TAPIWA CHIGIJI

AND

TRUST MATENDE

VERSUS

STATE

HIGH COURT OF ZIMBABWE
CHEDA J
BULAWAYO 14 MARCH AND 17 MARCH 2011

Mr R. Mahachi, for the applicants
Mr T. Hove, for the respondent

BAIL PENDING APPEAL

CHEDA J: This is an application for bail pending appeal against conviction and sentence. The background of this matter is that appellants were charged with one count of attempted murder and another one of contravening section 27(d) of the Firearms Act, chapter 10:09. It was alleged that on the 11th of October 2009 at Dingumuzi Township Plumtree, applicants together with co-accused discharged firearms in public which resulted in complainant being hit with one of the bullets.

They pleaded not guilty but were however, convicted on both counts and on the first count were sentenced to 7 years imprisonment of which 3 years imprisonment was suspended for 5 years on the usual conditions and on the second count they were sentenced to 3 months imprisonment which was ordered to run concurrently.

Applicants have argued that there are good and sufficient reasons for their success on appeal as they were acting according to the order and instructions of one Victor Mago who was their superior.

Upon perusal of the record, the circumstances surrounding the commission of this offence did not warrant appellants' actions on unarmed civilians. Their conduct was quite reprehensible. I do not see them succeeding on appeal to an extent of avoiding an effective prison term. Use of a firearm in a military fashion in that manner calls for a harsh sentence, a firearm generally kills it is fortuitous that it injures hence the need for an effective prison term.

In light of the above, it would not be proper for a person who is rightfully supposed to be in prison, to be temporarily released but to be ordered back again as if his previous release was to enable him to enjoy some deserved holiday.

I am of the considered view that appellants' chances of success on appeal are indeed nil and as such they should be denied bail.

Accordingly, this application is dismissed.

Messrs T. Hara and Partners, Applicants Legal Practitioners
Criminal Division, Attorney General's office, Respondent's Legal Practitioners