

SOUTH AFRICA / JUDGMENT

Masigo v S (Sentence Appeal) (CA53/2024) [2025] ZANWHC 112 (3 July 2025) [2025] ZANWHC 112

COURT

North West High Court, Mafikeng

BEFORE

Oosthuizen-Senekal, Mokhare

CASE / FILE NUMBER

CA 53/2024

Source: saflii.org · Research copy typeset by Esheria. Not court-issued or certified.

Source record

IN

THE HIGH COURT OF SOUTH AFRICA

NORTH

WEST DIVISION - MAHIKENG

CASE

NUMBER: CA 53/2024

NWDM

Petition Case No: CAP 05/2024

Regional

Court Case No: RC 1/41/2022

Reportable: NO

Circulate

to Judges: NO

Circulate

to Magistrates: NO

Circulate

to Regional Magistrates: NO

In

the matter between:

PETROS

MASIGO

APPELLANT

and

THE

STATE

RESPONDENT

Coram: OOSTHUIZEN-SENEKAL AJ et MOKHARE AJ
Date
judgment reserved: 30 May 2025
The
judgment was handed down electronically by circulation to the
parties' representatives via email. The date and time
for
hand-down is deemed to be 3 July 2025 at 10H00am.
ORDER
1.
The appeal against sentence is
dismissed.
2.
The sentence
of eight (8) years' direct imprisonment imposed by the Regional
Court is confirmed.

JUDGMENT

OOSTHUIZEN-SENEKAL AJ:

Introduction

- [1] This is an appeal against sentence only, following the appellant's conviction in the Regional Court sitting in Potchefstroom on a charge of theft out of a motor vehicle. The appellant was sentenced to eight (8) years direct imprisonment. His application for leave to appeal was dismissed by the court a quo on 3 October 2023. However, a subsequent petition to the High Court was subsequently granted, limited to sentence.
- [2] This appeal was adjudicated on the papers, as agreed by the legal representatives for both the appellant and the respondent. Comprehensive heads of argument were filed by both parties, and both confirmed that the appeal is limited to sentence.

Factual

Background

- [3] The conviction stems from an incident that occurred on 1 March 2022, during which the appellant snatched a Samsung cellular phone from inside a vehicle while the complainant was seated therein. It is significant to note that the offence was not spontaneous. The evidence shows that the appellant acted in concert with another person, who deliberately distracted the complainant, thereby creating an opportunity for the appellant to reach into the vehicle and steal the phone. This was not a spur-of-the-moment decision, but rather a carefully orchestrated plan that relied on teamwork and timing. The accomplice's role in diverting the attention of the complainant enabled the appellant to execute the theft with reduced risk of immediate detection or resistance. The method employed indicates a

deliberate and premeditated strategy to commit the offence, which aggravates its seriousness. The phone was never recovered.

- [4] At the time of sentencing, the appellant was 39 years old, unmarried with a 15-year-old minor child. He resided in Ikageng, Potchefstroom, and was employed as a cleaner at Witrand Hospital with a monthly income of R5,500. Notably, the appellant had spent approximately 12 months in custody awaiting finalisation of the trial.

Grounds of Appeal

- [5] The appellant contended that the trial court erred by imposing a sentence that is unjustifiably severe and disproportionate to the offence committed. He argued that the court a quo failed to consider a lesser sentence, especially in light of his personal circumstances, the relatively low value of the stolen item, and the fact that he had already spent a significant period in pre-trial detention.
- [6] He further submitted that the trial court failed to properly apply the triad of sentencing principles set out in *S v Zinn* 1969 (2) SA 537 (A), namely the offender, the crime, and the interests of society.
- [7] The respondent opposed the appeal and argued that the sentence imposed was appropriate, considering the seriousness of the offence and the appellant's extensive criminal history. It was stressed that the cell phone was never recovered and that the offence was committed in a bold and opportunistic manner.

Legal Principles: When an Appeal Court May Interfere with Sentence

- [8] It is well-established that sentencing is primarily within the trial court's domain. An appellate court will only interfere

where the sentence is vitiated by a material misdirection or is shockingly inappropriate.[1]

- [9] In *Mathekga and Another v S*[2], the Supreme Court of Appeal endorsed the Constitutional Court's reasoning in *S v Bogaards* 2013 (1) SACR 1 (CC) at paragraph [19] where the following was said:

"...a court exercising appellate jurisdiction cannot, in the absence of material misdirection by the trial court, assess the appropriateness of the sentence as if it were the trial court and then alter the sentence arrived at by that court, simply because it disagrees with it."

- [10] The limited grounds upon which a court of appeal may interfere with sentence include:

- (i) Where the sentence is disturbingly inappropriate;
- (ii) Where the sentence is so disproportionate to the offence as to induce a sense of shock;
- (iii) Where the sentence differs markedly from that which the appellate court would have imposed;

- (iv) Where there was a material misdirection; or
- (v) Where the sentencing discretion was exercised unreasonably.

