



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

Case No K/S 18/2013

Heard on: 26/02/2014

Delivered on: 08/03/2014

In the matter between

JOSEPH MOSIMANEGAPE PHOKOJE

APPLICANT

And

THE STATE

RESPONDENT

JUDGMENT ON APPLICATION FOR LEAVE TO APPEAL

PAKATI J

1. The applicant, Mosimanegape Phokoje, and Neo Elliot Mckenzie (the applicant's co-accused) pleaded guilty to murder read with the provisions of s51 of the Criminal Law Amendment Act, 105 of 1997. On 19 November 2013 I convicted them and they were sentenced on 22 November 2013 to life imprisonment. The applicant now applies for

leave to appeal against his sentence. He is represented by Mr D Van Tonder on the instructions of the Legal Aid South Africa.

2. In his notice of appeal filed on 06 December 2013 the applicant recorded the following grounds:

- 2.1 That I erred in finding that there were no substantial and compelling circumstances present to justify the imposition of a lesser sentence;

- 2.2 That there exist good prospects of rehabilitation by the applicant due to his youthfulness. He is a first offender and showed remorse by pleading guilty to the charge;

- 2.3 That he co-operated with the police and made a confession to a magistrate which is indicative of true remorse;

- 2.4 That the murder was not pre-meditated;

- 2.5 That the applicant was under the influence of alcohol and drugs at the time the offence was committed;

- 2.6 That he passed grade 12 at school and is unmarried;

- 2.7 That he spent 11 months [in detention] awaiting trial; and

- 2.8 That the abovementioned circumstances cumulatively amount to substantial and compelling circumstances that warrant the imposition of a lesser sentence.

3. In passing sentence I considered the personal circumstances of the applicant as against the aggravating factors. The aggravating factors far outweighed his personal circumstances. I reiterate what I mentioned when I imposed sentence that the offence that the applicant was convicted of was serious. The deceased was unarmed and posed no threat as he was fleeing. It is important to note that the applicant chased after the deceased when he fled the scene and stabbed him again even though he had already been seriously injured by the applicant and his co-accused. The evidence

clearly showed that the applicant acted in the furtherance of a common purpose with his co-accused.

4. In my view there are no prospects of success on appeal. There is also no possibility that another court may arrive at a different decision.

ORDER

The application for leave to appeal is dismissed.

BM PAKATI
JUDGE

<i>On behalf of the Applicant:</i>	<i>Mr D. Van Tonder</i>
<i>Instructed by:</i>	<i>Legal Aid Board, Kimberley.</i>
<i>On behalf of the Respondent:</i>	<i>Adv C. Jansen</i>
<i>Instructed by:</i>	<i>Director of Public Prosecutions</i>