

SOUTH AFRICA / JUDGMENT

Matati v S (A374/19) [2020] ZAGPPHC 680 (26 October 2020)

[2020] ZAGPPHC 680

COURT

North Gauteng High Court, Pretoria

BEFORE

Collis, Mokose

CASE / FILE NUMBER

A374/19

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REPUBLIC OF SOUTH AFRICA

IN

THE HIGH COURT OF SOUTH AFRICA

GAUTENG

DIVISION, PRETORIA

(1)

REPORT

ABLE: NO

(2)

OF

INTEREST

TO

OTHER

JUDGES:

NO

(3)

REVISED

26

October 2020

CASE

NO: A374/19

In

the matter between:

MANGALISO

WONDER MATATI

APPELLANT

and

THE STATE

RESPONDENT

JUDGMENT

COLLIS J (MOKOSE J Concurring)

- [1] The appellant Mr Mangaliso Wonder Matati appeared before the Oberholzer Regional Court on a charge of public violence. He pleaded guilty to the charge on 16 July 2019 and was subsequently convicted of the charge on the same day. On 28 August 2019, he was sentenced to three years' imprisonment in terms of section 276(1) of the Criminal Procedure Act 51 of 1977.
- [2] Following his conviction and sentence he applied for leave to appeal his sentence, which leave was granted by the court a quo.
- [3] Succinctly, the appellant appeals his sentence on the following grounds:
- 3.1 That the sentence imposed by the trial court is shockingly inappropriate in that it is out of proportion to the totality of the accepted facts in mitigation;
- 3.2 furthermore, that the court a quo erred by not imposing a different sentencing option more so given the personal circumstances of the appellant.
- [4] The genesis of the conviction and sentence arose from events which occurred during the evening of 13 February 2019, at or near Carltonville on Welperdiend Road. It was during this evening that the appellant, together with other members of the public disturbed the public peace and tranquillity by barricading a public road with burning tyres and stones and also pelting passing cars with stones. Albeit that no damage was caused to any motorist, the demonstration was unlawful and this resulted in the appellant being arrested by the police.
- [5] Sentencing is inherently within the discretion of the sentencing court. The powers of an appeal court to interfere with the sentencing court's discretion in imposing a sentence are limited, unless the sentencing court's discretion was exercised improperly. The essential inquiry in an appeal against sentence is not whether the sentence was right or wrong, but whether the sentencing court exercised its discretion properly and judicially. If the discretion was exercised improperly, the appeal court will interfere with the sentence imposed[1].
- [6] The approach to be followed by a trial court when dealing with sentence has been stated in many judgments of the SCA. It was amply summarized in *S v Hewitt*[2] as follows:

"It is a trite principle of our law that imposition of sentence is the prerogative of the trial court. An appellate court may not interfere with the discretion of the trial court merely because it would have imposed a different sentence. In other words, it is not enough to conclude that its own choice of penalty would have been an appropriate penalty. Something more is required; it must conclude that its own choice of penalty is the appropriate penalty and that the penalty chosen by the trial court is not. Thus the appellate court must be satisfied that the trial court committed a misdirection of such a nature, degree and seriousness

that shows that it did not exercise its sentencing discretion at all or exercised it improperly or unreasonably when imposing it. So, interference is justified only where there exists, a 'striking' or 'startling' or 'disturbing' disparity between the trial court's sentence and that which the appellate court would have imposed. And in such instances the trial court's discretion is regarded as having been unreasonably exercised."

- [7] In exercising its discretion, the trial court must weigh both mitigating and aggravating factors, focused on the nature of the crime, the personal circumstances of the offender and the interest of society.
- [8] It is further trite that where a sentence is deemed to be "startlingly inappropriate" or induces a sense of shock; with there being a striking disparity between it and the sentence the appeal court would have imposed, the appeal court is entitled to "interfere with such sentence because such sentence shows that the court imposing the sentence failed to properly and reasonably exercise the discretion bestowed upon it." [3]
- [9] In the present instance, the appellant assails the sentence on the assertion that the sentence imposed for 3 years' direct imprisonment is startlingly inappropriate and harsh, more so he pleaded guilty and thus showed remorse. At 19 years of age and being a scholar he is still youthful and a first offender. In addition to the above; that during the incident no damage was caused to any vehicle or person and that the probation officer's report recommended a suspended sentence to serve as a deterrence.
- [10] In contrast the respondent had argued that the appellant was convicted of a pre meditated and serious offence which is regarded as aggravating and that the court had proper regard to the triad when it imposed its sentence.
- [11] In the decision *S v Rabie* 1975 (4) SA 855 (A) Holmes JA stated the following:
"Punishment should fit the criminal as well as the crime, be fair to society, and be blended with a measure of mercy according to the circumstances."
- [12] In my view, the sentencing court failed to exercise his sentencing discretion properly and reasonably when it imposed a sentence of three years' direct imprisonment for a youthful first offender. Furthermore, having regard to what had been placed before the court by the probation officers report, it does not appear as if the trial court properly considered the contents and recommendations made therein.
- [13] As to the seriousness of the offence; it is so that public violence can cause great harm to persons and property and more often to members of the public who happened to find themselves at the centre of a dispute which does not involve them. In the present instance however, no evidence was presented before the sentencing court that indeed through the actions of appellant damage was caused to any member of the public or property.
- [14] In my view the sentence imposed by the trial court induces a sense of shock and as such calls for interference by the court.

[15] In the result and consequently the following order is made:

15.1. The appeal against sentence .is upheld.

15.2. The sentence imposed by the and court a quo is hereby substituted with the following:

In terms of section 297(1)(b) of the Criminal Procedure Act 51 of 1977 the accused is sentence to one (1) year' direct imprisonment wholly suspended for a period of three (3) years on condition that the accused does not commit an act of public violence within the period of suspension.

15.3. The sentence imposed is antedated to 28 August 2019.

C.J. COLLIS

JUDGE OF THE HIGH COURT

I agree

S.N.I. MOKOSE

JUDGE OF THE HIGH COURT

It is so ordered:

Appearances

For the Appellant

: Ms. M.B. Moloi (Attorney)

Instructed by

: Legal Aid of South Africa: Pretoria Local Office

For the Respondent

: Adv. L. Williams

Instructed by

: The Director of Public Prosecutions: Pretoria

Date of Hearing

: 09 September 2020

Date of Judgment

: 26 October 2020

Judgment

transmitted electronically.

- [1] S v Malgas 2001(1)SACR 469 (SCA)
- [2] S v Hewitt [2016] ZASCA 100; 2017 (1) SACR 309 (SCA) para 8.
- [3] S v Wright 2000 (1) SACR 322 (SCA) at 324h & S v Michael and Another 2010 (1) SACR at 134h 135b.
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