



CONSTITUTIONAL COURT OF SOUTH AFRICA

Case CCT 108/12  
[2013] ZACC 8

In the matter between:

CLINTON LOYD HOUSTON

Applicant

and

THE STATE

Respondent

Decided on : 28 March 2013

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JUDGMENT

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THE COURT

[1] The applicant seeks leave to appeal against two sentences imposed on him in separate cases in the KwaZulu-Natal High Court, Durban (High Court) in September 1997 and February 1998. In the first case he was found guilty of murder, kidnapping and robbery with aggravating circumstances and sentenced to an effective

sentence of 30 years' imprisonment (first sentence). In the second he was found guilty of two counts of murder and two counts of robbery with aggravating circumstances, and sentenced to an effective 40 years' imprisonment (second sentence). Despite consideration of the issue in the second trial, the second sentence was not ordered to run concurrently with the first. The result is that the applicant is serving an effective sentence of 70 years' imprisonment.

[2] An application for leave to appeal against the second sentence was dismissed in the High Court on 31 May 2005. The Supreme Court of Appeal refused further special leave to appeal in respect of an application brought five years later, on 22 September 2010. The applicant launched the application for leave to appeal to this Court on 7 November 2012. He also seeks condonation for the late application.

[3] This Court does not ordinarily grant leave to appeal against sentence unless the appeal raises fair trial issues that may result in a failure of justice.<sup>1</sup> That is not the case here. The applicant's complaint is not that his trials were unfair, but that the effect of the parole policies of the Department of Correctional Services (Department) is that he is being unfairly discriminated against. The question is thus where his remedy, if any, lies.

[4] In order to appreciate the applicant's concern, it is necessary to recap events briefly. In determining the second sentence the High Court considered whether a life

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<sup>1</sup> *Bogaards v S* [2012] ZACC 23; 2013 (1) SACR 1 (CC); 2012 (12) BCLR 1261 (CC) at para 42.

sentence was appropriate, but decided that it was not. This was done on the basis that a life sentence was only appropriate where there are no prospects of rehabilitation or reform of the convicted person. The implication is that the High Court considered the applicant to be a person with the potential of rehabilitation. The ensuing years appear to have borne this assessment out. The Department reports that the applicant has been a model inmate, and has been recommended for parole. Due to the fact that the applicant was sentenced to definite periods of imprisonment he will become eligible for parole only after he has completed one-third of his sentence,<sup>2</sup> that is, on 28 June 2020.

[5] The quirk in this tale is that had he been sentenced to life imprisonment in respect of his offences he would by now probably be eligible to be considered for parole. This appears to be the result of decisions of the courts<sup>3</sup> that offenders serving life sentences who were sentenced prior to 1 October 2004 are entitled to have their dates of eligibility for parole advanced by credits earned under earlier legislation.

[6] The applicant contends that this state of affairs amounts to unfair discrimination in that had he been sentenced to life imprisonment he would have been better off as regards parole than he is now. Something is wrong with a system which makes the granting of parole easier for persons sentenced to life imprisonment - and thus assumed to be

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<sup>2</sup> See Correctional Services Act 111 of 1998.

<sup>3</sup> *Van Vuren v Minister of Correctional Services and Others* [2010] ZACC 17; 2012 (1) SACR 103 (CC); 2010 (12) BCLR 1233 (CC); and *Van Wyk v Minister of Correctional Services and Others* 2012 (1) SACR 159 (GNP).

unlikely to be rehabilitated or reformed - than for those, like him, who at the time of sentencing were considered to have potential for rehabilitation or reform.

[7] But if the applicant is right about that, and we express no opinion on it, his possible remedy lies in seeking a review of the Department's parole policies in the High Court. It is not a ground for an appeal against sentence to this Court, because this result does not flow from any unfairness in the trial. This Court should also not ordinarily deal with a review application of that kind as a court of first instance.

[8] In the course of considering this matter we requested Legal Aid South Africa to investigate the circumstances of the applicant's position and to report to this Court. We wish to record our appreciation for the comprehensive and helpful report compiled by Mr Achmed Mayet of that office.

[9] Legal Aid South Africa is requested to advise and assist the applicant in considering what further steps, if any, need to be taken in view of this judgment.

*Order*

[10] The following order is made:

1. Condonation is granted.
2. Leave to appeal is refused.

3. The Registrar is directed to forward a copy of this judgment to Legal Aid South Africa.