

SOUTH AFRICA / JUDGMENT

Khoza v S (A359/2017) [2018] ZAGPPHC 846 (19 December 2018)

[2018] ZAGPPHC 846

COURT

North Gauteng High Court, Pretoria

BEFORE

Janse van Nieuwenhuizen, A.T. Mathunzi

CASE / FILE NUMBER

A359/2017

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IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)

REPUBLIC OF SOUTH AFRICA

Case Number: A359/2017

19/12/2018

(1)

NOT REPORTABLE

(2)

NOT OF INTEREST TO

OTHER JUDGES

(3)

REVISED

In

the matter between:

JULY
KHOZA
Appellant
And
THE
STATE
Respondent

JUDGMENT

JANSE VAN NIEUWENHUIZEN J

- [1] The appellant was convicted in the Benoni Regional Court on a charge of robbery with aggravating circumstances in that the appellant wielded a firearm at a certain Lizzy Masina, who was on her way to school where she was studying to become a caregiver. The appellant demanded her cell phone at gunpoint and Ms Masina who was, naturally, extremely scared complied with the appellant's demand.
- [2] The appellant was sentenced to 24 years imprisonment.
- [3] This appeal is only against sentence.

Legislative framework

- [4] The appellant was a third offender in respect of the crime of robbery with aggravating circumstances. In the result, section 51(2) of the General Law Amendment Act, 105 of 1997 ("the Minimum Sentencing Act"), prescribes a minimum sentence of 25 years' imprisonment.
- [5] The court a quo found that due to the fact that the appellant was incarcerated for a period of eight months prior to his conviction, constitutes substantial and compelling circumstances existed which justified a deviation from the minimum sentence and thus imposed the period of 24 years' imprisonment.

Test on appeal

- [6] Ms Makgwatha, counsel for the state, correctly referred to the test applicable when the sentence imposed by a trial court is on appeal. The first port of departure is the principle that the imposition of a sentence is pre-eminently a matter that falls within the discretion of the trial court.
- [7] A court of appeal may only interfere in narrowly defined circumstances, to wit where the sentence is vitiated by an irregularity, where the court a quo misdirected itself in imposing the sentence or if the sentence imposed induces a sense of shock. [See: S v Salzwedel and Others 1999 (2) SACR 586 SCA at 591 d-g.]

Grounds of appeal

- [8] Ms Augustyn, counsel on behalf of the appellant, submitted that the court a quo erred in:
 - i. over emphasising the interests of the complainant;
 - ii. over emphasising the interests of the community, and
 - iii. attaching too much weight to the fact that the appellant was a third offender.

- [9] It is further submitted that the sentence is disproportionate to the circumstances under which the crime was committed and induces a sense of shock.

Discussion

- [10] These grounds of appeal presumably infer that the court a quo misdirected itself in not having proper regard to the three factors relevant to sentencing, that is, the circumstances under which the crime was committed, the interests of society and the personal circumstances of the accused.
- [11] The appellant does not rely on an irregularity and reliance on the ground that the sentence induces a sense of shock is, in casu where a lesser sentence than the prescribed minimum was imposed, without merit.
- [12] The court a quo duly considered and balanced the three factors pertaining to a fair sentence. In the premises, there was no misdirection by the court a quo in this regard.
- [13] Moreover, and in view of the provisions of the Minimum Sentencing Act, the appellant had to convince this court that substantial and compelling circumstances justifying a further deviation from the prescribed minimum of 25 years' imprisonment existed.
- [14] Save for reiterating the personal circumstances of the appellant, namely that he was 31 years old, not married and that he has one minor child, which personal circumstances were duly considered by the court a quo and submitting that the circumstances under which the crime was committed was not that serious, the appellant has failed to advance any further substantial and compelling circumstances which the court a quo failed to take into account.
- [15] In the premises and having regard to the jurisdictional factors justifying an interference by this court, I am of the view that the appeal against sentence has no merit and should be dismissed.

ORDER

- [16] In the premises, I make the following order: The appeal against sentence is dismissed.

JUDGE OF THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

I agree

A.T. MATHUNZI

ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA

It is so ordered.

DATE HEARD

29 October 2018

JUDGMENT

DELIVERED

19 December 2018

APPEARANCES

Counsel for the Appellant

Advocate L. Augustyn

Instructed by. Pretoria Justice Centre

(012 401 9200)

Counsel for the Respondent Advocate M.J. Makgwatha

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Instructed by.

Director of Public Prosecutions

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