

SOUTH AFRICA / JUDGMENT

Malonya v S (A421/2016) [2017] ZAGPPHC 568 (25 August 2017) [2017] ZAGPPHC 568

COURT

North Gauteng High Court, Pretoria

BEFORE

M.A. Hawyes, S.A.M. Baqwa

CASE / FILE NUMBER

A421/2016

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IN THE HIGH COURT OF

SOUTH AFRICA

(GAUTENG DIVISION,

PRETORIA)

CASE

NO: A421/2016

Not

reportable

Not

of interest to other judges

Revised.

25/8/2017

In

the matter between:

THABISO

MALONYA Appellant

and

THE

STATE Respondent

JUDGMENT

HAWYES AJ

- [1] The appellant was arraigned before the Regional court of North West held at Stilfontein on one count of unlawful possession of a semi-automatic firearm i.t.o Section 3 of the Firearms Control Act no 60 of 2000.
- [2] The appellant pleaded guilty to the charge and was subsequently sentenced to 8 years imprisonment on the 17 November 2015.
- [3] The appellant was granted leave to appeal against sentence only by the trial court on the 4 May 2016.

Grounds of Appeal

- [4] The appellant submits that the sentence of 8 years imprisonment is shockingly harsh and inappropriate as a result of the following

alleged misdirection by the court a quo:

- The court erred in not accepting the explanation tendered by the appellant in his plea, of how and why he came to be in possession of the firearm.
- The court erred in over-emphasizing the seriousness of the offence, the interest of the society and the previous convictions of the appellant.

- [5] The appellant referred to a portion of the learned regional magistrate's judgment on sentence:

"In u pleit het u beweer u het hierdie vuurwapen besit omrede u wou gevoet het hoe, dit voet om n vuurwapen te besit.

Nou dit is,so die pleit is so aanvaar deur die staat maar ·die Hof moet aan u meld dat hierdie rede vlr die besit van die vuurwapen die Hof met 'n knippie sout neem 'n Persoon besit nie 'n vuurwapen,'n gevaarlike instrument waarvoor daar wetgewing is vir die besit daarvan, sommer net om te voel hoe dit voel om so 'n item in jou besit te he nie."

- [6] The appellant referred pertinently to the matter of S vs Khumalo 2013(1) SACR 96 (KZP) at paragraphs 9-12:

"[9] In S vs Jansen 1999 (2) SACR 368. Davis J considered the situation where an accused pleads guilty and hands in a written statement in terms of section 112 (2) of the Criminal Procedure Act 51 of 1997 setting out the facts upon which a plea of guilty is admitted and the state accepts that plea. Davis J stated that in these circumstances the plea so accepted constituted the essential factual matrix of which a sentence must be imposed. He stated that the state may adduce evidence to fill in the framework which was set by the · plea but that the essential factual matrix could not be ended or altered by evidence given in mitigation of sentence.

[7] The appellant alleges that the court a quo had gone beyond the factual matrix by indicating to the appellant that he intended

regarding his plea explanation with a "pinch of salt. -

[8] Appellant submits further that he did not possess the firearm with the intention to commit an offence, nor did the firearm, whilst in his possession, pose any direct danger to the public, especially in light of the fact that the firearm did not have a magazine and he did not have any ammunition in his possession for the firearm.

Discussion

[9] The respondent submits that the Firearms Control Act no 60 of 2000 prescribes a maximum period of 15 years imprisonment on a conviction of contravening the provisions of section 3 of that Act. A specific minimum sentence in terms of the Criminal Law Amendment Act no 105 of 1997 is also applicable.

[10] The respondent submits further that the court properly and judiciously balanced the interests of the community, the nature of the offence and the personal circumstances of the appellant in its quest to find an appropriate sentence. It is submitted that the aggravating factors far outweigh the mitigating factors in this case and sentence imposed cannot be faulted.

[11] In deciding the matter I enquired about the surrounding circumstances of appellant's arrest. It is common cause that the appellant ran away when he was discovered in possession of the firearm and was arrested after a scuffle with the police. These surrounding circumstances reveal the appellant's state of mind at the time of his arrest and place the explanation for his possession of the firearm in its proper perspective. The learned magistrate did not exceed the bounds of the factual matrix when he commented that he intended regarding appellant's plea explanation with a "pinch of salt". No misdirection was committed.

[12] I agree with the submission of the Respondent that sentencing is a matter to be decided upon by the trial court and the court has a wide discretion.

[13] The accepted grounds justifying interference with the sentence are set out in *S vs Petkar* 1998 (3) SACR 571(A) at 574 C by Smallberger JA:

'The court's powers to interfere with a sentence on appeal are circumscribed. It may only do so if the sentence is vitiated by (1) irregularity (2) misdirection or (3) is one which no reasonable court could come to, in other words, one where there is a striking disparity between the sentence imposed and that which this court considers appropriate...

I cannot find fault with the learned magistrate's evaluation of the relevant factors to be considered prior to sentence and the sentence he ultimately imposed.

[14] In the circumstance I propose that the following order be made

14.1 The appeal is dismissed.

M.A. HAWYES

ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

I agree and it is so ordered.

S.A.M. BAQWA

JUDGE OF THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

Heard on: 31 July 2017

Delivered on: 25/07/2017

For the Applicant: H Steynberg

Instructed by: Legal Aid

For the First Respondent: Advocate C. Mnisi

Instructed by: The Director of Public Prosecutions, Pretoria

Instructed by: The Director of Public Prosecutions, Pretoria

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