

SOUTH AFRICA / JUDGMENT

Gebert v S (A271/2015) [2016] ZAFSHC 114 (30 June 2016)

[2016] ZAFSHC 114

COURT

Free State High Court, Bloemfontein

BEFORE

Molemla, Rampai

CASE / FILE NUMBER

A271/2015

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IN

THE HIGH COURT OF SOUTH AFRICA,

FREE

STATE DIVISION, BLOEMFONTEIN

Case

number: A271/2015

In

the matter between:

HANSLEY
DESIRE GEBERT
Appellant
and
THE
STATE
Respondent

CORAM:

MOLEMELA,
JP et RAMPAL, J
HEARD

ON:

9 MAY
2016

JUDGMENT

BY: RAMPAL, J

DELIVERED ON: 30 JUNE 2016

[1] This was an appeal against the sentence. The appellant was tried and convicted in the Bloemfontein Regional Court.

Following his conviction, he was sentenced to an effective custodial term of 8 years imprisonment. He was aggrieved by the sentence – hence the appeal. He is currently serving his sentence.

[2] An incident took place in Bloemfontein on 8 November 2012. A death claim to the tune of R5,0 million was submitted to the appellant's life insurer, Old Mutual Life Assurance (Pty) Ltd. The claim form and annexures thereto completed and signed in support of the death claim were purportedly submitted to the insurer by the appellant's wife Ms Mpho Gebert. In the supporting sworn statement, it was stated that the appellant had died. I suppose a fake death certificate, which purportedly verified that the appellant was no longer alive, was annexed to the fake statement.

[3] The insurer was busy processing the death claim in favour of the "widow" when it emerged that the appellant was still very much alive and well. The insurer investigated the matter and ascertained that the death claim was false and that some of the documents submitted in respect of the alleged death were fictitious. The incident was reported to the police.

[4] Almost eleven months later, on 4 October 2013 to be precise, the appellant was apprehended on a warrant of arrest at Ladybrand.

The scene of the arrest was at Maseru Border Gate. He entered the country from Lesotho.

[5] Subsequent to his arrest, the appellant was charged with fraud. His first appearance in the Bloemfontein Regional Court was on 19 December 2013. He was denied bail. The essence of the charge was that the appellant, acting together with his wife in the furtherance of a common purpose:

- gave out and pretended to Old Mutual Insurance Administrators that he had died;
- furnished information which included affidavits, among others, to verify the alleged death;
- averred that the death claim submitted by virtue of the life insurance policy was legitimate ;
- stated that the claim papers submitted in support of such claim were true and correct; and
- induced the said insurer to process the death claim and to pay out the proceeds of the R5,0 million policy.

[6] The prosecution also alleged that when the accused made the aforesaid representations he knew, in truth and in fact, that the death claim was not legitimate; that the information furnished in support of such claim was untrue; that all the aforesaid

representations were false; and that it was a crime to do so. The prosecution alleged further that the couple made such representations unlawfully, falsely and with intent to defraud; that they made such false representations to the prejudice of the insurer and that they did so in Bloemfontein on 8 November 2012.

[7] On 27 January 2014 the accused pleaded guilty. A written statement in terms of Section 112(2) Criminal Procedure Act, Act No. 51/1977 was prepared, read out, recorded and handed up as "exi a". Ms DS Soomaroo presided over the proceedings.

Mr J Swanepoel appeared for the state and Mr F Kara for the defence. The state accepted the plea. Consequently the accused was convicted on his plea.

[8] On the same day the accused was sentenced to 10 years imprisonment of which 2 years imprisonment was conditionally suspended for 3 years.

[9] The accused was aggrieved. In the 4 page notice of appeal dated 20 May 2014 he listed a total of 18 grounds of misdirections.

On 11 June 2014 he successfully applied to the regional magistrate for condonation and for leave to appeal. Therefore, he came to this court with the leave of the regional court.

[10] The sentencing of an offender, is the primary prerogative of the trial court. A court hearing an appeal can only interfere when the sentencing discretion entrusted to the trial court has not been properly exercised. *S v Giannoulis* 1975 (4) SA 807 (AD).

The powers of a court hearing an appeal are limited. Such a court can only interfere if an irregularity that took place during the course of a trial has resulted in a failure of justice; or if the misdirection committed by the trial court as regards the facts or the law has resulted in a failure of justice; or if the sentence imposed by the trial court induces a sense of shock. *Du Toit et al: Commentary on the Criminal Procedure Act*, 930 – 2.