[11] In *S v Malgas*[3], the Supreme Court of Appeal stated that:

“A court exercising appellate jurisdiction cannot, in the absence of material misdirection by the trial court, approach the question of sentence as if it were the trial court and then substitute the sentence arrived at simply because it prefers it.”

[12] This principle was reaffirmed in *S v Matyityi*[4] where the following was said:

“It is incumbent upon a trial court to consider all relevant factors and to strike a balance between the nature and seriousness of the offence, the interests of society and the interests of the offender.”

Application to the Present Case

- [13] While the value of the item stolen (a cell phone) may appear modest at first glance, it is essential to contextualise the importance of a cell phone in present-day society. Beyond its monetary value, a cell phone typically contains sensitive personal and financial information, private communications, banking and identity verification apps, digital records, and irreplaceable personal media. The theft of such a device can lead to secondary financial losses, identity theft, and psychological harm to the victim. The impact of the theft, therefore, extends far beyond the mere replacement cost of the device itself. In this case, the complainant's phone was never recovered, exacerbating the loss and disruption suffered.
- [14] The complainant was seated in the vehicle at the time of the incident, rendering the act invasive and distressing. The brazen nature of the offence, committed in a public and confined space, further heightens its seriousness.
- [15] The appellant's personal circumstances were taken into account by the trial court. However, these had to be weighed against his extensive criminal record, which reveals a persistent and troubling pattern of dishonest conduct spanning nearly two decades. On 28 January 2004, the appellant was convicted of theft and sentenced to 18 months' correctional supervision. Thereafter, on 6 July 2006, he was again convicted of theft and received a sentence of 12 months' imprisonment, wholly suspended. Merely three months later, on 6 October 2006, he was convicted of robbery and sentenced to 36 months' imprisonment, with 12 months suspended. On 30 August 2010, he was found guilty on two counts of theft and sentenced to three years' imprisonment on each count. This was followed by another conviction on 8 February 2011, also for theft, resulting in a five-year imprisonment sentence. Despite these serious custodial sentences, on 6 November 2017, the appellant was again convicted of theft, this time receiving a wholly suspended sentence of two years' imprisonment. His most recent convictions before the current offence occurred on 21 February 2018, when he was found guilty on three counts of theft and sentenced to 18 months' imprisonment.

- [16] The appellant had been released on parole multiple times and was re-incarcerated for parole violations. His most recent supervision ended in 2019. Nonetheless, he reoffended in March 2022, indicating a persistent disregard for the law and an unwillingness to reform. Despite having served several terms of direct imprisonment, the appellant has evidently not been deterred from engaging in criminal conduct. His conduct exhibits a sustained pattern of reoffending shortly after release, whether on parole or following a suspended sentence. This undermines any suggestion that prior sentences have had a rehabilitative effect or served their purpose as a deterrent.
- [17] In the context of this criminal history, the trial court was justified in placing significant weight on deterrence and the protection of the community. Members of the community are entitled to feel safe from repeated acts of opportunistic theft and robbery. The appellant's record makes it clear that he poses a continuing risk to society. He has had numerous opportunities to rehabilitate, and the justice system has, in the past, afforded him the benefit of non-custodial sentences, parole, and suspended sentences. Yet, he has shown no inclination to alter his behaviour. The cumulative effect of his past convictions and persistent criminality demonstrates that the community requires protection against further offences by the appellant.
- [18] While the period of pre-trial incarceration, approximately one year, is a relevant factor, it does not outweigh the gravity of the offence and the appellant's recidivism.
- [19] The sentencing court applied its discretion judicially. A sentence of eight years' direct imprisonment, while substantial, cannot be said to be so disproportionate as to induce a sense of shock. There is no misdirection warranting interference by this Court.

Order

[20] In the result, the following order is made:

1. The appeal against the sentence is dismissed.

CSP OOSTHUIZEN-SENEKAL

ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA

NORTH WEST DIVISION, MAHIKENG

I agree

TC MOKHARE

APPEARANCES

For the Appellant: Mr T.G Gonyane

No 742 Dr James Moroka Drive

South Wing Borekelong House

MMABATHO

Tel: 018-381 4582

For the Respondent: The Director of Public Prosecutions

North West Province

Mega City- East Gallery

Sekame Road

MAHIKENG

[1] See *S v Hewitt* 2017 (1) SACR 309 (SCA) and *S v Livanje* 2020 (2) SACR 451 (SCA).

[2] 2020

(2) SACR 559 (SCA).

[3] 2001

(1) SACR 469 (SCA) at paragraph [12].

[4] 2011

(1) SACR 40 (SCA) at paragraph [23].

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.saflii.org/za/cases/ZANWHC/2025/112.html>

CASE PAGE <https://chat.esheria.ai/case-law/south-africa/masigo-v-s-unknown-topic-anwhc-2025>

Prepared on 9 October 2026 · Esheria