

for robbery, three years for possession of firearms and three years for possession of ammunition.

Thembekile refused to accept it. He wrote to the registrar of the court, ministry of justice and the public protector and even penned letters to former president Thabo Mbeki and president Jacob Zuma. "I was writing letters and when I had a visitor I'd ask them to [send a] fax for me. I'd then call to confirm if the fax was received." The responses were vague and he was advised to lodge an appeal.

For eight years he fought to get the transcript he needed from the North West high court so he could appeal. His family and that of two of the other accused had to raise R21 000 to pay for a lawyer to get the transcript because Legal Aid was experiencing a lack of finance and a shortage of staff.

But essential parts of the document were omitted, he says. "The record wasn't authentic and I couldn't lodge the appeal. I was sent from pillar to post."

He approached warder Levi Maphakane and asked him to call the Wits Justice Project, an organisation that investigates miscarriages of justice. That's where he met journalist Carolyn Raphaely.

Levi was sceptical. "In prison you don't believe anything," he says. But he gave Thembekile an ear and went through the heap of documents the inmate gave him.

Levi put Thembekile in touch with Carolyn in 2012. "I'm not a lawyer," Carolyn says. "Thembekile understood much more about the law than I did. I had to ask him to explain to me countless times."

She also hit a wall when she tried to get the correct transcript. Eventually she asked Lawyers For Human Rights to intervene and they received the necessary documents. "It was the turning point."

In October 2012 Thembekile requested leave to appeal, which was granted. But the supreme court of appeal threw out his case in August 2013.

That same year he approached the constitutional court without a lawyer because Legal Aid doesn't assist you beyond the appeals court. Thembekile represented himself but his application was unsuccessful.

"Even then I was still hopeful," he says.

His saving grace came when two of his co-accused lodged an application at the constitutional court for leave to appeal against their conviction and sentence. The court ordered the two inmates be released in March this



CAROLYN RAPHAELY



ABOVE: Thembekile suffered hallucinations, insomnia and poor concentration in jail. RIGHT: He says he got strength from God to carry on fighting for his release.

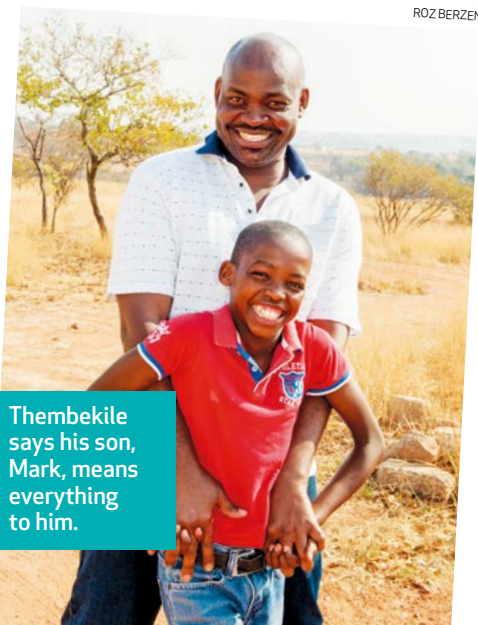
year and the state prosecutor said the same should apply to Thembekile.

"Either luck or serendipity or God intervened," Carolyn says. "I didn't expect what happened in court that day."

But there was another hurdle. Basically the law says that if your case has been heard in the constitutional court it can't be heard again – and because Thembekile had appealed and had been rejected the release ruling couldn't apply.

But the court appointed an attorney for him who argued this was an exceptional circumstance. The court agreed Thembekile's rights were being denied, considering his co-accused had been released. It also took into account the fact that he'd previously represented himself, which "resulted in him failing to raise meritorious constitutional issues".

Carolyn has nothing but praise for Thembekile. "He's 100 percent responsible for what he did. I think a lesser man would have given up or been broken long ago."



ROZ BERZEN

Thembekile says his son, Mark, means everything to him.

T WILL take some time for Thembekile to erase the memories prison has left. "It feels like it's tattooed in my brain," he says. "Waking up there – that's what I hated the most. I'd dream I was outside then wake up there."

He missed his family the most but little things matter too when you're secluded from the outside world, the former taxi driver says. "I missed the monoxide of the car and the first smell of dust after the rainfall."

He lived on porridge for breakfast, bread with butter and flavoured drink mix for lunch, and pap and chicken or boiled eggs for supper. "On Sunday we'd eat beef but I wasn't sure if they'd killed a rhino because it didn't taste nice."

He instilled hope by preaching to others and schooling them about the law. He was also involved in maintaining prison property and was one of the inmates who constructed a bathroom for fellow prisoner Oscar Pistorius.

"I asked how he was coping and I told him to be strong. You can have all the money in the world but when you're inside it feels like you're buried alive."

He doesn't know what the future holds. "I'm taking it one day at a time. I can't think straight and still need to deal with the criminal record that's hanging over me and the stigma and rejection."

But one thing he's sure about is he wants to do right by his son, Mark (12), who lives nearby with mom Paulina Seshabela. "I owe him a lot because I was never there for him." Thembekile also wants to marry Paulina once he has enough money. "She supported me all the way."

He holds no animosity towards the judge who imprisoned him, he says. "I'd hug her if I were to see her. People make mistakes." ■