

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

SS03/2009

**DATE:**

29 MARCH 2011

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In the matter between:

**RASHAAD MEYER**

Applicant

and

10 **THE STATE**

Respondent

**J U D G M E N T****Application for Leave to Appeal**15 **SALDANHA, J:**

These are the short reasons for the order in the application for leave to appeal. The application for leave to appeal is sought on the basis, and in particular to the Supreme Court of Appeal, against the approach of this court in the evaluation of "non recanting witnesses". The applicant contends that it is a matter that should be considered by the Supreme Court of Appeal. The second ground for the application for leave to appeal to the Supreme Court of Appeal Ms Erasmus, on behalf of the applicant, submitted that this case has been already

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considered thus far by three judges of this Division.

I will deal briefly with both contentions. The state opposes the application for leave to appeal and in particular the application  
5 for leave to appeal to the Supreme Court of Appeal on the basis that the issues raised by the applicant in this matter is no more than a question of the evaluation of the evidence of the "non-recanting" witnesses and that the matter does not involve a question of law and nor does it require the specific  
10 attention of the Supreme Court of Appeal.

During the course of the trial, the applicant's counsel indicated that the applicant would seek leave to appeal to the Supreme Court of Appeal on the questions as to whether this matter had  
15 correctly been referred to the High Court in terms of the minimum sentence legislation for the purposes of sentence. The applicant had not been warned when pleading of the application of the provisions of the minimum sentence legislation. After the applicant had been convicted in the  
20 Regional Court, the magistrate proceeded to sentence the applicant.

The applicant thereafter sought leave to appeal against sentence only, which appeal was heard by Thring, J and De  
25 Swart, AJ. That court of appeal found that the sentence had

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been incorrectly dealt with by the Regional Court and should have more appropriately been referred to the High Court in terms of the minimum sentence legislation. On that basis, the matter was referred to this court to be dealt with on the basis  
5 of the minimum sentence legislation.


The applicant had indicated that he would seek leave to appeal on that issue. I was at that stage of the view that if an application for leave to appeal was to be made on the issue as  
10 to the applicability of the minimum sentence legislation that such an issue should more appropriately be referred to the Supreme Court of Appeal for consideration, given that a court of this division had already dealt with that issue. However, in this application for leave to appeal, the applicant only seeks  
15 leave to appeal against the conviction and on the basis of the acceptance by this court of the evidence of the “non-recanting” witnesses.

I am of the view that leave to appeal to a full bench of this  
20 Division should be granted. There are reasonable prospects that another court may arrive at a different conclusion on the evaluation of the evidence of the “non-recanting witnesses”.

**Leave to appeal is therefor granted to a Full Bench of the**  
25 **Western Cape High Court.**

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SALDANHA, J