

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

IN THE HIGH COURT OF SOUTH AFRICA
(Northern Cape Division)

Case no: K/S 29/05
Date heard: 8 August 2006
Date delivered: 8 August 2006

In the matter between:

MOSES TUTU MOSHANE

APPELLANT

and

THE STATE

RESPONDENT

JUDGMENT: APPLICATION FOR LEAVE TO APPEAL
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Molwantwa A J:

1. This is an application for leave to appeal lodged on 5 August 2005 against my judgment delivered on 2 August 2005. The appellant pleaded guilty on 2 August 2005 and was convicted on his plea on

the same day. He was sentenced to 15 years imprisonment.

This intended appeal is against both conviction and sentence.

2. Ms Segone, instructed by Justice Centre represented the appellant during the trial on 2 August 2005. She is again representing the appellant in this application. She has submitted Heads of Argument on 7 August 2006 in which she conceded that both the conviction and the sentence were in order. There is nothing before me that indicates that the appellant has abandoned his appeal in any way.
3. The appellant's grounds of appeal boil down to the following:
 - 3.1 That the Court erred by not taking into account the discrepancies in the evidence of the complainant and other state witness. (Which did not have happen as the appellant
 - 3.2 That the Court did not take into account compelling and substantial circumstances existing in his case. (which the court did take into account).
4. The appellant was charged with rape of a thirteen year old girl. He

pleaded guilty .In a statement handed in as exhibit during the trial he admitted all the elements of the offence. I was satisfied that he understood the charge preferred against him and the contents of the statement as read back to him. He confirmed the same. I convicted him as charged.

5. As prescribed by section 51(1) read with (2) and (3) Act 105 of 1997 (Criminal Law Amendment Act),I found compelling and substantial circumstances existing and imposed fifteen years imprisonment instead of life imprisonment.
6. I have been assured by Ms Segone that she consulted with the appellant in prison. She explained the process which unfolds during a guilty plea and the prescribed provision of Act 105 of 1997.
7. None of the grounds have substained if I have erred it is on the side of leniency. For the foregoing reasons, it would be superfluous to deal with any other matter in the judgment, be that the conviction or the sentence. See **S v Sikosana** 1980 (4) S A 559 (A) at 562 H-563 B whereat **Diemont J A** stated:

“Once the trial Judge has firmly come to the conclusion that the State has

proved the guilt of the accused beyond all reasonable doubt he must proceed to reconsider the case from an objective standpoint and ask himself whether there is not a reasonable prospect that another Court might come to a different conclusion. If he decides to refuse the application he must give his reasons (see s 316 (6) of Act 51 of 1977). It may be that his reasons for his refusal will appear from the reasons for convicting (R v White 1952 (2) SA 538 (A) at 540) but where he decides to grant the application his reasons for so doing are less likely to be found in his judgment. It is important in such case that he should state concisely his reasons for allowing the application unless they otherwise appear clearly from the record. Moreover, when leave is granted the leave may be limited so as to allow only particular grounds of appeal to be advanced, or leave may be granted generally so that all the issues may be canvassed - see the remarks of SCHREINER JA in R v Jantjies 1958 (2) SA 273 (A) at 275."

8. The applicant's legal representative Ms Segone, instructed by the Justice Centre, could point to no misdirection and I have discerned none. In all the circumstances the application has no merits.

ORDER

The application for leave to appeal is dismissed.

B C MOLWANTWA

Acting Judge

Northern Cape Division

On behalf of the Appellant: Ms B Segone

On behalf of the Respondent: Advocate M G W Baganeneng