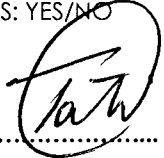


IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)

27/2/15
CASE NO: CC152/2013

(1)	REPORTABLE: YES / NO
(2)	OF INTEREST TO OTHER JUDGES: YES/NO
(3)	REVISED.
2015.02.27	
DATE	SIGNATURE

In the matter between:

MZIKAYIZE MBONGENI SHANDU

Applicant

and

THE STATE

Respondent

J U D G M E N T - Leave to Appeal

MAKGOKA, J:

[1] This is an application for leave to appeal against the sentence of 25 years' imprisonment for murder and robbery, handed down by this court on 20 February 2014. The application is opposed by the State.

[2] The test applicable whether or not to grant leave to appeal, is trite and well settled. At common law¹ it has always been whether there are reasonable prospects that another court, given the same set of facts, might arrive to a different conclusion. The test was recently restated as follows:

'The mere possibility that another court might come to a different conclusion was not sufficient, nor that it would offer solace to the applicant to know that the final decision in a serious case would be given by a court of appeal. See *S v Swanepoel* 1978 (2) SA 410 (A).'²

¹ This common law test has now been codified in s 17 of the Superior Courts Act, 10 of 2013.

² *S v Magadla* 2010 (2) SA 316 (E) para 8.

[3] It is trite that the imposition of sentence is pre-eminently a matter within the judicious discretion of a trial court. The appeal court's power to interfere with a sentence is circumscribed to instances where is vitiated by an irregularity, misdirection or where there is striking disparity between the sentence and that which the appeal court would have imposed had it been the trial court. See generally: *S v Petkar* 1988 (3) SA 571 (A), *S v Snyder* 1982 (2) 694 (A) and *S v Sadler* 2000 (1) SACR 331 (SCA) and *Director of Public Prosecutions, KZN v P* 2006 (1) SACR 243 (SCA) para 10.

[4] As a result, after careful, dispassionate and detached regard to the contents of the notice of application for leave to appeal, as well as the oral arguments, I am unable to detect any material misdirection in the manner in which sentence was considered, to justify a conclusion that another court might arrive to a different conclusion. The application for leave to appeal falls to fail.

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

1. The applicant's application for leave to appeal against the sentence is dismissed.



TM MAKGOKA
JUDGE OF THE HIGH COURT