



CONSTITUTIONAL COURT OF SOUTH AFRICA

Wayne Anthony Wickham v Magistrate, Stellenbosch and Others

CCT 118/16

Date of judgment: 25 October 2016

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.

Today the Constitutional Court handed judgment in an application for leave to appeal against the order and judgment of the Western Cape Division High Court (High Court) concerning the right of a victim to give evidence and participate in criminal proceedings before a court in terms of the Victims' Charter. The only son of Mr Wickham (the applicant in the current proceedings) was killed in a car accident.

The driver was charged with two counts of culpable homicide. Mr Wickham initiated his own investigation of the accident and he made available his reports from accident reconstruction experts available to the prosecuting authorities. In addition he offered to testify. He also drafted an affidavit (on instruction by the Director of Public Prosecutions) in the form of a victim impact statement to present in court that would show some of the devastating consequences of the driver's conduct. This was not used by the prosecutor on grounds that it did not qualify as a victim impact statement. It was primarily a discussion of the merits and contained facts inconsistent with the factual matrix relied on by the state. The prosecution contended that Mr Wickham had no standing unless the court exercised its discretion in terms of section 105(7)(b)(i)(bb) of the Criminal Procedure Act 51 of 1977 (CPA). The Magistrate refused to exercise such discretion.

The driver entered into a plea and sentence agreement with the Director of Public Prosecution in terms of section 105A of the CPA. She was convicted of culpable homicide and sentence in accordance with the agreement.

Mr Wickham initially instituted a direct application for leave to appeal to this Court, which was dismissed as it was not in the interests of justice to hear at that time because the Supreme Court of Appeal had not yet been approached. Pursuant to the Court's order, he applied for leave to appeal to the Supreme Court of Appeal at the High Court, which was denied, and a further application to the Supreme Court of Appeal was also refused.

The High Court held that prosecutors were obliged to give complainants an opportunity to make representations, but only where it was reasonable to do so in light of all the circumstances relating to the offence, as well as the interests of complainants themselves. Failure to do so would be unreasonable and unlawful. Thus giving rise to a claim in terms of Promotion of Administrative Justice Act 3 of 2000. Here, however, the Director of Public Prosecutions entered into the plea and sentence agreement only after having given Mr Wickham an opportunity to make his voice heard, after having properly weighed the facts and circumstances and without any misconduct, indolence or ineptitude. Thus the Magistrate had correctly declined to exercise his discretion under section 105A(7)(b)(i)(bb) of the CPA.

Having exhausted all avenues, Mr Wickham renewed his application to this Court.

Mr Wickham argues that the High Court's decision sets a precedent that will undermine victims' rights in terms of the Victims' Charter in future criminal proceedings. It therefore raises an arguable point of law of general public importance.

The Constitutional Court decided the application in a short judgement without written submissions or oral argument from the parties.

Mr Wickham's application substantively depends on the rights of victims contained in section 2 of the Victims' Charter. The Victims' Charter is a Charter of Rights adopted in terms of section 234 of the Constitution, which empowers Parliament to adopt charters of rights consistent with the Constitution. The premise of the Victims' Charter is to confer a right to offer information during the criminal investigation and trial and that to offer victims chance to participate where feasible in criminal justice proceedings and make victims' statements where it is appropriate.

In a unanimous judgement the Court found that rights in the Victims' Charter are not absolute. This means that the right to give evidence or be heard is not unqualified. Thus the High Court correctly analysed and applied the rules relating to victims' participation in criminal proceedings. Mr Wickham's rights as a victim were duly addressed in that the prosecutor gave Mr Wickham the opportunity to do this by requesting a victim impact statement which he undertook to attach to the plea and sentencing agreement.

However, Mr Wickham prepared a victim statement which dealt with the merits of the case based on facts that were inconsistent with the factual matrix agreed upon by the State and the accused in the plea and sentencing agreement. As a result, his statement was not placed before the Court. Furthermore the right of a victim to participate and give

evidence is within the discretion of a court and on the facts there is nothing to suggest that the Magistrate improperly exercised this discretion.

The Court endorses the High Court's observation that the trial court could have exercised some degree of judicial maturity, civility and empathy to allow Mr Wickham latitude to express his feelings at having lost his son, provided this could be done without infringing upon the rights of the driver, but ultimately dismissed the application for leave.