

SOUTH AFRICA / JUDGMENT

Mathobela v S (CA05/2020) [2024] ZANWHC 258 (17 October 2024)

[2024] ZANWHC 258

COURT

North West High Court, Mafikeng

BEFORE

R D Hendricks, A H Petersen

CASE / FILE NUMBER

CA05/2020

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IN THE HIGH COURT OF

SOUTH AFRICA

NORTH WEST DIVISION,

MAHIKENG

CASE

NO: CA 05/2020

REGIONAL

MAGISTRATES CASE NO: SRC8/2018

In

the matter between:

SEPALELA

RAHAB MATHOBELA

Appellant

and

THE

STATE

Respondent

CORAM:

HENDRICKS JP et PETERSEN J

DATE

OF HEARING:	30 NOVEMBER 2023 DATE
OF JUDGMENT:	17 OCTOBER 2024 FOR THE
APPELLANT:	ADV. D SMIT FOR
RESPONDENT:	ADV. MUNYAI
Delivered:	This judgment was handed down electronically by circulation to the parties' representatives via email. The date and time for hand-down is deemed to be 14h00 on 17 October 2024. ORDER Resultantly,
the following order is made:	The appeal against the sentence is dismissed.

JUDGMENT

HENDRICKS JP

- [1] The appellant pleaded guilty to two counts of fraud and twenty-one counts of theft and was sentenced to an effective term of six
- (6) years imprisonment on 16 April 2019. On 25 September 2019 leave to appeal against sentence was granted and the appellant was admitted to bail. The appeal was enrolled for 30 November 2023. The assigned scribe D Joubert AJ failed to deliver a judgment for more than ten months. I deemed it prudent to re-allocate this appeal to a differently constituted Full Bench panel of judges on 4 October 2024. The delay in finalizing this appeal is regrettable. I took it upon myself to pen this judgment as a matter of urgency. The parties had previously agreed to have the appeal adjudicated on the papers as permitted within the purview of section 19 (1) (a) of the Superior Courts Act 10 of 2013, and as indicated as such in the practice note of both counsel for the appellant and the respondent (State).
- [2] The appeal against sentence is assailed on the basis that the effective term of imprisonment of six (6) years is out of proportion to the totality of the accepted facts in mitigation and is shockingly severe and excessive. The appellant contends that the trial court should have imposed a sentence of correctional supervision in terms of section 276 (1)(h) of the Criminal Procedure Act 51 of 1977 (CPA), as recommended by the probation officer in the report, alternatively only suspended sentence.

[3] It is trite law that a court of appeal will not likely interfere with the sentencing discretion of a trial court. It will only interfere in limited instances. The grounds on which a court of appeal may interfere with the sentence are:

- (i) where the sentence is disturbingly, shockingly inappropriate; and/or
- (ii) where the sentence is so badly out of proportion to the magnitude of the offence(s); and/or
- (iii) where the sentence is sufficiently disparate; and/or
- (iv) where the sentence is vitiated by a misdirection or when the trial court exercise its discretion unreasonably; and/or
- (v) where the sentence is otherwise such that no reasonable court would have imposed it.

See: *S v Giannoulis* 1975 (4) SA 867 (A).

S v Kibido 1998 (2) SACR 213 (SCA)

S v Salzwedel & Others 1999

(2) SACR 586 (SCA)

S v Matyityi 2011 (1) SACR 40 (SCA)

S v Dodo [2001] ZACC 16; 2001 (3) SA 382 (CC)

S v Mtungwa en 'n Ander 1990

(2) SACR 1 (A).

S v Malgas 2001 (2) SA 1222 (SCA)

[4] It is submitted on behalf of the appellant that the trial court failed to appreciate that the amount of R331 147.00 which was stolen was paid back with interest in the amount of R19 332.00. Emphasis is also placed on the fact that the appellant pleaded guilty, thereby not wasting the trial court's time, which is a sign of remorse or contrition. Factors weighing against a custodial sentence, it is said is inherent in the fact that the appellant is a first offender at the age of 42 years; was struck from the roll of attorneys; was married but was separated from her husband; she was unemployed; and resided with her mother who supports her financially.

[5] A careful and diligent reading of the judgment of the Regional Magistrate on sentence does not evince a sense of any misdirection in imposing sentence. All the relevant personal circumstances of the appellant were duly considered. These included the fact that the appellant was 42 years of age; obtained an LLB degree; practiced as an attorney; was married and had a daughter aged 19 years; that she was struck off the roll of attorneys; pleaded guilty and was remorseful. The Regional Magistrate further considered the fact that the appellant suffered emotionally as a result of the incident; had paid back the stolen money with interest; was a first offender; and was now dependent on her mother who

supported her financially.

- [6] The Regional Magistrate also considered the aggravating factors inherent in the commission of the offences. The appellant, as attorney, was in a position of trust. She deceived her clients and stole money intended for vulnerable minor children, from a deceased estate. The offences were not isolated but perpetrated over a period of time; and would have continued if not detected. Fraud and theft of this nature which involve dishonesty are very serious and prevalent offences. The motive was purely for financial gain and greed.
- [7] The interests of society were also taken into consideration. The effect of such theft and fraud with monies intended for vulnerable minor children, as last sign of love and respect from the deceased, offends against the moral rectitude of society. The conclusion reached by the Regional Magistrate that direct imprisonment was the only suitable sentence, when weighed up against the alternative sentences proposed, cannot be faulted.
- [8] Much has been made about the fact that correctional supervision was not imposed as a sentence as recommended in the probation officer's report in terms of section 276 (1) (h) of the CPA. That the probation officer's report is a useful guide in arriving at an appropriate sentence behoves now argument, but it is exactly that, a guide and nothing more. A court whilst under a duty to consider such a sentence is not bound by such recommendation in a probation officer's report. The very essence of the sentencing discretion of a court would be eroded, if a judicial officer is under a duty to simply accept such a recommendation. The recommendation contained in a probation officer's pre-sentence report is but one of the sentencing options a trial court may take into consideration when imposing a suitable and just sentence. To reiterate, no misdirection was committed by the Regional Magistrate, and I am of the view that the sentence is not shockingly severe and disproportionate to the offences committed. The appeal against sentence should consequently fail.

Order

- [9] Resultantly, the following order is made:

R D HENDRICKS

JUDGE PRESIDENT OF THE HIGH COURT OF SOUTH AFRICA,

I agree.

A H PETERSEN

JUDGE OF THE HIGH COURT OF SOUTH AFRICA,

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Prepared on 10 October 2026 · Esheria