

SOUTH AFRICA / JUDGMENT

De Lange v S (A122/2019) [2022] ZAMPMHC 8 (17 June 2022)

[2022] ZAMPMHC 8

COURT

Middelburg High Court, Mpumalanga

BEFORE

S S Mphahlele, M B Langa

CASE / FILE NUMBER

A122/2019

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IN

THE HIGH COURT OF SOUTH AFRICA

MPUMALANGA

DIVISION, MIDDELBURG (LOCAL SEAT)

CASE

NO.: A122/2019

REPORTABLE: NO

OF INTEREST TO OTHER JUDGES: NO

REVISED.

17 June 2022

In the matter

between:

MATTHEW

JOHANNES DE LANGE

Appellant

versus

THE

STATE

Respondent

JUDGMENT**MPHAHLELE J**

- [1] The appellant pleaded guilty to the crime of contravening the provisions of section 5 (1) of the Criminal Law (Sexual Offences and Related Matters) Amendment act 32 of 2007 in that on or about 16 April 2017 and at or near Secunda, in the regional division of Mpumalanga, he did unlawfully and intentionally sexually violate one MJ, a minor child by touching and kissing her vagina without her consent.
- [2] On 14 February 2015 the appellant was accordingly convicted and sentenced to 4 years' imprisonment in terms of section 276(1)(i) of the Criminal Procedure Act 51 of 1997. The appellant was granted the leave to appeal the sentence only by the trial court. He was also released on bail pending the appeal.
- [3] The main question in this appeal is whether the court a quo was correct in sentencing the appellant to 4 years' imprisonment in terms of section 276(1)(i) of the Criminal Procedure Act 51 of 1997.
- [4] The appellant stated that the sentence imposed on the appellant is harsh, inappropriate and induces a sense of shock.
- [5] The appellant further stated that the trial court over emphasised the seriousness of the crime, the balance between the crime and expectations of society and the complainant's circumstances at the expense of the appellant's personal circumstances.
- [6] It is trite that sentencing is pre-eminently a matter which falls in the discretion of the trial court, and that the appeal court will only interfere if this discretion by the trial court was exercised improperly and led to a misdirection on the part of the sentencing court.
- [7] In the matter of *S v Pillay* 1977 (4) SA 535 (A) at E – F, the court remarked that: “Now the word misdirection in the present context simply means an error committed by the court in determining or applying the facts for assessing the appropriate sentence. As an essential enquiry in an appeal against sentence, however, is not whether the sentence was right or wrong, but whether the court in imposing it exercised its discretion properly and judicially, a mere misdirection is not by itself sufficient to entitle the appeal court to interfere with the sentence; it must be of such a nature, degree of seriousness that it shows, directly or inferentially, that the court did not exercise its discretion at all or exercised it improperly or unreasonably.

Such a misdirection is usually and conveniently termed one that vitiates the court's decision on sentence.”

- [8] The appellant was found guilty of a very serious offence. The appellant did not only make contact with the victim's private parts, but pulled down her pants, touched her vagina and then kissed in the region of the vagina. Sexual offences against children have reached pandemic levels in our country. The offence was committed in the victim's grandmother's house where the appellant also stayed. No doubt that she trusted that nobody would hurt her in this house that is supposed to be her safety net. The appellant clearly breached this trust of the victim.
- [9] The mother of the victim testified with regard to the impact of the offence on the victim. She informed the court that she observed that the victim was no longer the very vibrant bubbly little girl she used to be before this incident. She subsequently had nightmares and her school performance deteriorated.
- [10] On the other hand, the appellant's mitigating factors were presented to the court as follows: he is a first offender; he showed remorse by pleading guilty; he was willing to pay for counselling for the victim; he was employed during the incident; alcohol played some part in his commission of the offence and he himself was sexually abused as a young boy.
- [11] It is noted that the appellant pleaded guilty but failed to disclose what motivated him to commit the offence. Ms M Du Preez, a social worker who prepared a psycho-social report on the instruction of the appellant, assumed that the appellant was suddenly triggered more than 50 years after his own alleged abuse. Du Preez could not however definitively state as to why it only triggered 50 years later, and what would have triggered the actions by the appellant.
- [12] Further, the appellant gave Mr B Madoa, also a worker, a different version of what he did to the victim. The appellant failed to inform Madoa that he pulled down the pants of the victim and kissed her private parts or vagina. He only made mention of kissing the victim on her tummy next to her belly button and touching the victim's private parts by mistake.
- [13] In addition, the appellant failed to take the court into his confidence and state what motivated him to commit the offence. It is therefore not surprising for the trial court to have doubted that the appellant was genuinely remorseful. A plea of guilty is not indicative of remorse.
- [14] The argument on behalf of the appellant that the trial court did not consider his personal circumstances and the interest of society or the seriousness of the offence, on equal standing, is not borne out of the proper reading of the record. The trial court gave each of these factors proper consideration. Mention is specifically made of the personal circumstances of the appellant as already mentioned above in paragraph 10.
- [15] The trial court considered the options recommended by Madoa and Du Preez in respect of sentencing. It went further to mention all the sentencing options at its disposal in terms of section 276(1) of Criminal Procedure Act 51 of 1977. The trial court considered that to

impose a non-custodial sentence will serve the best interest of the appellant but however the court was of the view that the non-custodial sentence will underestimate the seriousness of the crime committed, in particular that the appellant sexually assaulted a nine-year old girl as well as the interests of society. In the result the non-custodial sentence would over-emphasize the appellant's personal circumstances over the interest of society as well as the crime that was committed. Under the circumstances of this case, the trial court decided that direct imprisonment of 4 years was the appropriate sentence.

[16] It is correct that the trial court must consider the recommendation of the social worker and/or probation officer, with regard to a suitable sentence, as it happened in this matter but the court is not bound by the recommendation. Under the circumstances, I find that the appellant has failed to show in what respect the trial court misdirected itself in the process of determining the appropriate sentence to be meted out to him. The record shows that the court took into account all the relevant factors, including the seriousness of the offence, the interests of society and the personal circumstances of the appellant. Under the circumstances the appeal against the sentence stands to fail.

[17] In the result, the appeal against the sentence of 4 years' direct imprisonment is hereby dismissed.

S S MPHAHLELE

DEPUTY JUDGE PRESIDENT,

MIDDELBURG, LOCAL SEAT

I agree

M B LANGA

JUDGE OF THE HIGH COURT,

FOR THE APPELLANT:

Adv PJ Niemann

INSTRUCTED BY:

Cronje, De Waal – Skhosana Inc

FOR THE STATE: Adv

D Rowles

INSTRUCTED BY: Director

of Public Prosecutions, Middelburg

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