

SOUTH AFRICA / JUDGMENT

Bila v S (Appeal) (CA56/2022)

[2025] ZANWHC 90 (29 May 2025)

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COURT

North West High Court, Mafikeng

BEFORE

N Morej, R D Hendricks

CASE / FILE NUMBER

CA56/2022

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IN

THE NORTH WEST HIGH COURT, MAFIKENG

CASE

NO: CA56/2022

Reportable:

NO
Circulate
to Judges: NO
Circulate
to Magistrates: NO
Circulate
to Regional Magistrates: NO
In
the matter between: -
BILA
EDWARD
Appellant
and
THE
STATE
Respondent

JUDGMENT

Judgment

is handed down electronically by distribution to the party's legal representatives by email. The date the judgment is deemed to be handed down is 29 May 2025.

MOREI AJ:

1.

Introduction:

The appellant, Mr Edward Bila, was arraigned before the Regional Court, Potchefstroom on a charge of robbery with aggravating circumstances. When the trial started the appellant pleaded not guilty, and the trial proceeded. On the 22nd of August 2019 he was found guilty as charged and sentenced to 20 years imprisonment. The appellant was throughout the proceedings

legally represented by Mr Koen. The appeal is against sentence only. The respondent concedes that the sentence imposed by the Court a quo warrants interference by this Court.

2. Ad Condonation

Condonation for the late filing of the Notice of Appeal by the appellant was granted.

3. The Appeal

The grounds of appeal are summarised in the Appellants' Notice of Appeal as follows:

The trial court misdirected itself by imposing a term of 20 years imprisonment.

3.1. The sentence is disturbingly excessive, inappropriate, unjust and unconstitutional.

3.2. The trial court failed to exercise its discretion properly and that the Court of Appeal should interfere with the sentence and impose a lesser sentence.

4. Ad Sentence

4.1 The Court held as follows in the case of *Bogaards v S* (CCT120/11 (2012) ZACC 23; 2012 (12) BCLR 1261 (CC); 2013 (1) SACR 1 (CC) (28 September 2012):

“Ordinarily, sentencing is within the discretion of the trial court. An appellate court’s power to interfere with sentences imposed by the courts below is circumscribed. It can only do so where there has been an irregularity that results in failure of justice; the court below misdirected itself to such an extent that its decision on sentence is vitiated; or the sentence is so disproportionate or shocking that no reasonable court could have imposed it. A court of appeal can also impose a different sentence it sets aside a conviction in relation to charge and convicts the accused of another”.

5. A Court of Appeal will only interfere with the sentence imposed by the trial court if it is vitiated by an irregularity, or misdirection or when the sentence is shockingly severe, disturbingly inappropriate and totally out of proportion to the offence committed.
6. In the present case the issue is whether the court, in sentencing the appellant, misdirected itself or exercised its discretion improperly in imposing the sentence of 20 years imprisonment.
7. In terms of Section 51 (2) of the Criminal Law Amendment Act 105 of 1997, Schedule 2 Part II, the Appellant, upon conviction, would be liable to imprisonment of fifteen (15) years, unless the court finds that there are substantial

and compelling circumstances to deviate from the prescribed minimum sentence.

8. Criminal Law Amendment Act 105 Of 1997

Section 51. Discretionary minimum sentences for certain serious offences:

‘(2) Notwithstanding any other law but subject to subsections (3) and (6), a regional court or High Court shall sentence a person who has been convicted of an offence referred to in – (a) Part II of Schedule 2, in the case of –

- (i) a first offender, to imprisonment for a period not less than 15 years.
- (ii) a second offender of any such offence, to imprisonment for a period not less than 20 years; and
- (iii) a third or subsequent offender of any such offence, to imprisonment for a period not less than 25 years.’

9. The Appellant had no previous conviction of robbery with aggravating circumstances. He is, therefore, liable for imprisonment under sub-paragraph (i) above, as he does not have a relevant previous conviction.
10. The appellant submits that the trial court misdirected itself and did not exercise its discretion properly and judicially. The trial court was very personal and emotional and did not exercise its discretion judicially. The fact that the Appellant was not a South African citizen and not from the area of Potchefstroom, weighed heavily in the mind of the learned Magistrate to the prejudice of the Appellant. The determination and imposition of the sentence discriminated against the Appellant based on geographical location and nationality. Assumption are that the learned Magistrate hold certain preconceived views about foreign nationals and did not apply his mind judicially and balance the triad factors of the well-known Zinn case.

See: S v Osmond 2020 (1) SACR 357 (ML)

S v Baartman 1997 (1) SACR 304 (E) 305b-e

S v Muggel 1998 (2) SACR 414 (C).

S v Dodo

(1) SACR 594 (CC).

S v Kruger 2012 (1) SACR 369 (SCA).

S v Muller & another 2012 (2) SACR 545 (SCA).

Director of Public Prosecutions, Free State v Mokati 2022

(2) SACR 1 (SCA).

S v Bogaarts 2013 (1) SACR 1 (CC).

S v Zinn 1969 (2) SA 537 (A).

11. The respondent submits that the sentence of 20 years imprisonment on a charge of robbery with aggravating circumstances induces a sense of shock. Based on this, the respondent is of the view that the sentence imposed by the court a quo warrants interference by this Court. Further, that the court a quo approached sentencing with anger which can be deduced from the remarks made by the Magistrate during sentencing, which are devoid of objectivity.
12. Based on the above submissions, the Respondents submits that the court a quo did not exercise its sentencing discretion properly when sentencing the appellant. The respondent submits further that the sentence of 20 years be set aside and be replace with a sentence of 15 years.
- 13.

Conclusion

Based on the submissions by both the appellant and the respondent, this Court concludes that the court a quo did not exercise its discretion properly when sentencing the appellant, which places this Court at liberty to interfere with the sentence imposed.

14. Order

Consequently, the following order is made:

- (a) The appeal against sentence is upheld.
- (b) The sentence of 20 years imprisonment is set aside and replace with the following:

‘The accused is sentenced to 15 years imprisonment.’

N MOREI

ATING JUDGE OF THE HIGH COURT,

NORTH WEST DIVISION, MAHIKENG

I agree

R D HENDRICKS

JUDGE PRESIDENT OF THE HIGH COURT,

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