[11] In *S v Pillay* 1977 (4) SA 531 (A) at 535D-F, the court had this to say about a misdirection and interference on appeal

"Where, however, the dictates of justice are such as clearly to make it appear to this Court that the trial Court ought to have had regard to certain factors and that it failed to do so, or that it ought to have assessed the value of these factors differently from what it did, then such action by the trial Court will be regarded as a misdirection on its part entitling this Court to consider the sentence afresh."

At first blush this seems to conflict with the preceding dicta quoted above. It has thus given rise to some misgivings about its meaning and correctness - see *S. v Nel*, 1974

(1) SA 29 (AD) at

p. 32B - H, and *S. v Hockley*, 1974

(1) SA 183 (RAD) at pp. 184 - 5. 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 the essential inquiry 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, or seriousness that it shows, directly or inferentially, that the Court did not exercise its discretion at all or exercised it improperly or unreasonably."

[12] Where an offender has been convicted on his written plea that has been accepted by the state, the court is inextricably bound to sentence such an offender in accordance with the factual matrix as set out in the written plea. It is a salient principle of our law that where an accused individual has been convicted solely on his plea, his moral blameworthiness should be determined, among others, by the role he played. It is well to keep in mind that, in order to do so properly, a trial court is bound by the facts as set out in the plea. *S v Van der Merwe* 2011 (2) SACR 509 (FB)

S v Thole 2012 (2) SACR 306 (FB) par [8] and [9].

[13] The prime focus of correctional supervision through Section 276 Act No. 51/1977 is rehabilitation. The introduction of the concept of correctional supervision of offenders as a sentencing option was hailed as a significant milestone in the reformative

process of humanising the criminal justice system. It opened new avenues of possible, several and imaginative sentencing

measures. The new horizon facilitated the shift of punitive emphasis from retributive perspective to rehabilitative perspective.

By its introduction the courts were called upon to distinguish between two types of offenders, namely: those who ought to be removed from society and imprisoned and those who, although they deserve to be punished, do not deserve to be removed from society and imprisoned. *S v M*

[2007] ZACC 18; 2007 (2) SACR 539 (CC) by the distinguished judge, Sachs J.

[14] In *S v Siebert* 1998 (1) SACR 554 (SCA) the magistrate court had considered but rejected correctional supervision as an appropriate sentencing option. On appeal the court held that where there was insufficient factual material to substantiate and to justify an exclusion of such a sentencing option, its baseless rejection and exclusion by the trial court amounted to a misdirection.

“Sentencing is a judicial function sui generis. It should not be governed by considerations based on notions akin to onus of proof. In this field of law, public interest requires the court to play a more active, inquisitorial role. The accused should not be sentenced unless and until all the facts and circumstances necessary for the responsible exercise of such discretion have been placed before the court.”

An accused should not be sentenced on the basis of his or her legal representative's diligence or ignorance. If there is insufficient evidence before the court to enable it to exercise a proper judicial sentencing discretion, it is the duty of that court to call for such evidence. Especially as regards correctional supervision this duty can be discharged easily and without any cost to the accused, by calling for the probation officer's report required by a 276A(1) of the Act.”

[15] Lest we forget, we are dealing with fraud here, a crime often dubbed a “white collar” crime. About it and the tendency by the court to leniently punish fraudsters, some apposite comments were made in *S v Sadler* [2000] ZASCA 105; [2000] 2 ALL SA 121 (A).

The court commented on the fallacious justifications:

“[11] I am satisfied that the circumstances of this case call for the imposition of a period of direct imprisonment and that the interests of justice will not be adequately served by leaving the sentence imposed by Squires J undisturbed. So-called "white-collar"

crime has, I regret to have to say, often been visited in South African courts with penalties which are calculated to make the game seem worth the candle. Justifications often advanced for such inadequate penalties are the classification of "white-collar"

crime as non-violent crime and its perpetrators (where they are first offenders) as not truly being "criminals" or "prison

material" by reason of their often ostensibly respectable histories and backgrounds. Empty generalisations of that kind are of no help in assessing appropriate sentences for "white-collar" crime. Their premise is that prison is only a place for those who commit crimes of violence and that it is not a place for people from "respectable" backgrounds even if their dishonesty has caused substantial loss, was resorted to for no other reason than self-enrichment, and entailed gross breaches of trust.”

