

IN THE HIGH COURT OF SOUTH AFRICA
(ORANGE FREE STATE PROVINCIAL DIVISION)

Appeal No.: A444/2003

In the case between:

MR W D KNOESEN

Applicant

and

THE STATE

Respondent

CORAM:

BECKLEY J *et* EBRAHIM J

JUDGMENT:

EBRAHIM J

HEARD ON:

24 JUNIE 2005

DELIVERED ON:

28 JULY 2005

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- [1] This is an application for leave to appeal to the Supreme Court of Appeal against conviction and sentence. The applicant was convicted of theft and sentenced to 36 months imprisonment on the basis of a case based solely on circumstantial evidence. In bringing the application it is the applicant's main contention that the trial court had failed to properly distinguish between mere speculation

and the proper drawing of inferences from the proven facts. In addition the applicant contends that this court erred in confirming the trial magistrate's finding that the applicant's version could not reasonably possibly be true and that the only reasonable inference be drawn from the circumstantial evidence was that it was the applicant who had conspired to steal the petrol in question.

[2] I am of the view that there is no reasonable prospect that another Court would conclude otherwise on the evidence for the following reasons:

2.1 It was conceded by the applicant's counsel, Mr Nel, that it could only have been the applicant or his son who conspired with Assegai to steal the petrol. That being so, it is highly improbable that had it been the son and not the applicant who was involved, the son would not have made firm and fixed arrangements with Assegai as to where and when delivery would take place, alternatively that the son would not have ensured that he would be accessible when delivery was to be made. That he was nowhere to be found and could not be reached militates against the

conclusion being drawn that it was he who was to receive delivery of the petrol.

- 2.2 Having received the petrol, the applicant made no mention of this fact at all to his son but choose instead to consult his attorney about the delivery. Had he in fact believed that the delivery was a *bona fide* one done in the course of ordinary business, it would have been the obvious thing for him to do since his son was in charge of the running of the business and, according to the applicant, payment for the petrol still had to be made. That he did not discuss the matter at all with his son indicates his son had nothing to do with the transaction.

[3] As regards the sentence, I am of the view that the application

is without merit. The learned magistrate had due regard to the evidence of two expert witnesses namely, Mrs. Steyn a social worker and Miss Hlahane a correctional Supervision Officer from the Department of Correctional Supervisions, both of whom categorically excluded correctional supervision as a possible sentence in the case of the applicant for good reason. Accordingly there was no reason why the learned trial magistrate ought to have ignored their recommendations and imposed a sentence of correctional supervision. I cannot fault his exercise

of his
discretion.

I find that there are no reasonable prospects of success of
an appeal in this matter. The application is therefore
dismissed.

S. EBRAHIM, J

I concur.

A.P. BECKLEY, J

On behalf of appellant:

J. Nel
Instructed by
Rossouws Attorneys
BLOEMFONTEIN

On behalf of respondent:

Director: Public Prosecutions
BLOEMFONTEIN

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