

PRIDE MAREGERE
versus
THE STATE

HIGH COURT OF ZIMBABWE
CHIKOWERO J
HARARE, 9 June 2022

Chamber Application

CHIKOWERO J:

1. This is a Chamber Application for condonation for late noting of appeal against both conviction and sentence, extension of time to note the appeal and leave to prosecute the appeal in person.
2. It is made pursuant to the applicant's conviction on a plea of guilty to a charge of rape as defined in s 65 of the Criminal Law (Codification and Reform) Act [*Chapter 9:23*] and the imposition of a sentence of 12 years imprisonment of which 4 years imprisonment was suspended for 5 years on the usual conditions of good behavior to leave an effective custodial term of 8 years imprisonment.
3. The applicant was convicted and sentenced on 16 July 2021.
4. He intends to rely on the following grounds of appeal:-

“AD CONVICTION

1. The learned magistrate erred by failing to take into account the fact that the report was not made freely and voluntarily but was done by a brother of the victim who was offended by the victim over frivolous and trivial issues.
2. The learned magistrate erred by concluding that there was sexual intercourse between the complainant and the accused despite the fact that there was no penetration.
3. The trial magistrate erred and misdirected himself by failing to give due weight to the fact that the appellant was not legally represented therefore the plea of guilty

ought to have been explained and also the essential elements of the offence to be explained.

4. The learned magistrate misdirected herself by convicting appellant on this count of rape in circumstances of plea of guilt which was not explained to him. This led to an unfair trial.

AD SENTENCE

The sentence imposed is so harsh and induces a sense of shock to an innocent man who was unrepresented and exposed to an unfair trial.”

5. The first ground of appeal does not arise at all since the applicant was convicted on a plea of guilty.
6. The medical report which was produced by consent indicated that the doctor who examined the complainant observed a hymenal notch at 6:00 o'clock. Further, the procedure on a plea of guilty as set out in s 271 of the Criminal Procedure and Evidence Act [*Chapter 9:07*] was followed whereupon the learned magistrate, having been satisfied that the plea of guilty was understandingly and genuinely made, convicted the applicant. In the circumstances the intended grounds of appeal number 2 and 3 have nil prospects of success.
7. The intended ground of appeal against sentence is invalid to the extent that it attacks both the conviction and the sentence.
8. If it be contended that its validity could be saved by excising the portion which attacks the conviction, my view is that the sentence is unimpeachable. The complainant was a 10 year old girl. The applicant was double that age. Rape is a serious offence. It is traumatic. The plea of guilty, the appellant's status as a first offender and his age not only operated to ensure that the court settled for a moderate sentence, being 12 years imprisonment, but also justified the suspension of a third of that sentence on the usual conditions of good behavior.
9. In all the circumstances therefore, there is no prospect of success in the intended appeal against both conviction and sentence.
10. The need to assess any other factor does not arise.

11. The application for condonation for late noting of appeal against both conviction and sentence, extension of time to note the appeal and leave to prosecute the appeal in person in CRB HRE 254/21 be and is dismissed.

The National Prosecuting Authority, respondent's legal practitioners