

HARMONY FARARIRA
versus
THE STATE

HIGH COURT OF ZIMBABWE
CHIKOWERO J
HARARE, 8 July 2022

Chamber Application

CHIKOWERO J:

1. On 10 June 2016, at Gokwe, under CRBGKR 92-3/16 the applicant pleaded guilty to 4 counts of robbery as defined in s 126 of the Criminal Law Code. He also pleaded guilty to one count of unlawful possession of a firearm as defined in s 4(1) of the Firearms Act [*Chapter 10:09*].
2. Having been convicted as charged on all the 5 counts the applicant was sentenced as follows:
 - Counts 1 and 2 taken as one for purposes of sentence: 10 years imprisonment
 - Counts 3 and 4 treated as one for purposes of sentence: 10 years imprisonment
3. Of the total 20 years imprisonment 12 months imprisonment was suspended on condition of restitution.
4. A further 2 years imprisonment was suspended for 5 years on the usual conditions of good behaviour.
5. On count 5 the applicant was sentenced to 12 months imprisonment. In addition, the firearm was forfeited to the state.
6. The applicant's accomplice, who is not before me, was also convicted on pleading guilty to the 5 counts and was similarly sentenced.
7. On the same date and under CRBGKR 94/16, the applicant also appeared before the same court. He pleaded guilty to one count each of attempted robbery as defined in s 189 as read with s 126(1) of the Criminal Law Code and theft as defined in s 113(1) of the same code.
8. He was convicted as charged. In respect of count 1, he was sentenced to 30 months imprisonment of which 5 months imprisonment was suspended for 5 years on the usual

- conditions of good behaviour. On count 2, the sentence imposed was 15 months imprisonment of which 3 months was suspended on condition of restitution with another 4 months imprisonment suspended for 5 years on conditions of good behaviour.
9. Finally, on 15 December 2017, under CRBKDR 130/17, the applicant appeared before the Magistrates Court sitting at Kadoma whereupon, following a trial, he was convicted on a charge of robbery committed in aggravating circumstances. He was sentenced to 8 years imprisonment of which 2 years imprisonment was suspended for 5 years on the usual conditions of good behaviour.
 10. On 2 June 2022 the applicant filed an application for leave to appeal out of time. He is aggrieved by the convictions and sentences on all 3 records. He also seeks leave to prosecute the appeal in person.
 11. In respect of the first two records, the applicant was convicted and sentenced almost six years ago.
 12. On the third record the applicant was convicted and sentenced over four years ago.
 13. The applicant explains the delay in these terms:

“The reason why the applicant delayed in noting this appeal is I was of the mistaken view that one could institute an appeal through the services of a legal counsel only. Applicant advised his relatives to hire a legal practitioner but his relatives had no money at all to hire one, after three years of trying to save money to hire a lawyer. In 2020 applicant got some advice from other inmates that he could file an appeal out of time as a self-actor. Applicant wrote several letters to the trial courts so that he obtains his records but that task of obtaining the records proved difficult as money was needed to obtain those records. I didn’t have the money neither my only ailing mother had the money to pay for the record. In 2021 that when my uncle got the money to pay for the records. Many convicted inmates do face challenges to obtain the records and I am not an exception.”
 14. I have no difficulty in finding that this explanation is not only unreasonable but is, in addition, false. The applicant was a self-actor throughout when he appeared at the Magistrates Court on all three matters. Against that background, I do not accept that he thought that only a legal practitioner was allowed to note an appeal on his behalf. The person who was dissatisfied with the convictions and sentences was the applicant himself and not some unnamed legal practitioner. I do not accept that it was only in 2020 that the applicant was advised by fellow inmates that he could file the present application. He was sentenced on 10 June 2016 on the first two records and on 15

December 2017 on the third. By 2020 the applicant had already been serving for not less than four years. I take the view that this was more than an adequate period for fellow inmates to have already told the applicant that he could file the application which he eventually filed on 2 June 2022. Further, despite claiming that he wrote several letters to the Gokwe and Kadoma Magistrates Court requesting for the records of proceedings, the applicant has deliberately decided not to disclose the dates when he authored the same. He also has taken a conscious decision not to attach copies of such correspondence to the application. It is my finding that no such letters were ever written.

15. The applicant has approached this court half a dozen years after his conviction and sentence on two of the records. As for record number three, the delay is over four years. In all the circumstances, the delay is clearly inordinate.
16. A false explanation has been tendered for this late approach to the Court. Utmost good faith is required of a litigant who seeks an indulgence from the Court. The applicant has been found wanting in this regard.
17. The applicant has failed at the first hurdle. The need for finality in litigation demands that the application must fail without any further ado.
18. In the result the application for leave to appeal out of time and to prosecute such appeal in person be and is dismissed.

The National Prosecuting Authority, respondent's legal practitioners