to a different conclusion regarding the existence or otherwise of substantial and compelling circumstances. On the contrary I am satisfied that the present matter is one where life imprisonment was an eminently suitable, and in fact the only suitable sentence to impose on this particular applicant.

10 In the circumstances the APPLICATION FOR LEAVE TO APPEAL IS REFUSED.

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GRIESEL, J