

**IN THE HIGH COURT OF SOUTH AFRICA
EASTERN CAPE DIVISION – PORT ELIZABETH**

Case No.: CC34/2010

In the matter between:

XOLANI EDWARD GANA

Applicant

and

THE STATE

Respondent

JUDGMENT

SMITH J:

[1] The applicant applies for leave to appeal against both his conviction and sentence. He also applies for condonation for his late filing of the application.

[2] He was convicted of murder, armed robbery with aggravating circumstances, and unlawful possession of a fire-arm and ammunition, on 18 November 2010. The following day, namely 19 November 2010, he was sentenced as follows:

- a) In respect of the murder count, to life imprisonment;
- b) In respect of the armed robbery count, to 15 years' imprisonment;
- c) For unlawful possession of a fire-arm, to 4 years' imprisonment; and
- d) For unlawful possession of ammunition, to 1 year imprisonment.

[3] His application for condonation was supported by an affidavit wherein he explained the reasons for the delay. The State did not oppose the application and, being satisfied that good cause had been shown, I granted the application.

- [4]** Ms Theron, who appeared for the applicant, argued that there are reasonable prospects that another court may find that the conclusion drawn from the circumstantial evidence, was not the only reasonable one.
- [5]** I have given extensive reasons in my judgment for my finding that the circumstantial evidence adduced by the State was overwhelming and compelling. The applicant's version, on the other hand, was contrived and improbable. This much is abundantly evident from my summary of the evidence. He was, by way of example, unable to provide a coherent and reasonable explanation for his presence at the crime scene and in the hijacked motor vehicle, as well as for his fingerprints on the passenger side when, on his version, he was driving the vehicle. There were also numerous other discrepancies and improbabilities in his testimony which justified the finding that his version could not be reasonably possibly true and that it was false, beyond reasonable doubt.
- [6]** The other inferences which were proffered by his counsel were fanciful and farfetched. I am accordingly of the view that there

are no reasonable prospects that another court will accept his version as being reasonably possibly true. In my view the proved facts compelled, as the only reasonable inference, that he was complicit in the commission of the crimes and that he was acting in common purpose with other unknown co-perpetrators. In my view it is unlikely that another court will be convinced that there is any other reasonable inference that can be drawn from those facts.

[7] I am similarly of the view that there are no prospects of another court interfering with the sentence of life imprisonment in respect of the murder count. The applicant's intended appeal is against that sentence only. The applicant was unable to establish any substantial and compelling circumstances which could have justified the imposition of a lighter sentence.

[8] I am accordingly of the view that there are no reasonable prospects of success on appeal, both in respect of the convictions and sentence.

In the result the application for leave to appeal is refused.



SMITH J

Judge of the High Court

Appearances:

For the applicant: Adv E Theron, instructed by Legal Aid.

For the respondent: Adv M Stander, instructed by National Director of Public Prosecutions.

Date heard: 23 October 2019

Date delivered: 29 October 2019