



Reportable:	Yes/No
Circulate to Judges:	Yes/No
Circulate to Magistrates:	Yes/No

**IN THE HIGH COURT OF SOUTH AFRICA
(NORTHERN CAPE DIVISION, KIMBERLEY)**

CASE NO.: K/S 20/2017
Date delivered: 28-10-2022

In the matter between:

Isak Olyn

Applicant

And

The State

Respondent

CORAM: WILLIAMS J:

J U D G M E N T

WILLIAMS J:

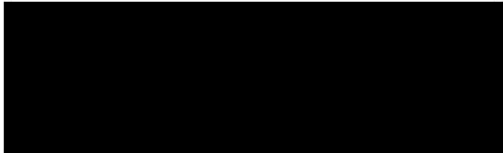
1. On 20 March 2018 the applicant, Mr Isak Olyn, was convicted of murder and attempted rape and sentenced to life imprisonment and 10 years imprisonment respectively. This is an application for leave to appeal against the convictions and the sentence of life imprisonment imposed. The application for leave to appeal is accompanied by an application for condonation for the late filing of this application.

2. As reasons for the delay, the applicant contends that he was transferred to Mangaung Correctional Centre after being sentenced and that it was difficult to establish contact with his legal representative. He eventually had to apply for legal aid afresh in order to expedite the application for leave to appeal. Mr Rosenberg for the State does not oppose the application for condonation and confirms the difficulties which sentenced offenders encounter when transferred to a different province. In the circumstances I am satisfied that condonation be granted.
3. With regard to the convictions, the applicant merely states that there is a reasonable prospect that another court on appeal may come to a different conclusion on the evidence presented.
4. S17 (1)(a)(i) of the Superior Courts Act 10 of 2013, however states that:
*“(1) Leave to appeal may only be given where the judge or judges concerned are of the opinion that –
(a)(i) the appeal would have a reasonable prospect of success.”*
(Own emphasis)
5. The bar has therefore now been raised with respect to the test to be applied to the merits of the proposed appeal. That being said I now turn to the merits *in casu*.
6. In the trial the respondent presented evidence that the deceased was in the company of the applicant the night before her body was found. He had told a state witness that he

wanted to have sexual intercourse with her. After the deceased left the applicant's house, he disappeared for a few hours. Early the next morning the deceased's body was found next to the railway line. She was tied to the railway line with a shoelace which was shown to have the applicant's DNA on it. She also had the applicant's DNA under her fingernails. The deceased had scratchmarks around the pubic area, lower abdomen and left thigh, indicative of an attempted rape.

7. In his defence the applicant testified that he had gone to sleep after the deceased had left his house and that they had not touched each other at all. He could not explain why his DNA was found on the murder scene. He made a very bad impression as a witness.
8. On the evidence described above there are no prospects of success on appeal.
9. As far as the sentence of life imprisonment is concerned the following factors are relevant. The applicant had been convicted previously of murder and rape and had been out on parole when he committed the offences *in casu*. He was related to the deceased (her uncle). The evidence pointed toward the offences being planned and premeditated. There were no substantial and compelling circumstances present which would have justified the imposition of a lesser sentence than the prescribed life imprisonment.

In the premises, the application for leave to appeal is dismissed.



CC WILLIAMS
JUDGE

For Applicant: Mr P Fourie
Legal Aid South Africa

For Respondent: Adv. J Rosenberg
Office of the DPP