



IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

Case number: CC56/2024

(1)	REPORTABLE: YES/NO
(2)	OF INTEREST TO OTHER JUDGES: YES/NO
(3)	REVISED: YES
	
SIGNATURE	15/09/2025 DATE

In the matter between:

JOHAN MARAIS

APPLICANT

v

THE STATE

RESPONDENT

JUDGMENT

MOSOPA J

(1) This is an application for leave to appeal against a sentence of 15 years imprisonment imposed on the applicant on the 10 July 2025. This sentence is a sequel to the applicant convicted on the strength of his guilty plea.

- (2) The applicant was legally represented throughout his trial matter by Ms Simpson from the Legal Aid, South Africa. The respondent is represented by Advocates Kabini, Davhana and Mogotsi all from the Director of Public Prosecutions, Pretoria.
- (3) The applicant was employed in the then apartheid South Africa Police when he murdered the deceased together with his colleagues on the 24 August 1987. The deceased was a student activist who was opposed to apartheid system when he was murdered.

APPLICABLE LEGAL PRINCIPLE

- (4) Section 316 of Act 51 of 1977 regulates application for leave to appeal relating to applicants convicted and sentenced by a High Court. The following provision is made by section 316(1)(a) of Act 51 of 1977,
- “Subject to section 84 of the Child Justice Act, 2008 any accused convicted of any offence by a High Court may apply to that court for leave to appeal against such conviction or against any resultant sentence or order.”
- (5) Section 316(1)(a)(i) makes provision that such application must be made within 14 days passing the sentence. However, the applicant is afforded an opportunity to make an application after the lapse of 14 days for the extension of such a period, but such applicant must show good cause for condonation to be granted. *In casu*, the applicant filed his application for condonation which was not opposed by the respondent and that is despite the fact that the respondent is of the view that such application is meritless. As a consequence, application for condonation is hereby granted.
- (6) Also governing applications for leave to appeal is section 17 of the Superior Courts Act 10 of 2013, which makes the following provision;
- “(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;
- (b) the decision sought on appeal does not fall within the ambit of section 16(2)(a); and
- (c) where the decision sought to be appealed does not dispose of all the issues in the case, the appeal would lead to a just and prompt resolution of the real issues between the parties.”

(7) In ***Cook v Morrison and Another 2019 (5) SA 51 (SCA)*** at par 8, the following was stated;

‘(8) The existence of reasonable prospects of success is a necessary but insufficient precondition for the granting of special leave. Something more, by way of special circumstances, is needed. These may include that the appeal raises a substantial point of law; or that the prospects of success are so strong that a refusal of leave would result in a manifest denial of justice; or that the matter is of very great importance to the parties or to the public. This is not a closed list.”

(8) In ***S v Smith 2012 (1) SACR 567 (SCA)*** at para 7, the following stated,

“(7) 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.”

(9) In ***Mont Chevaux Trust (IT 212/28) v Tina Goosen*** (unreported) Land Claims Court Case no: LCC 14R/2014, Bertelsmann J at para 6, when dealing with the concept of reasonable prospects of success, stated,

“(6) It is clear that the threshold for granting leave to appeal against a judgment of a High Court has been raised in the new Act. The former test whether leave to appeal should be granted was a reasonable prospect that another court might come to a different conclusion, see *Van Heerden v Cronwright and Other* 1985 (2) SA 342 (T) at 343 H. The use of the word “would” in the new statute indicates a measure of certainty that another court will differ from the court whose judgment is sought to be appealed against...”

ANALYSIS

(10) The leave to appeal by the applicant is premised on the ground that, the appeal would have a reasonable prospect of success. The following can be gleaned from the grounds of the application for leave to appeal that, “it is further respectfully submitted that there are reasonable prospects of success that another court can come to another finding on the sentence imposed.”

(11) In argument, Ms Simpson, contended that the trial court did not apply sentence discretion properly and judicially and it misdirected itself when sentencing the applicant to 15 years imprisonment. This contention is made against the background that the respondent called upon the trial court to impose a sentence of life imprisonment, alternatively 25 years imprisonment. I have dealt in judgment in the sentence that the prescribed minimum sentencing is not applicable in this matter. However, the court has inherent jurisdiction to impose any sentence which includes life imprisonment.

(12) The personal circumstances of the applicant when imposing sentence were adequately considered, the interests of society, the impact of crime on the family of the deceased and the nature and severity of the crime committed. I found no justification in imposing a sentence of life imprisonment or 25 years imprisonment as was contended by the respondent. In my judgment on

sentence, I did not overemphasize any aspect, mentioned above, above any other aspect.

(13) The advanced age of the applicant and the fact that he is suffering from gout were all considered. Despite not being a medical practitioner, Ms Clark a Clinical Psychologist who testified on behalf of the applicant, is of the view that the gout that the applicant is suffering from is treatable and it does not have the effect of impacting him on his mobility. That is borne of the fact that the ailment did not temper with his love for gardening. Mr Matthee in his report in consideration of correctional supervision as a sentence, proposed that in terms of section 52 of the Correctional Services Act 111 of 1998, community service as opposed to direct imprisonment can also be recommended as a sentence. Community service encompasses physical work and it is my considered view that such, should not have been considered if the applicant's gout was that serious. He was hospitalised because of lack of treatment after running out of funds, meaning that if he received treatment, hospitalisation could have been unnecessary.

(14) It is appreciated that applicant pleaded guilty to murder and further that it is the applicant who approached a journalist and disclosed his involvement in the commission of the murder. He proceeded to present a detailed section 112(2) statement outlining his role and involvement. But when he appeared before Ms Clark gave a contradictory version of the circumstances of the murder. It is acknowledged that the respondent accepted the applicant's plea, but I fail to understand why the applicant could not have just simply repeated the circumstances of the murder as outlined in section 112(2) to Ms Clark.

(15) It is further contended that the court erred in finding that the applicant did not have a true appreciation of the consequences of his action and thus not remorseful. In *S v Matyityi* it was said that for the offender to be said that he is truly remorseful must have a true appreciation of the consequences of his

action, which I found that the applicant did not have. I have stated my reasons for coming to that conclusion in my judgment on sentence and I do not intend repeating them here.

(16) My judgment was wrongfully understood by Ms Simpson when she contended that, the finding that the applicant is required to testify against others involving the same offence to prove his remorse is unfair. What was said in the judgment is the following;

“...I hope you will also use this opportunity to reflect, and hopefully you will change your mind in testifying on behalf of the state in the matter pertaining to your former colleagues...”

(17) This is an obiter remark made at the conclusion of the judgment and can in no way stand as a finding. No negative inference was drawn of the failure or non-willing of the applicant to testify on behalf the state against his former colleagues and that is his right to do so which this court ought to respect.

(18) I could not consider sentencing options suggested on behalf of the accused as I deemed it that they are not proportional to the crime committed after considering evidence in its totality. Therefore, I see no sound, rational basis for the conclusion on that there are prospects of success on appeal.

ORDER

(19) In the result, the following order is made.

1. Application for condonation of the late filing of the application for leave to appeal is hereby granted.
2. Application for leave to appeal against sentence is hereby refused.


M.J. MOSOPA
JUDGE OF HIGH COURT,
PRETORIA

APPEARANCES:

For the Applicant : Ms S. Simpson

Instructed by : Legal Aid South Africa

For the Respondent: Adv. L. Davhana

Instructed by : Director of Public Prosecutions

Date of hearing: 15 August 2025

Date of Judgment: 15 September 2025