



**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)**

**Not Reportable
Case No: CC14/2014**

In the matter between:

ARTHUR WHEELER

Applicant

and

THE STATE

Respondent

Coram: SMITH, AJ
Heard on: 10 September 2026
Delivered on: 15 September 2026

ORDER

The application for leave to appeal against the conviction is dismissed.

JUDGMENT

SMITH, AJ

Introduction

[1] This is an application for leave to appeal against the conviction of the applicant of the following charges:

- (1) Rape
- (2) Contravening Section 3 of Act 32 of 2007, Rape
- (3) Contravening Section 5 of Act 32 of 2007, Sexual Assault
- (4) Murder

[2] The applicants contend:

Count 1

- (i) That the court erred in accepting that the complainant's evidence is reliable and credible.
- (ii) The medical evidence does not support the complainant's evidence.
- (iii) The court failed to apply sufficient weight to the evidence of Dr. Swanepoel in respect of the penile abnormality of the applicant.

Count 2 to 4

- (i) The DNA evidence does not support the finding that the applicant raped, sexually assaulted and strangled the deceased.
- (ii) The court did not place sufficient weight on the fact that the applicant was not the only individual in the house with the deceased.

[3] The provisions of Section 17 of the Superior Courts Act 10 of 2013 govern applications for leave to appeal. The relevant Section states:

“17. (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.”

[4] Reasonable prospect of success is described in Smith¹ as follows:

“What the test of reasonable prospect 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 categorized as hopeless. There must, in other words, be a sound rational basis for the conclusion that there are prospects of success on appeal.”

Count 1

[5] The finding that the evidence of the complainant is reliable and trustworthy is discussed in the judgment from par 58. Reasons for rejecting the version of the applicant is also fully discussed in the judgment. The applicant knew that the complainant was intoxicated to such an extent that she could not have consented to sexual intercourse.

[6] The medical examination of the complainant shows no injuries. The absence of vaginal injuries does not exclude a finding of rape.

[7] Dr. Swanepoel, who examined the applicant gave recognition to the slight abnormality of the applicant's penis. It is also her evidence that the abnormality does not prevent the applicant from having sexual intercourse without the assistance of the partner.

¹ 2011 ZASCA 15; 2012(1) SACR(SCA)567 par.7

Count 2 to 4

[8] The absence of DNA on the body of the deceased does not mean that the deceased was not raped, sexually assaulted and strangled. A person inflicted the injuries. The evidence shows beyond reasonable doubt that neither the son of the applicant or the flatmate Koen, committed the offense.

[9] It was never the narrative of the applicant that his son (a minor) or Koen committed the offense. Towards the end of his evidence, during cross-examination, the applicant suggested that Koen may have committed the offense. Koen testified as a witness. He was never cross-examined in this regard. It is the evidence of the applicant that he woke Koen up to perform CPR on the deceased, when he realized the child was not breathing.

[10] The inconsistencies in the account of the applicant in respect of all 4 counts, together with facts that are common cause, and evidence of the State conceded to by the applicant shows beyond reasonable doubt that the applicant is guilty of all 4 Counts.

[11] After considering the record of the proceedings referred to by both counsel as well as their written and oral submissions, I find that there is no rational basis to conclude that there is a prospect of success on appeal.

[12] Accordingly, the following order is made:

It is hereby ordered that the application for leave to appeal against the conviction is dismissed.

S. I. SMITH, AJ
Acting Judge of the High Court

APPEARANCES

For the Appellant: I. Levendal

Instructed by: Legal Aid South Africa

For the Respondent: J. Seethal

Instructed by: Directorate of Public Prosecutions, Western Cape