[16] The court further commented on the repercussions of unjustifiable leniency:

“[12] These are heresies. Nothing will be gained by lending credence to them. Quite the contrary. The impression that crime of that kind is not regarded by the courts as seriously beyond the pale and will probably not be visited with rigorous punishment will be fostered and more will be tempted to indulge in it.”

[17] The court commented on the serious corrosive impact of “white collar” crimes on the moral fibre of society:

“[13] It is unnecessary to repeat yet again what this Court has had to say in the past about crimes like corruption, forgery and uttering, and fraud. It is sufficient to say that they are serious crimes the corrosive impact of which upon society is too obvious to require elaboration.”

[18] At the heart of this appeal is the question whether the effective sentence of 8 years imprisonment imposed by the trial court induces a sense of shock or not.

[19] Mr Kriel, counsel for appellant, submitted that the answer to the crucial question must be affirmative. He was of the opinion that the regional magistrate committed a number of material misdirections. Counsel's conclusion was that as a result of the misdirections the regional magistrate imposed a shockingly inappropriate sentence of 8 years imprisonment which was indicative of its failure to exercise its sentencing discretion properly and judiciously. Therefore, counsel urged us to interfere

[20] Mr Swanepoel, counsel for the respondent, differed. He submitted that the facts called for a negative response to the

crucial question. Counsel was of the opinion that no material misdirection was committed by the regional magistrate in sentencing

the appellant. In his conclusion, counsel submitted that there was nothing shockingly inappropriate about the sentence of 8 years imprisonment; that the regional magistrate properly and judiciously exercised the sentencing discretion entrusted to her as the trial court and that the threshold misdirections or principles of appellate interference as set out in Sadler, supra and the authorities there cited were not met. Accordingly counsel urged us to decline any form of interference.

[21] In sentencing the appellant the trial court took into account certain mitigating factors. The appellant was 40 years of age. He was a family man. He had two dependent minor children. Both were learners at a private school. He was responsible for their educational needs. He paid school fees at the rate of R40 000 per annum per child. His spouse was a housewife. He also looked after his sick mother-in-law. He was the sole breadwinner for the family. He was a businessman. He had 30 persons in his employ. He pleaded guilty to the charge of fraud. The insurer suffered no actual financial loss. He was a first offender.

[22] In sentencing the appellant the trial court also took into account certain aggravating factors. The appellant was convicted for committing fraud, which is a serious crime. It was a prevalent crime within the regional jurisdiction of the court. The amount involved was very high. Although the insurer did not suffer actual financial loss of R5,0 million, the potential prejudice was nonetheless very high. The modus operandi was meticulously thought out. The crime itself was well planned. The public interest required that society be protected

from fraudsters. Law abiding citizens expected those who commit serious crimes such as fraud to be retributively punished.

[23] On behalf of the appellant it was submitted, at the trial, that there were substantial and compelling circumstances to justify deviation from the prescribed minimum sentence of 15 years imprisonment. On behalf of the respondent the submission was conceded. The regional magistrate was satisfied that the submission and the concession were correctly made. The appellant was then

sentenced to 10 years imprisonment of which 2 years were conditionally suspended.

[24] Notwithstanding such decremental deviation, the appellant was still aggrieved by the effective custodial sentence of 8 years

imprisonment. Of the numerous grounds of appeal relied upon, six were stressed on appeal before us.

[25] In the first place, the appellant contended that the trial court did not consider the appropriate sentencing option of correctional

supervision in terms of Section 276(1)(h) Criminal Procedure Act 51/1977. The trial court was urged to consider correctional

supervision which was obviously the appellant's preferred type of punishment. In responding to that request the regional

magistrate commented:

"Your attorney has asked the Court to consider various sentencing options such as a period of imprisonment and a fine wholly, partly suspended, giving you a fine that would be in the region of about 30 (sic) to R40 000, the Court cannot consider correctional supervision because obviously there's not report in front of it to consider so that type of sentencing option will not be considered by the Court." (my emphasis)

[26] The aforesaid comment by the regional magistrate elicited critique by the appellant. In his notice of appeal he complained:

"14. It is respectfully submitted that the Learned Regional Magistrate erred and misdirect herself in finding that she cannot consider

Correctional Supervision in terms of Section 276 (1) of the CPA as there is no Correctional Supervision Report."

