



**IN THE HIGH COURT OF SOUTH AFRICA  
[WESTERN CAPE HIGH COURT, CAPE TOWN]**

**Case No: SS161/2001**

In the matter between:

**THE STATE**

and

**VUSUMZI ALEX MAZONGOLO**

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**JUDGMENT DELIVERED: 12 SEPTEMBER 2011**

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**FOURIE, J**

[1] The applicant applies for leave to appeal against his conviction and sentence, having been found guilty of the rape of the 6 year old complainant and sentenced by me to 23 years imprisonment on 4 July

2002. The applicant has explained the reasons for the delay in bringing this application, in particular that he was not advised of his right to appeal and that, notwithstanding numerous letters written to various officials and institutions, his subsequent attempts to prosecute an appeal were frustrated by inordinate delays on the part of those who were supposed to assist him. Although the applicant may be criticised for not taking timeous and effective measures, it does seem to me that he has shown good cause for the long delay in prosecuting his appeal.

[2] The application for leave to appeal is opposed by the State and it is trite that, to succeed with the application, the applicant has to show that he has a reasonable prospect of success on appeal.

[3] The matter was dealt with in terms of the provisions of Act 105 of 1997 ("the Act"), the applicant having been convicted in the Paarl Regional Court and thereafter referred to this court for sentence in terms of section 52 (1) (b) of the Act. Prior to imposing sentence, I requested additional reasons from the presiding magistrate, who provided same, and after considering the record of the proceedings in the court *a quo*, including the judgment and further reasons, I concluded that the

proceedings were in accordance with justice and confirmed the conviction.

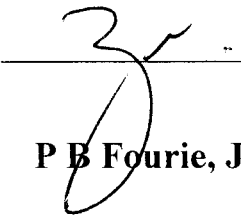
[4] I have now again considered all the relevant material, including the grounds upon which applicant now seeks leave to appeal. In regard to the conviction, the central issue is that of identification, as it was really undisputed that the complainant had been raped. Applicant was positively identified by the complainant and her friend, the latter having known applicant before the incident. Applicant raised an alibi-defence, which the magistrate, in my view correctly, rejected. On reflection, I am not persuaded that the applicant has a reasonable prospect of success in an appeal against his conviction.

[5] As far as sentence is concerned, the Act prescribes imprisonment for life, in view of the tender age of the complainant. I had taken all the relevant mitigating circumstances into account, and concluded that they constituted substantial and compelling circumstances justifying the lesser sentence of 23 years imprisonment.

[6] The question now is whether the sentence of 23 years imprisonment, is indeed proportionate to the offence in question. I believe that, in answering this question, it has to be borne in mind that when this sentence was imposed, the Act was in its infancy. Now, nearly a decade later, much has been said and written on this topic. On reflection, it appears to me to be just and equitable to allow the applicant the opportunity to have his sentence reconsidered in the light of the experience and wisdom gathered by our courts over this decade, particularly in regard to the application of the provisions of the Act. Put differently, the reasonable prospect of another court coming to a different conclusion as to the appropriateness of the sentence imposed, cannot, in my view, be excluded.

[7] In the result the following order is made:

1. The applicant's failure to prosecute his appeal timeously, is condoned.
2. The applicant is granted leave to appeal to the Full Bench of this Division against the sentence imposed upon him on 4 July 2002.



**P B Fourie, J**