



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
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STATUS Immediate

Please note that the media summary is for the benefit of the media and does not form part of the judgment.

Oosthuizen & another v S (144/2018) [2018] ZASCA 92 (1 June 2018)

The Supreme Court of Appeal (SCA) today dismissed an application for leave to appeal against a decision, by the Gauteng Division of the High Court, Pretoria, (functioning as the Mpumalanga Division, Middelburg), refusing bail pending an application, to this court, for leave to appeal the case on the merits.

The applicants, Mr Willem Jacobus Albertus Oosthuizen and Theo Martins Jackson, were convicted on two counts of assault with intent to do grievous bodily harm, one count of kidnapping, one count of attempted murder and one count of intimidation. Jackson was also convicted of defeating or obstructing the course of justice. Their effective sentences were 11 years' and 14 years' imprisonment, respectively.

In refusing bail the court a quo (Mphahlele J), considered the possibility of non-custodial sentences being imposed by a court on appeal and came to the following conclusion:

'[T]aking into account the evidence that was presented in this court and the nature

and seriousness of the offences the applicants were convicted of, it is likely that the sentences to be imposed on appeal would be custodial.’

The judge went on to say:

‘The granting of the appeal, would be like delaying the inevitable.’

The SCA found that, based on their own version of events, the applicants could, at the very least, be convicted of kidnapping and assault with intent to do grievous bodily harm and that in the circumstances of this case including the racial connotations, the offences which they admittedly committed have to be seen as serious.

Counsel on behalf of the applicants contended that the applicants had been provoked by the victim and that provocation might serve as a mitigating or exculpatory factor. In considering the seriousness of the admitted offences, the SCA held that provocation might at best serve as a mitigating factor. The court found that there is real possibility of significant custodial sentences being imposed by a court of appeal and dismissed the applications.

The SCA ended its judgment with words from a great American who was a former justice of their Supreme Court, Thurgood Marshall, adapted for South Africa:

‘I wish I could say that racism and prejudice were only distant memories. . . . We must dissent from the indifference. We must dissent from the apathy. We must dissent from the fear, the hatred and the mistrust . . . We must dissent because [South Africa] can do better, because [South Africa] has no choice but to do better.’¹

The following order was made:

The applicants’ applications for leave to appeal the refusal by the court below to grant bail is dismissed on the grounds that there are no reasonable prospects of success and there is no other compelling reason why an appeal should be heard.

¹ An extract from Thurgood Marshall's acceptance speech upon receiving the Prestigious Liberty Award on 4 July 1992.