[27] The appellant's heads of argument were embodied in an 8 page type written document. Of those pages 3 were exclusively

devoted to the regional magistrate's rejection of correctional supervision as an appropriate sentencing option in this case.

On appeal, a great deal of time was also spent on this particular ground of appeal. It can, therefore, be seen that the question

of correctional supervision obviously became the dominant rallying point.

[28] It has been authoritatively held that where there is insufficient factual material to substantiate and to justify an outright

exclusion, *ab initio*, of the sentencing option of correctional supervision from the pot of various mix of sentencing options, the exclusion amounted to a misdirection. *S v Siebert*, *supra*. The question that confronts us was whether there was sufficient factual material to validate the rejection by the regional magistrate of the proposed correctional supervision as possibly the most, appropriate sentencing option for the appellant.

[29] In the instant case we have a business man of some standing. However, he was not an inhabitant of the country. He was not resident in this country at all times material to the case. He was a semi-permanent resident of the neighbouring state of Lesotho. He was not a Lesotho national. He is a citizen of the state of Mauritius, overseas. His family resided in Lesotho. He has no permanent physical address of residence in this country. He was a foreigner in every sense of the word. All these facts were common cause. Given the undisputed lack of permanent ties between the appellant and the jurisdiction of the court, it appeared to me that it could not be submitted, with honest conviction, that there was insufficient factual material to substantiate and to justify the exclusion of correctional supervision by the trial court.

[30] It must be borne in mind that the basic requisite of the Section is that the offender must have a fixed address from where (s)he can be monitored by the correctional supervision officers. It will not be lawfully possible at all to have a foreigner who ordinarily resides in a foreign country monitored. Even a citizen of this country who has no fixed and reliable residential address or whose alleged physical address is questionable, is not a suitable candidate to be sentenced in terms of Section 276(1)(h). This disposes of the argument that to deny the appellant's the benefits of the section was tantamount to unfair discrimination. The statutory provision applies to everyone alike – foreigners and nationals – because all are equal before the law. However, our domestic laws cannot be applied and enforced extra-territorially.

[31] In the light of the aforesaid considerations, I am not persuaded that a correctional supervision report would have served any useful purpose. It was obvious from the outset that the appellant could not be practically monitored. Since he could not be monitored as envisaged in the section, he was, therefore, not a suitable candidate. In these circumstances, I am not persuaded that the exclusion or rejection of the correctional supervision by the regional magistrate amounted to a material misdirection.

[32] In the second place, the appellant contended that the trial court did not properly consider the paramount interests of his dependent minor children in imposing a custodial sentence on him. The fundamental rights of children are protected by Section 28 of the Constitution.

[33] The appeal was premised on the following ground:

“9. It is further submitted that The Learned magistrate erred and misdirected herself in failing to consider the Constitutional Rights of the two minor children of the Applicant, of whom he is the primary breadwinner.”

[34] The appellant heavily relied on the decision in *S v M*

[2007] ZACC 18; 2007 (2) SACR 539 (CC) where the paramountcy of the interests of minor children was considered within the context of the sentencing of their delinquent parent.

[35] The underlying rationale is that children who are shown to be entirely dependent on a single parent are, as far as it may be

practically possible, rendered completely destitute, guardianless and parentless through the imprisonment of their delinquent parent who is truly and practically their primary caregiver. That is not the case in the instant appeal. The children, aged 13 and 8 years, are not destitute. They are still in the primary care and daily custody of their mother. The appellant's legal representative conceded at the trial that the appellant is not the children's primary caregiver. The appellant's wife is the children's primary caregiver. Although the children's mother is a housewife, it was placed on record that she is a partner in one of the appellant's companies. Therefore, the children were not in a desperate situation as were the children in *S v M*, *supra*.

[36] In the instant matter the appellant and his wife were business partners. Together they owned a construction business

enterprise which trades as Décor Construction that imports goods from this country. The annual costs of such imports was said to be a staggering figure of approximately R35,0 million. Besides, the appellant is a shareholder in another business

enterprise known as DGP Health Care which imports health products from India. His annual turnover must have been a staggering

figure. All this made me wonder as to why a man of such seeming opulence would be tempted to defraud his insurer. It appeared to me, therefore, that the imprisonment of such a serious business man would, apart from emotional detachment, otherwise possibly have minimal adverse impact on his two children. It has to be mentioned, that the appellant was such a resourceful man that he could afford to pay an insurance premium of R4 000 per month.

