

SOUTH AFRICA / JUDGMENT

Mene v S (A526/2012) [2012] ZAWCHC 358 (16 November 2012)

[2012] ZAWCHC 358**COURT**

Western Cape High Court, Cape Town

BEFORE

Samela, Veldhuizen

CASE / FILE NUMBER

A526/2012

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JUDGMENT

IN THE HIGH COURT OF SOUTH AFRICA

(WESTERN CAPE HIGH COURT, CAPE TOWN)

CASE NUMBER: A526/2012

DATE: 16 NOVEMBER 2012

In the matter between

ANDILE MENEAppellant

and

THE STATERespondent

SAMELA, J: The appellant appeared in Bellville Regional Court on a charge of theft of a motor vehicle. He pleaded not guilty to the charge. After evidence was led, he was found guilty of attempted theft of a motor vehicle. He was sentenced to five years imprisonment. The appellant noted an appeal against the sentence only. Ms Kloppers argued on appellant's behalf that the court a quo misdirected itself by not taking into account, or giving sufficient weight to the following factors: 1. Overemphasising the prevalence of crime. 2. Attach little or no weight to the fact that the complainant did not suffer any actual loss. 3. Failure to take into account alternative sentencing options. 4. Overemphasising the interests of the community and underemphasising appellant's personal circumstances, for example: (a) That the appellant was a first offender (b) Was the sole breadwinner. (c) Has two minor dependants. Ms Sipoyo argued on behalf of the state that the court a quo took into account all the relevant factors mentioned by Ms Kloppers. She requested this court not to interfere with the sentence of the court a quo and dismiss the appeal. From the record the following are relevant: 1. The appellant was found by the complainant inside

the motor vehicle trying to steal it. 2. He was not deterred by the barking dogs in his quest to permanently deprive the complainant of her valuable property, namely the motor vehicle. 3. Despite being confronted by the complainant, he was not moved, continued with his unlawful conduct of attempting to steal the car. 4. He boldly ignored the complainant and his grandchild, instead arrogantly ordered the complainant to go back to the house. 5. He did not willy-nilly walked away, it was only when he heard that the police had been called, did he decide to walk away. The imposition of an appropriate sentence falls entirely within the discretion of the trial court. Unless the trial court has

misdirected itself, which misdirection should appears ex facie the record, a court of appeal would not likely interfere with a sentence imposed by the trial court. See *R v Ramanka* 1949 (1) SA 417 (A). In the present matter, there is no basis on which this court can interfere. There is no misdirection and the sentence is not shockingly, startlingly or disturbingly inappropriate. I, accordingly, would propose the following order: The appeal is dismissed. The conviction and sentence are confirmed. SAMELA, J I agree. It is so ordered: VELDHUIZEN, J

SAMELA, J:

The appellant appeared in Bellville Regional Court on a charge of theft of a motor vehicle. He pleaded not guilty to the charge. After evidence was led, he was found guilty of attempted theft of a motor vehicle. He was sentenced to five years imprisonment. The appellant noted an appeal against the sentence only.

Ms Kloppers argued on appellant's behalf that the court a quo misdirected itself by not taking into account, or giving sufficient weight to the following factors:

1. Overemphasising the prevalence of crime.
2. Attach little or no weight to the fact that the complainant did not suffer any actual loss.
3. Failure to take into account alternative sentencing options.
4. Overemphasising the interests of the community and underemphasising appellant's personal circumstances, for example:
 - (a) That the appellant was a first offender
 - (b) Was the sole breadwinner.
 - (c) Has two minor dependants.

Ms Sipoyo argued on behalf of the state that the court a quo took into account all the relevant factors mentioned by Ms Kloppers. She requested this court not to interfere with the sentence of the court a quo and dismiss the appeal.

From the record the following are relevant:

1. The appellant was found by the complainant inside the motor vehicle trying to steal it.

2. He was not deterred by the barking dogs in his quest to permanently deprive the complainant of her valuable property, namely the motor vehicle.
3. Despite being confronted by the complainant, he was not moved, continued with his unlawful conduct of attempting to steal the car.
4. He boldly ignored the complainant and his grandchild, instead arrogantly ordered the complainant to go back to the house.
5. He did not willy-nilly walked away, it was only when he heard that the police had been called, did he decide to walk away.

The imposition of an appropriate sentence falls entirely within the discretion of the trial court. Unless the trial court has

misdirected itself, which misdirection should appears ex facie the record, a court of appeal would not likely interfere with a sentence imposed by the trial court. See *R v Ramanka* 1949 (1) SA 417 (A).

In the present matter, there is no basis on which this court can interfere. There is no misdirection and the sentence is not shockingly, startlingly or disturbingly inappropriate. I, accordingly, would propose the following order:

The appeal is dismissed. The conviction and sentence are confirmed.

SAMELA, J

I agree. It is so ordered:

VELDHUIZEN, J

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