



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal

Date: 05 December 2023

Status: Immediate

The following summary is for the benefit of the media in the reporting of this case and does not form part of the judgments of the Supreme Court of Appeal

De Klerk v The State (718/2022) [2023] ZASCA 172 (05 December 2023)

Today, the Supreme Court of Appeal (SCA) upheld an appeal from the Gauteng Division of the High Court, Johannesburg (high court). The order of the high court refusing leave to appeal from the regional court, was set aside and substituted with one granting leave to appeal to the high court against conviction and sentence.

On 14 October 2019, Mr Pieter Cornelius de Klerk (the appellant) was charged with one count of murder in the regional court, Boksburg. He was convicted on 16 March 2020 and on 2 June 2020 sentenced to 15 years imprisonment. His applications for leave to appeal the conviction and sentence in the regional court and the high court were dismissed. The appellant turned to the SCA with a petition requesting special leave to appeal, which was granted on 22 June 2022.

At the request of the appellant and the Director of Public Prosecution, Gauteng, the appeal was considered in terms of s 19(a) of the Superior Courts Act 10 of 2013, without the parties submitting oral arguments.

The one count of murder arises from an incident which, according to the evidence of the appellant, occurred along Forel and Jonny Arends streets, Boksburg on 27 December 2018. A fight had broken out between Mr Wendell Pietersen (the deceased), and his friends, Mr Darryl Dwan van Greunen (Darryl), Mr Theodore Hoffman (Theo) and Mr Ethan Johnson (Ethan) over money. The deceased threw stones at Darryl and Theo. The appellant and his neighbour, who at that time were seated on a bench just outside his neighbour's premises, stood up to intervene after the deceased threw a stone which narrowly went past where they were seated. The appellant crossed the street towards his house and saw the deceased approaching with a half-brick in his hand. The deceased told the appellant to move out of his way, but the appellant blocked his path, intending to stop him from throwing further stones. The deceased swung his right hand holding the half-brick, toward the appellant, who ducked. The appellant pulled his firearm from the holster on the hip, pointing towards the deceased. The deceased threw the half-brick away and grabbed the barrel of the firearm. As the two were wrestling over the control of the firearm, the deceased's forefinger slipped into the trigger guard, and accidentally pulled the trigger. A shot went off and hit the deceased on the chest. The deceased ran for a short distance

and collapsed. The appellant drove to the police station to report the incident. On arrival at the scene with the police, they found the body of the deceased where he had collapsed on the street.

The SCA in considering the matter, followed the approach taken in the *S v Matshona*, 2013 (2) SACR 126 (SCA), where it was held that 'Where the Supreme Court of Appeal grants an accused leave to appeal against a refusal by the high court of a petition seeking leave to appeal against a conviction or sentence in a regional court, the issue before the court is whether leave to appeal should have been granted by the high court, and not the appeal itself. The SCA lacks the authority to determine the merits of the appeal at this stage, and there are sound policy reasons why the court should refuse to do so, even if it could. The SCA may merely consider whether leave to appeal should have been granted by the high court'. In effect, the SCA is not authorised to determine the merits of an appeal direct from the regional court, without the high court first having determined such merits.

The regional court had found that the appellant had committed the crime of murder with direct intent. The appellant disputes the finding that there was direct intent to kill the deceased. Through his attorney, the appellant contends that at best for the State, he could be guilty of culpable homicide, in which event, the prescribed minimum sentence of 15 years' imprisonment imposed on him would, as a result, be disproportionate to that offence.

The SCA is of the view in determining sentence, the regional court erred in not attaching sufficient weight to the nature of the offence, in particular the conduct of the deceased. Consequently, on the evidence and the circumstances of this matter, there are reasonable prospects of success on appeal against conviction and sentence and that the high court should have granted leave to appeal.

In the result the SCA upheld the appeal and ordered that the high court order refusing leave to appeal to it, should be set aside and substituted with an order granting the appellant leave to appeal to the Gauteng Division of the High Court, Johannesburg.

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