[37] In these circumstances the trial court was not obliged to call for a social welfare report pertaining to the two minor children before it could properly and judicially exercise its sentencing discretion in respect of their father who was not their primary caregiver. I am therefore not persuaded that the regional magistrate committed a material misdirection in this regard. It follows, therefore, that we cannot interfere on this ground.

[38] In the third place, the appellant contended that the trial court went beyond the parameters of his accepted plea in order to substantiate and justify the excessively severe sentence it imposed on him. The essence of the misdirection complained of was that the regional magistrate failed to appreciate that she was bound by the factual matrix as set out in his plea which was accepted by the respondent and which ultimately underlined his conviction – S v Thole, supra and the authorities there cited.

[39] Mr Kriel argued the point on behalf of the appellant and relied on the following passage in S v Thole, supra, par 9.

“[9] As stated above, no evidence was adduced before the court a quo relating to how the offences were committed by the appellant. For these details the court relied entirely on the appellant's plea explanation.”

[40] In the instant case unlike in S v Thole, supra there was evidence, before the trial court, of how the fraud was committed by the appellant. He had to fake his own death.

A certain Mohale Thipa, a dubious character, mooted out the idea that he, the appellant, should pretend to be dead; that he, Mohale Thipa would prepare all the necessary paperwork in support of the proposed fraudulent claim; and that a claim would then be lodged with the appellant's insurer.

[41] The appellant himself explained how the offence was committed. At par 6-9 of his statement in terms of Section 112(2) of the Criminal Procedure Act 51/1977 he said:

“6. A day or 2 later he called me telephonically to make a false claim in respect of my death against my policy. The condition was that I split 50% of the money received in respect of the payout that being about R5 000 000,00. He prepared all the necessary paperwork and handed same to me for my wife to hand over to Old Mutual.

7. Mpho Gebert, my wife, was not aware of the fraudulent documents but was advised by myself that if anyone contacted her from Old Mutual, she was to advise them that I had passed on.

8. Mohale Thipa used another woman to pursue the claim from Old Mutual. This other woman acted as my wife.

9. A month later, I asked him not to pursue the claim as I have no interest in the claim any longer.”

[42] During the course of sentencing, the regional magistrate said the following about the role played by the appellant.

“Clearly the fact that you had time to prepare these documentations or worked with this co-perpetrator shows that your actions are planned and it could only be planned in order for it to have succeeded.”

[43] It was indeed so that the appellant did not personally prepare the claim papers. They were physically prepared by his

co-perpetrator, Mohale Thipa. But it was really of no moment as to who actually did what because they were in it together.

Whatever Mohale did, he did in the furtherance of the common criminal enterprise for the mutual benefit of both. Therefore, it was not open for the appellant to say Mohale did that and Mohale did that. Mohale was in law an extension of the appellant in whatever he did to defraud the insurer. Consequently, the appellant was, according to law, fully liable and criminally responsible for the actual preparation of the claim papers just as his co-perpetrator factually was.

[44] Mohale approached the appellant, sold the fraudulent scheme to him, sought and obtained his undertaking to participate in the deceitful design and recruited an unnamed woman who was paraded as the appellant's wife for the purpose of actually submitting the false death claim. Of course the appellant knew all that. He directly or indirectly collaborated in the entire web of deceit. He even solicited the participation of his wife in so far as he requested her to tell the employees of Old Mutual that he had died, should any enquiries be made. The whole scheme would not have taken off the ground if the appellant did not endorse it and did not collaborate. Without him the idea mooted out by his co-perpetrator would have evaporated into thin air. The argument that but for Mohale the appellant would not have committed the crime failed to persuade me. Similarly, there was no substance in the argument that Mohale played a greater role than the appellant in this criminal enterprise. I have earlier expressed the view that they did what they did for and on behalf of each other. They had equal stakes in the contemplated harvest.

[45] attempts to trivialize the appellant's role at the expense of his co-perpetrator was devoid of any real substance. The belated submission begged to be further carefully scrutinized. The appellant had to play dead. It follows, therefore, that he had to play a covert role. However passive his role might have been, it was nonetheless his very vital passive role.

