

Reportable:	YES / NO
Circulate to Judges:	YES / NO
Circulate to Regional Magistrates:	YES / NO
Circulate to Magistrates:	YES / NO



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

Case number: KS 18/2024

In the matter between:

ANDY CHRISTOPHER KOCK

APPLICANT

and

THE STATE

RESPONDENT

Neutral citation: *Kock v The State* (KS 18/2024) 12 June 2025

Coram: Stanton J

Heard: 12 June 2025

Delivered: 13 June 2025

Summary: Application for leave to appeal – sentence of life imprisonment – murder read with the provisions of s 51(1) of the Criminal Law Amendment Act 105 of 1997, as amended, read with s 1 of the Domestic Violence Act 116 of 1998 – whether the trial court under-emphasised the personal circumstances of the applicant – first time offender and a plea of guilty – whether the trial court over-emphasised the seriousness of the crime - applicant's case is arguable - reasonable prospects of success.

ORDER

1. The application for condonation is granted;
2. Leave is granted to the applicant to appeal to the Full Court of the Northern Cape Division against the life sentence imposed in respect of counts three and four.

Stanton J

JUDGMENT

Introduction:

- [1] The applicant stood accused of the following four offences:-
- 1.1 Count 1 - assault with the intent to do grievous bodily harm;
 - 1.2 Count 2 - assault with the intent to do grievous bodily harm;
 - 1.3 Count 3 - assault with the intent to do grievous bodily harm; and
 - 1.4 Count 4 - murder read with the provisions of s 51(1) of the Criminal Law Amendment Act 105 of 1997, as amended ("the CLAA"), read with s 1 of the Domestic Violence Act 116 of 1998 ("the Domestic Violence Act").

- [2] The applicant pleaded guilty to the four counts proffered against him, and he was accordingly found guilty on all four counts.
- [3] Prior to sentencing, Mr Nel, on behalf of the applicant, conceded that the count of the murder falls within the provisions of s 51(1) of the CLAA for the following two reasons:
- 3.1 The murder was committed with premeditation; and
- 3.2 The death of the deceased resulted from physical abuse or sexual abuse, as contemplated in paragraphs (a) and (b) of the definition of "domestic violence" in s 1 of the Domestic Violence Act by the applicant who was in a domestic relationship with the deceased.
- [4] The applicant's conviction in respect of the count of murder therefore carried a prescribed minimum sentence of imprisonment for life, in the absence of substantial and compelling circumstances for the imposition of a lesser sentence as provided for in s 51(3)(a) of the CLAA. Mr Nel requested that the sentences in respect of counts 3 and 4 should be taken together for purposes of sentencing. I agreed as the evidence showed that these two offences are inextricably linked in terms of locality, time, protagonist and common intent.
- [5] The following relevant applicable case law was considered before imposing sentence:
- 5.1 Punishment must fit the criminal, as well as the crime, be fair to society and be blended with a measure of mercy; and
- 5.2 When sentencing an accused, a court is required to consider the four objectives of punishment (deterrence, prevention, rehabilitation and retribution) in view of the triad of factors as set out in *S v Zinn*.¹ The triad

¹ 1969 (2) SA 537 (A).

of factors being: (a) the personal circumstances of the offender, including his character, conduct in life and personality, and everything that influenced the commission of the offence; (b) the nature and seriousness of the offence committed; and (c) the interests of the community, including the necessity for a level of uniformity in sentencing.

[6] On 08 November 2024, the following sentences were imposed:

6.1 In respect of count 1 (assault with the intent to do grievous bodily harm): 12 months' imprisonment;

6.2 In respect of count 2 (assault with the intent to do grievous bodily harm): 6 months' imprisonment; and

6.3 In respect of both count 3 (assault with the intent to do grievous bodily harm) and count 4 (murder read with the provisions of s 51(1) of the CLAA, read with s 1 of the Domestic Violence Act: life imprisonment;

[7] An order was made that the sentences shall run concurrently; and the applicant was declared unfit to possess a firearm.

Application for leave to appeal:

[8] On 24 January 2025, the applicant filed an application for leave to appeal against the sentences of life imposed in respect of counts 3 and 4. In addition, the applicant filed an application for the condonation of the late filing of the application for leave to appeal.

