

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

CASE NUMBER:

SS07/10

5 **DATE:**

8 MARCH 2011

In the matter between:

WILFRED VAN WYK

Applicant

and

10 **THE STATE**

Respondent

J U D G M E N T

(Application for leave to appeal)

15 **OLIVIER, AJ:**

This is an application for leave to appeal against both the conviction and the sentence as imposed on accused No 3 in the trial which served before me in the course of last year. Ms
20 Kloppeers, who appeared on behalf of accused 3 throughout a thorough argument traversed all of the issues arising from my judgment, both on conviction and sentence. She submitted that I ought not to have rejected the appellant's version as it could reasonably possibly be true.

Mr Van Wyk was placed on the scene by the evidence of the State witness, Ms Taylor whose evidence I had approached with the necessary caution on the admissions he had made to her, on the evidence of accused 1 and also on the objective
5 cell phone record evidence. Cumulatively, that evidence is dispositive of the defence put up by Mr Van Wyk.

I am satisfied that no other Court can reasonably possibly come to a different result.

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In respect of sentence Ms Kloppers, in principle, argued that there was a disparity so great between the sentences imposed upon accused 1 and 2 and accused 3 that it amounted to a misdirection.

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I had full regard to all of the circumstances of the accused, the crimes they had committed and the community. I had, in respect of accused 3, had regard to the role that he had played and, though it is not clear that all of the fatal assaults took
20 place in the presence of accused 1 and 2, they however clearly, on any version, took place in the presence of accused 3. I had full regard to the personal circumstances, different as they were, of all three the accused.

25 The imposition of a life sentence arises from the minimum

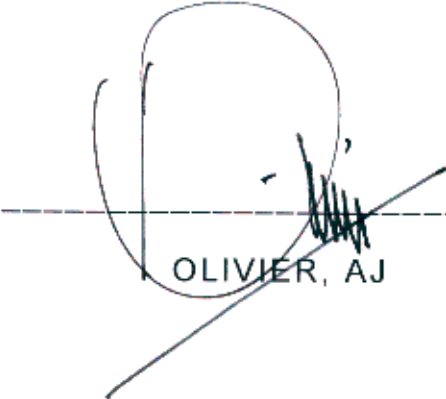
sentence legislation and a life sentence was, given his role in the crimes, not disproportionate to the sentences of 15 years imposed on the other accused.

- 5 I am on balance satisfied that no other Court will reasonably possibly come to a different conclusion, and in the premises **BOTH THE APPLICATIONS AGAINST CONVICTION AND SENTENCE ARE DISMISSED.**

- 10 I am indebted to Mr Wolmarans and Ms Kloppers, in particular, for her comprehensive heads of argument that were prepared.

The Court is now adjourned.

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OLIVIER, AJ