Naturally, the grand scheme of things required him to withdraw from the vigilant public eyes. He was not supposed to be seen

alive. He had to and did in fact play a role which was critical for the ultimate success of the scheme. The appellant was a sine qua non for the scam to function and succeed. Put differently the scam could still have functioned and succeeded without Mohale but

certainly not without the appellant.

[46] The scam was thoroughly planned as the regional magistrate correctly found. It almost succeeded. Although the appellant had a change of heart later on, it was pathetically belated. The claim had already been lodged under the false pretext that the appellant had died. By then the insurer was already busy processing the fake claim. Moreover, the appellant did not go far enough. He did nothing to prevent the processing of the fake claim.

He did not openly cut off the ties of the unholy alliance he had with his co-perpetrator let alone alert the insurer about the imminent risk of a huge loss. The question had to be asked as to whether the appellant would have surrendered his ill-gotten gains of R2,5 million had the insurer paid out? I leave it to you, the reader, to take a guess.

- [47] In the light of all these peculiar features of this particular ground of the complaint, I am not persuaded that the trial court materially erred in not giving a mitigating credit to the appellant for his change of heart. As I see it, there was no misdirection in connection with that aspect. Perhaps we need to remind ourselves about the salient principle that it is the prerogative of the sentencing court to decide which factors should influence it in determining an appropriate measure of sentence and what value to attach to each of such factors *S v Kibido* 1998 (2) SACR 213 (SCA) at 216g-j.
- [48] In this case and contrary to the case of *Pienaar v State* (564/11) [2012] ZASCA 60 (2 April 2012) the regional magistrate did not deviate from the accepted facts as set out by the appellant in the written statement he made in terms of Section 112 Act No. 51/1977.
- [49] In the fourth place, the appellant contended that the regional magistrate over-emphasized the seriousness of the offence of fraud at the expense of his personal circumstances – vide paragraph 12 notice of appeal.
- [50] There was no evidence adduced before the trial court and none contained in “exi a” relating to the adverse impact of the crime on the insurer’s business. Although the insurer suffered potential loss only and did not suffer actual loss whatsoever, the regional magistrate reckoned that, for the purpose of sentence, it was irrelevant whether the prejudice suffered was potential or actual. During the course of passing sentence the regional magistrate, on a few occasions, repeatedly stressed the gravity of the crime of fraud and repeatedly stressed that the appellant had to be retributively punished.
- [51] In our view, the regional magistrate exceedingly stressed the seriousness and the magnitude of the crime committed by the appellant. As a result of the misdirections outlined above, she ultimately imposed a sentence which was disturbingly shocking.

Although the regional magistrate was entitled to take notice that white-collar crime was increasingly becoming rife in our society, the gravity of the offence so dominated and clouded her mind that she failed to adequately individualise the appellant’s person. He was a first offender. He pleaded guilty. He expressed remorse for his actions. There was no actual loss suffered by the insurer. Instead the insurer even continued to collect the premiums for a period of six months subsequent to the lodging of the fake claim. Because the policy was cancelled the appellant lost the total sum of R64 000 in form of premiums and gained virtually nothing. It may be argued, though, that he was the architect of his own peril.

- [52] The fact that the appellant did not commit a crime of violence was not a mitigating factor. Fraud is a serious crime with corrosive impact upon our society. Consequently it must be visited with rigorous but appropriate punishment like any other serious crime – violent or not. Sadler, *supra*.
- [53] Given the inappropriateness of the manner in which the regional magistrate exercised the sentencing discretion entrusted to her, I am inclined to interfere. The misdirections were material. Having considered all the peculiar circumstances of this particular case, I am inclined to uphold the appeal on the basis that there was no appropriate balance between the gravity of the crime and the person of the individual offender. It seemed to me that reducing the effective sentence of eight years imprisonment by four years, would go a long way towards balancing the two considerations.
- [54] Accordingly I make the following order:
- 54.1 The conviction stands;
- 54.2 The appeal against the sentence succeeds. The 8 year sentence is set aside and substituted with the one below.
- 54.3 The accused is sentenced to 4 years imprisonment.
- 54.4 The substitute sentence is backdated to 27 January 2014.

MH RAMPAI, J

I concur

MB MOLEMELA, JP

On behalf of appellant: Adv. PJC Kriel

Instructed by:

Saleem Ebrahim Attorneys

Johannesburg

On behalf of respondent: Adv. JBK Swanepoel

Director of Public Prosecutions

Specialised Commercial Crime Unit

Bloemfontein

/PK

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