

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

Case No.: 17/2003

In the case between:

JACK MOLAHLEI MOKHOTHO

Applicant

and

THE STATE

Respondent

CORAM:

MUSI, J

HEARD ON:

5 MARCH 2004

DELIVERED ON:

25 MARCH 2004

This is an application for leave to appeal. The applicant was convicted of rape by the Regional Court, Bloemfontein and the case was then referred to this Court for sentence in terms of section 52 of the Criminal Law Amendment Act, No.105 of 1977, by virtue of the fact that the applicant had raped the complainant twice. The matter came before me on 13 December 2002. The applicant was legally represented and his counsel conceded that the conviction was in order. That was also my view and that of the counsel for the State and I formally confirmed the conviction and proceeded to consider sentence.

All the factors relative to sentencing were canvassed and these appear in my judgment on sentence. I found that there were substantial and compelling circumstances justifying the imposition of a lesser sentence than the prescribed minimum of life imprisonment. I considered that 20 years imprisonment would, in the circumstances of this case, be an appropriate sentence and I duly imposed that.

The application herein was heard on 5 March 2004, but I reserved judgment purely in order to have a look at a case that was cited by Ms Wright who appeared for the applicant. This is **S v DZUKUDA AND OTHERS; S v TSHILO** 2000 (4) SA 1078 (CC) in which the Constitutional Court overruled a judgment of the Witwatersrand Local Division in declaring section 52 of the Criminal Law Amendment Act as being unconstitutional.

Ms Wright referred to this case in response to the submission made by counsel for the State, Ms Bester, to the effect that the conviction herein could no longer be revisited or challenged as it was conceded prior to sentencing. Ms Wright pointed out, correctly in my view, that I was not

acting as a Court of Appeal when I confirmed the conviction. The applicant is within his rights to seek leave to appeal against the conviction as well.

The application for leave to appeal against the conviction is based solely on the ground that the conviction was based on the testimony of a single witness and Ms Wright contended that this issue was not raised previously and for that reason the application should be granted. She cited **S v SITEBE 1962 (1) SA 745 (T)**. It is true that on the rape itself the complainant was a single witness, but there were other witnesses whose testimony provided corroboration in the form of circumstantial evidence. The contention that the learned Magistrate did not consider the fact that the complainant was a single witness is not supported by the record, and in confirming the conviction I was fully aware of that. In my view, the evidence against the applicant was in fact overwhelming and that is why the conviction was conceded when the matter came up for sentencing.

In my view, there are no reasonable prospects of success on appeal in respect of both the conviction and sentence. The application is dismissed.

H.M. MUSI, J

On behalf of Applicant:

Adv. G.J.M. Wright
instructed by

Legal Aid Board

On behalf of Respondent:

Adv. A. Bester
instructed by
Director: Public Prosecutions

/scd