

SOUTH AFRICA / JUDGMENT

Hlohlolo v S (A73/2021) [2022]

ZAFSHC 3 (12 January 2022)

[2022] ZAFSHC 3

COURT

Free State High Court, Bloemfontein

BEFORE

Opperman, Daniso

CASE / FILE NUMBER

A73/2021

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IN THE HIGH COURT OF SOUTH AFRICA,

FREE STATE DIVISION, BLOEMFONTEIN

Appeal number: A73/2021

In the Appeal between: LEKGETHO HLOHLOLO Appellant and THE STATE Respondent

CORAM:

OPPERMAN, J et DANISO, J

HEARD ON: 18 OCTOBER 2021

JUDGMENT BY: DANISO, J

DELIVERED ON: This judgment was handed down electronically by circulation to the parties' representatives by way of email and by release to SAFLII.

The date and time for hand-down is deemed to be 11h00 on 12 January 2022.

- [1] On 19 June 2020 the regional court, Winburg sentenced the appellant to 10 years' imprisonment on a charge of assault with intent to cause grievous bodily harm. The appellant had been convicted by the district court on 05 February 2020. Thereafter the matter was transferred to the regional court for sentencing.
- [2] The Appellant is aggrieved by the sentence. He appeals to this court by way of a petition in terms of section 309C of the Criminal Procedure Act, 51 of 1977 (The CPA).

- [3] The appeal is supported by the State and it is premised on the grounds that the effective term of 10 years' imprisonment is excessive and induces a sense of shock. The court a quo erred in not imposing a shorter term of imprisonment having regard to the totality of all the circumstances of the case, more particularly, the appellant's personal circumstances, the rehabilitation element and remorse.
- [4] It was submitted by both counsel for the appellant and the State inter alia that the only reason the matter was referred to the regional court for sentencing was due to the fact appellant has two previous convictions and that he was on parole at the time the crime was committed. These factors do not warrant the imposition of a sentence of 10 years' imprisonment considering the fact that the appellant was convicted of assault with intent to cause grievous bodily harm not attempted murder.
- [5] The State and the defence are of the view that a sentence of 5 to 7 years' imprisonment would be appropriate.
- [6] It is trite that punishment is pre-eminently a matter for discretion of the trial court, the circumstances under which the appeal court can interfere with a sentence are limited. The test is whether the sentence is vitiated by irregularity or misdirection or is disturbingly inappropriate.[1]
- [7] It is incorrect that the only reason that the matter was referred to the regional court for sentencing was due to the appellant's previous convictions. In the record of the proceedings, it is stated that the referral was due to the seriousness of the crime.[2] Nonetheless, there is nothing untoward about the magistrate's decision following on a conviction to transfer a matter to the regional court for sentencing based on an accused's previous convictions. See s 116 (1) (b) of the CPA.
- [8] The complaint that the trial court underemphasized the appellant's personal circumstances and overemphasized his previous convictions at the expense of the seriousness of the offence is in my view, meritless.
- [9] The submissions by counsel overlook the fact that the appellant has the propensity to commit violent crimes. At the time of sentencing he had two previous convictions involving violence and those crimes were committed while he was on parole and during a suspended prison sentence.
- [10] The appellant's personal circumstances as recorded by the trial court that at the time of sentencing he was 29 years old, living with an aunt, went to school till grade 9, was employed and a provider for his minor child are merely a generic description of a male of his age whereas, the trial record reflects that the attack on the complainant was unprovoked. The appellant and his companion followed the unsuspecting complainant and started stabbing him even after he fell to the ground. The complainant sustained multiple lacerations to the right hand, back and the right side of the body, the extent and the severity of the injuries are revealed in the J88 medical report which was uncontested. There is

nothing exceptional about the appellant's personal circumstances to overshadow the gravity of the crime he has been convicted of.

- [11] I'm not persuaded that the appellant is sincerely remorseful. It has been said that a plea of guilty on its own is not an indicator of remorse the surrounding actions of an accused are also a factor to be considered as the plea might be solely motivated by regret of being caught. [3] The appellant was not convicted of his plea instead it was only after the testimony of the complainant that he admitted his guilt and it was after he was convicted that he proffered his purported remorse.
- [12] Rehabilitation can still be achieved where imprisonment is imposed, in my view, having regard to the violent crime that the appellant has been convicted of and his history of contemptuous behavior towards the justice system by breaching the parole conditions and the suspended sentence order a lengthy term imprisonment is warranted.
- [13] For the reasons above, I'm not persuaded that there was any misdirection by the trial court therefore, there is no basis to interfere with the sentence imposed.

Order

- [14] The appeal against sentence is dismissed.

NS DANISO, J

I concur

M OPPERMAN, J

On behalf of Appellant: Adv. S Kruger Instructed by: Legal Aid South Africa BLOEMFONTEIN
On behalf of respondent: Adv. M Lencoe Instructed by: The Director of Public Prosecutions
BLOEMFONTEIN

- [1] S v Sadler 2000

- (1) SACR 331 SCA H-J.

- [2] Page 15 of the transcript line 10.

- [3] S v Matyityi 2011

- (1) SACR 40 (SCA), para 13.

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