

**IN THE HIGH COURT OF SOUTH AFRICA  
(EAST LONDON CIRCUIT LOCAL DIVISION)**

**CASE NO: CC 118/06**

In the matter between:

**THE STATE**

and

**IAN LITCHFIELD**

**Accused**

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**JUDGMENT**

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**EBRAHIM J:**

[1] The appellant seeks leave to appeal to the Supreme Court of Appeal against the sentence of imprisonment for ten years imposed on him for the conviction of murder.

[2] Mr Price, who appeared for the appellant, focussed on the issue of diminished responsibility in his argument. He referred to his submissions on sentence at the trial and said the cases he had cited there were decided prior to the enactment of Criminal Law Amendment Act ('the CLA Act')<sup>1</sup> (which prescribed minimum sentences for certain offences). It was thus necessary

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<sup>1</sup> Act No 105 of 1997

for the Supreme Court of Appeal ('SCA') to indicate the weight to be attached to diminished responsibility as a mitigating factor in the determination of an appropriate sentence. He contended there was a reasonable prospect another Court might conclude that a lesser sentence should have been imposed and sought leave to appeal to the Supreme Court of Appeal.

[3] Mr Robinson, who appeared for the state, submitted there was no reasonable prospect of any of the grounds of appeal succeeding and another Court would not reach a conclusion different to that of this Court. He contended that the Court did not err in finding that the appellant's diminished responsibility was not severe and had given proper consideration to it as a mitigating factor. Furthermore, the Court had not erred by applying the provisions of the CLA Act.

[4] The ground of appeal that the sentence is 'shockingly inappropriate and causes a sense of shock' is without merit. If criticism could be directed at the sentence it is that the Court may have erred on the side of leniency considering the manner in which the deceased was killed. The appellant attacked a defenceless old woman with a hammer, administering numerous blows to her head and hands. If anything evokes a sense of shock it is, in my view, the gruesome nature of the crime and not the sentence.

[5] There is similarly no merit in the grounds of appeal that the Court did not take account sufficiently of certain mitigating factors and over-emphasised the interests of society, the brutality of the attack, retribution and prevention,

at the expense of the appellant's personal circumstances. I do not consider it necessary to respond to these grounds as it is apparent from the Court's comments when it imposed sentence that due weight was accorded to each of these issues. I am not persuaded there is a reasonable prospect that another Court would conclude that this Court erred in its approach to, and its evaluation of, these factors.

[6] The ground of appeal that the Court erred by applying the provisions of the CLA Act instead of 'the disproportionality (*sic*) test' is misconceived. The Court was legally bound to give effect to provisions which are mandatory. Mr Price's contention that there was a need for the SCA to indicate what weight to attach to diminished responsibility as a mitigating factor is without merit. In *S v Malgas*<sup>2</sup> the SCA provided guidelines in regard to the extent to which mitigating factors were to be taken into account in determining whether a Court was bound to impose a mandatory sentence. There is thus no justification for the SCA to have to revisit this question. I am consequently of the view that there is no reasonable prospect of this ground succeeding.

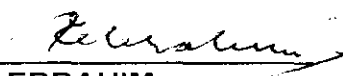
[7] It should be apparent from the Court's remarks when sentencing the appellant, and from what has been stated above, that the appellant's claim that the Court imposed an exemplary sentence is manifestly groundless. The same applies to the assertion that the Court erred by not following the approach to sentencing of the Supreme Court of Appeal (and the former Appellate Division) as set out in various cases. I do not consider that any

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<sup>2</sup> 2001 (2) SA 1222 (SCA)

further comment is necessary. In my view, there is no reasonable prospect of either of these grounds succeeding.

[8] In the result, since there is no reasonable prospect of success on any of the grounds appeal, the application for leave to appeal is dismissed.

  
**Y EBRAHIM**  
**JUDGE OF THE HIGH COURT**

**5 May 2008**

Counsel for the State:

D Robinson

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Counsel for the Accused:

T Price