



CONSTITUTIONAL COURT OF SOUTH AFRICA

Deshwin Barlow v The State

CCT 233/15

Date of hearing: 7 March 2017

MEDIA SUMMARY

The following explanatory note is provided to assist the media in reporting this case and is not binding on the Constitutional Court or any member of the Court.

On 7 March 2017 at 10h00 the Constitutional Court will hear an application for leave to appeal against the 15 year imprisonment term imposed on the applicant, Mr Deshwin Barlow, by the High Court of South Africa, Gauteng Local Division, Johannesburg (High Court).

On 23 October 2009, Mr Barlow was involved in a scuffle with Mr Frederick (the deceased) during which he was fatally wounded by Mr Barlow, with the deceased's gun. Ms Botha, a passenger in the deceased's car, was also shot in the elbow by Mr Barlow, with the same gun.

Mr Barlow was subsequently arraigned on eight charges, namely: the unlawful pointing of a firearm, murder, robbery, attempted murder, two counts of unlawful possession of a firearm and two counts of unlawful possession of ammunition. At the close of the State's case, counsel for Mr Barlow applied for his acquittal in terms of section 174 of the Criminal Procedure Act (Act). The High Court discharged Mr Barlow on the count of pointing a firearm and on one of each of the counts of unlawful possession of a firearm and unlawful possession of a firearm.

In the opening paragraph of his judgment on the question of guilt, Mabesele J sets out the charges that Mr Barlow had been facing. In doing so, he does not mention the charge of attempted murder. However, in the verdict that he ultimately reaches, he does convict Mr Barlow of attempted murder. He also convicts him of murder, theft (instead of robbery), one count of unlawful possession of a firearm and one count of unlawful possession of ammunition. In the judgment on sentence, he does sentence him in respect of the attempted

murder charge. The sentence is five years' imprisonment. He also sentences him as follows: ten years for murder and three years for unlawful possession of a firearm and for unlawful possession of ammunition. The last two convictions were taken together for purposes of sentence and this sentence was to run concurrently with the sentence on attempted murder. This resulted in an effective term of 15 years imprisonment.

Mr Barlow launched application for leave to appeal against the convictions on the grounds that the State had failed to prove his guilt beyond a reasonable doubt. Mabesele J granted leave to appeal to the Full Bench against the conviction. In listing the convictions, the Full Court left out the theft conviction. It then dismissed the appeal.

An application for special leave to appeal against the convictions was dismissed by the SCA. Mr Barlow has now brought an application for leave to appeal to the Constitutional Court. He submits to this Court that his conviction in respect of all five charges is unconstitutional and should be set aside because Makgoka J infringed on his right to human dignity and right to fair trial. Another issue that arises is whether there is any unfairness arising from the confusion in the itemisation of the convictions by Mabesele J and later the Full Court.