

CONSTITUTIONAL COURT OF SOUTH AFRICA

Case CCT 60/03

LOUIS BENJAMIN VAN DER WESTHUIZEN

Applicant

versus

THE STATE

Respondent

Decided on : 24 November 2003

JUDGMENT

THE COURT:

[1] The applicant approached this Court for bail. He was convicted in the Regional Court at George of an offence and sentenced to imprisonment. The applicant does not indicate the offence of which he was convicted, the sentence, or when he was convicted and sentenced. What appears from the application, is that the applicant applied unsuccessfully to the High Court in Cape Town to re-open the proceedings in the Regional Court to enable it to take into account facts and circumstances which had arisen subsequent to the imposition of sentence. That application was dismissed by the High Court. An application for leave to appeal against the decision of the High Court was subsequently dismissed by the Supreme Court of Appeal (“the SCA”). The applicant contends that the SCA, in dismissing his application for leave to appeal, did

so prematurely and without regard to averments made by him in a replying affidavit, which was lodged timeously but after the order had been made.

[2] The applicant, though represented by an attorney, has paid no regard to the rules of this Court. The application is in substance one for direct access to this Court for the grant of bail. The applicant requires the leave of this Court to bring such an application and the procedure that has to be followed is described in rule 17. Rule 17(2) provides that an application for direct access shall set out –

- “(a) the grounds on which it is contended that it is in the interests of justice that an order for direct access be granted;
- (b) the nature of the relief sought and the grounds upon which such relief is based;
- (c) whether the matter can be dealt with by the Court without the hearing of oral evidence and, if it cannot,
- (d) how such evidence should be adduced and conflicts of fact resolved.”

[3] Direct access will ordinarily be granted only in exceptional cases where it is in the interests of justice to do so.¹ None of the provisions of rule 17 has been observed. The applicant says that he is seeking legal advice and is uncertain as to what remedy he has. He may have none. The judges who made the order dismissing the application for leave to appeal reconsidered the matter after the replying affidavit had

¹ See *Bruce and Another v Fleecytex Johannesburg CC and Others* 1998 (2) SA 1143 (CC); 1998 (4) BCLR 415 (CC) para 9, *Christian Education South Africa v Minister of Education* 1999 (2) SA 83 (CC); 1998 (12) BCLR 1449 (CC) para 4, *Dormehl v Minister of Justice and Others* 2000 (2) SA 987 (CC); 2000 (5) BCLR 471 (CC) para 5, *National Gambling Board v Premier, KwaZulu-Natal and Others* 2002 (2) SA 715 (CC); 2002 (2) BCLR 156 (CC) para 29, *Van der Spuy v General Council of the Bar of South Africa (Minister of Justice and Constitutional Development, Advocates for Transformation and Law Society of South Africa intervening)* 2002 (5) SA 392 (CC); 2002 (10) BCLR 1092 (CC) para 7, *Satchwell v President of the Republic of South Africa and Another* 2003 (4) SA 266 (CC) para 6.

been filed and concluded that there was no reason to recall their order. Nothing has been placed before this Court to suggest that the decision to refuse the application for leave to appeal was in substance incorrect, or that the applicant has any prospect of persuading a court that the sentence imposed upon him by the Regional Court at George could or should be varied, because of facts and circumstances which have arisen since the date of the conviction and sentence.² On the basis of the averments made in the application, there is no reason why this Court or any other court should grant him bail.

[4] The applicant has therefore failed to establish that it is in the interests of justice to grant him direct access to this Court for the purpose of granting him bail. The application for direct access is therefore refused.

Chaskalson CJ, Langa DCJ, Ackermann J, Madala J, Mokgoro J, Moseneke J, Ngcobo J, O'Regan J, Sachs J and Yacoob J.

² See *R v Verster* 1952 (2) SA 231 (A) at 236A-C; *R v Hobson* 1953 (4) SA 464 (A) at 466A