Grounds of appeal:

[9] The following grounds of appeal were listed, namely that I erred in:-

- 9.1 Finding that the applicant did not show true remorse, and therefore under-emphasised that he indicated his remorse in his plea statement, which statement was accepted by the respondent;
- 9.2 Not considering and/or under-emphasising the role alcohol played in the commission of the offences;
- 9.3 Under-emphasising the fact that the applicant is a first offender;
- 9.4 Under-emphasising the attempt made by the applicant to address his anger management issues;
- 9.5 Under-emphasising the fact that the applicant pleaded guilty on the charges and played open cards with the court;
- 9.6 Over-emphasising the seriousness of the murder count as well as the interest of the community and under-emphasising the favourable personal circumstances of the applicant;
- 9.7 Not finding that the personal circumstances, together with the factors mentioned in paragraphs 9.1 to 9.6 above, cumulatively presented substantial and compelling circumstances that justify the imposition of a lesser sentence than the prescribed minimum sentence in respect of counts 3 and 4; and
- 9.8 Imposing a sentence, which is shockingly harsh and inappropriate in the circumstances.

Ad condonation:-

- [10] The applicant, in his application for condonation, explained that the delay in the filing of the application for leave to appeal was occasioned by the delay in obtaining the transcription of the record.

- [11] From the founding affidavit, it is evident that the applicant took all prudent and reasonable steps to obtain the copy of the transcribed record without delay. Furthermore, the respondent does not oppose the application for condonation.

Applicable law:

- [12] Section 17 of the Superior Courts Act 10 of 2013 provides:

‘17. Leave to appeal

- (1) Leave to appeal may only be given where the judge or judges concerned are of the opinion that—

(a)(i) the appeal would have a reasonable prospect of success; or

(ii) there is some other compelling reason why the appeal should be heard, including conflicting judgments on the matter under consideration;’

- [13] In *S v Smith*,² Plasket AJA stated:-

‘What the test of reasonable prospects of success postulates is a dispassionate decision, based on the facts and the law, that a court of appeal could reasonably arrive at a conclusion different to that of the trial court. In order to succeed, therefore, the appellant must convince this court on proper grounds that he has prospects of success on appeal and that those prospects are not remote, but have a realistic chance of succeeding. More is required to be established than that there is a mere possibility of success, that the case is arguable on appeal or that the case cannot be categorised as hopeless. There must, in other words, be a sound, rational basis for the conclusion that there are prospects of success on appeal.’

² 2012 (1) SACR SCA 667 at para 7.

Arguments by counsel:

[14] Mr Nel conceded that this Court did not misdirect itself in its application of the law and that it had considered all the relevant facts, but he submitted that the personal circumstances of the applicant, namely: (a) his consumption of alcohol; (b) his attempts to manage his anger; (c) him being a first time offender; (d) that he pleaded guilty; and (e) that he showed remorse, if considered cumulatively, amount to substantial and compelling reasons to deviate from the prescribed sentence of life imprisonment, which is shockingly harsh and inappropriate in the circumstances.

[15] Mr Makhaga, on behalf of the state, with reference to *S v Rabie*,³ countered that the application for leave to appeal should be dismissed as this Court exercised its discretion judicially, and there is no probability that another court would come to a different conclusion on the facts.

Conclusion:

[16] I fully embrace the convictions of our Supreme Court of Appeal as *inter alia* set out in *S v Matyityi*⁴ and *S v Malgas*⁵ to the effect that minimum sentences have been ordained by the legislature and should be imposed, unless there are truly convincing reasons for departing from them.

[17] Having said this, I am of the view that another court, acting reasonably, may find that life imprisonment is not warranted in view of the fact that the applicant was a first offender and that he pleaded guilty to the charges.

[18] Consequently, I am persuaded that the applicant's case is arguable and that there are reasonable prospects of success.

³ 1979 (4) SA 855 (A) at 857.

⁴ 2011 (1) SACR 40 (SCA) at para 23.

⁵ 2001 (1) SACR 469 (SCA).

- [19] It is not necessary to refer the matter to the Supreme Court of Appeal and leave should therefore be granted to the Full Court of the Northern Cape Division.

Order

Therefore, the following orders are made:

1. The application for condonation is granted;
2. Leave is granted to the applicant to appeal to the Full Court of the Northern Cape Division against the life sentence imposed in respect of counts three and four.



A STANTON
JUDGE

On behalf of the applicant:	Adv IJ Nel
On instruction of:	CM de Bruyn and Partners
On behalf of the respondent:	Adv R Makhaga
On instruction of:	The DPP Northern Cape