IN THE CONSTITUTIONAL COURT OF THE REPUBLIC OF SOUTH AFRICA
HELD AT JOHANNESBURG

CASE NO.

In the matter between:

DAVID ASHLEY PRICE Applicant

and

THE STATE Respondent

NOTICE OF APPLICATION FOR CONDONATION

Sirs,

TAKE NOTICE THAT application will be made at the hearing of the Applicant's main application for an order:

1. Condoning the late bringing of the application and directing that the above Honourable Court extend the time limits prescribed in the Rules of the above Honourable Court for the bringing thereof;

2. Directing the Respondent to pay the costs of this application, only in the event of the Respondent opposing same; and

3. Granting such further and/or alternative relief as to the above Honourable Court may seem meet.

TAKE NOTICE FURTHER THAT the Affidavits of DAVID ASHLEY PRICE and BELINDA CHERRYL HARTLE are filed in support hereof.

DATED at JOHANNESBURG on this the day of JUNE 2001.

JOSE NASCIMENTO

Per:
Applicant's Attorneys
218 Tramway Street
Kenilworth
JOHANNESBURG
(REF. J NASCIMENTO)
TEL. 011- 434 3631/2/3
BELINDA HARTLE
ATTORNEYS
138 Cape Road
Mill Park
PORT ELIZABETH
(REF. B HARTLE/SD/ BH)
TEL. 041 - 373 9286

TO THE DIRECTOR OF
PUBLIC PROSECUTIONS
High Court
PORT ELIZABETH
(Advocate M Le Roux)

/ SERVICE PER SHERIFF /

AND TO THE REGISTRAR
CONSTITUTIONAL COURT
JOHANNESBURG

IN THE CONSTITUTIONAL COURT OF THE REPUBLIC OF SOUTH AFRICA
HELD AT JOHANNESBURG

CASE NO.

In the matter between:

DAVID ASHLEY PRICE Applicant

and

THE STATE Respondent

AFFIDAVIT

I, the undersigned,

DAVID ASHLEY PRICE

do hereby make oath and say that:

1.

I am the Applicant in the above matter.

2.

I refer to my Founding Affidavit deposed to on 17 May 2001, more particularly paragraphs 44 to 47 thereof. I have been advised that a separate application for condonation is necessary given the lapse of time since my petition for leave to appeal against my convictions to the Supreme Court of Appeal was refused. I was

informed by my attorney that the Registrar of the above Honourable Court declined to accept my application for issue during the course of last week on the basis that a substantial application for condonation was necessary and was required to be filed simultaneously with the main application.

3.

As stated in my Founding Affidavit, I have been financially ruined by my arrest and trial and convictions. I applied for legal aid which was refused and my colleague BELINDA HARTLE, and counsel who appeared for me in the criminal hearing in the court *a quo,* have been assisting me on a *pro amico* basis. Both were on leave over the Christmas recess and their availability to assist me and to make opportunities to visit me at the prison, which is 35km from Port Elizabeth have been limited. Even in respect of this affidavit which I was requested to depose to, BELINDA HARTLE was sitting as an assessor in the High court and could not arrange a consultation with me until today.

4.

I have also referred in paragraph 7.7 of my Founding Affidavit to the delay in obtaining the forensic report of JOHANN LUBBE. LUBBE'S report is dated 5 March 2001, but was not released to my attorneys until much later in March once my family had procured the funds to pay the cost thereof.

5.

I was also quite shocked to learn that it was necessary to lodge twenty five copies of all documents filed in my application with the Registrar. Again it was necessary for my family to raise the funds to meet the expense of reproducing my application. My own attorney did not have the time or resources to make the copies, which function I believe was contracted out to DOWN TOWN PRINT AND COPY CENTRE in Port Elizabeth at considerable expense.

6.

In all the circumstances I respectfully pray that it may please the above Honourable Court to condone the late bringing of this application and to extend the time limits prescribed in the Rules of the above Honourable Court for the bringing of this application.

7.

I respectfully submit that I have good prospects of success upon appeal. I again refer the above Honourable Court to my Founding Affidavit filed in this regard, more particularly the summary at paragraph 5 setting out the basis for my application.

8.

In the premises I respectfully pray that it may please the above Honourable Court to grant the relief prayed for in the Notice of Application prefixed hereto.

DEPONENT

SIGNED and SWORN at PORT ELIZABETH before me on this 8TH day of JUNE 2001, the Deponent having acknowledged that he knows and understands the contents of this Affidavit which was deposed to in accordance with the regulations governing the administration of an oath as more fully set out in Government Notice R 1258 of the 21st July 1972, as amended by Government Notice 1648 dated the 19th August 1977.

COMMISSIONER OF OATHS

IN THE CONSTITUTIONAL COURT OF THE REPUBLIC OF SOUTH AFRICA
HELD AT JOHANNESBURG

CASE NO.

In the matter between:

DAVID ASHLEY PRICE Applicant

and

THE STATE Respondent

AFFIDAVIT

I, the undersigned,

BELINDA CHERRYL HARTLE

do hereby make oath and say that:

1.

I am the Applicant's local attorney of record in this application and also acted for him in respect of the criminal proceedings which culminated in his convictions and sentences imposed by the Honourable Mr Justice Jansen of the South Eastern Cape Local Division of the High Court on 11 September 2000.

2.

I have twelve years' experience as an attorney and four years as a public prosecutor prior to my admission as an attorney in 1989.

3.

I confirm that I, and to the extent that has been necessary, Advocate De Jager, have been assisting the Applicant on a *pro-amico* basis.

4.

The drafting of the application, research, consultations at the prison and the collating of all relevant annexures and newspaper reports has taken up considerable time and effort on the part of myself and counsel.

5.

I am involved in a small but busy practice and can ill afford to spend time on matters which do not generate an immediate fee income. I have, however, assisted the Applicant to the extent that I can within my resources and as expeditiously as possible.

6.

I regret that the application could not be finalised any earlier. Financial constraints on the part of the Applicant, in particular in respect of the obtaining of the forensic report of JOHANN LUBBE and the photocopying of the necessary affidavits and annexures, have also been factors which have delayed the bringing of his application.

7.

I respectfully submit that the Applicant has good prospects of success upon appeal. I support the allegations in the Applicant's Founding Affidavit in support of this contention. I also refer the above Honourable Court to the Applicant's Notice of Application to the South Eastern Cape Local Division of the High Court for leave to appeal against his convictions filed by our firm (pages 163 - 167 of the main application) which succinctly sets out the grounds upon which we believed that leave to appeal ought to have been granted.

8.

As a personal aside, I respectfully point out that my involving myself in assisting the Applicant on a *pro amico* basis attests to the fact that I believe that he has good prospects of success upon appeal.

9.

Wherefore I respectfully pray that it may please the above Honourable Court to condone the late bringing of the Applicant's application.

DEPONENT

SIGNED and SWORN at PORT ELIZABETH before me on this 11TH day of JUNE 2001, the Deponent having acknowledged that she knows and understands the contents of this Affidavit which was deposed to in accordance with the regulations governing the administration of an oath as more fully set out in Government Notice R 1258 of the 21st July 1972, as amended by Government Notice 1648 dated the 19th August 1977.

COMMISSIONER OF OATHS