

SOUTH AFRICA / JUDGMENT

Miti v S (A35/2007) [2019] ZAGPJHC 402 (18 October 2019)

[2019] ZAGPJHC 402**COURT**

South Gauteng High Court, Johannesburg

BEFORE

A Crutchfield, RM Keightley

CASE / FILE NUMBER

A35/2007

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IN THE HIGH COURT OF SOUTH AFRICA,
GAUTENG LOCAL DIVISION,
JOHANNESBURG

(1)

REPORTABLE:

YES

/

NO

(2)

OF

INTEREST TO OTHER JUDGES: YES/NO

(3)

REVISED.

CASE NO: A35/2007

18/10/2019

In the appeal between:

MPHO

BEVERLEY MITI

Appellant

and

THE

STATE

Respondent

JUDGMENT

CRUTCHFIELD AJ:

[1] This appeal on sentence came before us on 8 August 2019.

[2] The appellant pleaded guilty and was convicted of one count of fraud of R164 507.39 in the Regional Court for the Regional Division of Gauteng held at Kempton Park Court on 8 December 2017. On 6 February 2018, the

appellant was sentenced to six years imprisonment. Thereafter, the appellant was granted bail pending finalisation of her appeal.

[3] The appellant was married with a child of approximately two years of age.

[4] At the appeal hearing, the appellant raised for the first time, the point that the learned magistrate failed to consider the guidelines articulated in *S v M*[1] as to the responsibilities of a sentencing court when imposing sentence. The respondent conceded that the judgment on sentence did not reflect that the court a quo applied those guidelines.

[5] The appeal was postponed and both parties given an opportunity to file supplementary heads of argument dealing with the new point.

[6] The parties' supplementary heads reflected certain common ground between them.

[7] The appellant's stance was that the court a quo misdirected itself in that it omitted to obtain a pre-sentence and correctional supervision report, and that the court did not operate from an informed position when it imposed sentence on the appellant.

[8] The respondent made common cause with the appellant and raised the fact that there was nothing in the reasons for sentence that served to indicate that the court a quo applied its mind to the requirements of sections 28 (1)(b) and 28(2) of the Constitution to the matter.

[9] Accordingly, the parties agreed that this court should remit the matter of sentence

back to the court a quo for consideration of sentence afresh in accordance with the guidelines set out in *S v M* and the dictates of section 28 of the Constitution.

[10] Given the parties' broad consensus as to the appropriate order, it is unnecessary for this court to hear the parties' representatives on the issues raised in the supplementary heads prior to an order being made on the new point raised by the appellant at the hearing on 8 August 2019.

[11] By reason of the abovementioned I grant the following order

11.1 The sentence imposed by the trial court is set aside.

11.2 The matter is remitted back to the trial court in terms of section 19 of the Superior Courts Act 10 of 2013, for reconsideration by the trial court for an appropriate sentence in accordance with the guidelines set out in S v M 2007 (3) SACR 539 (CC), together with the provisions of section 28 of the Constitution.

11.3 The trial court is instructed to procure a pre-sentence and correctional supervision report for purposes of reconsideration by the trial court of the sentence imposed on the appellant.

A A CRUTCHFIELD SC

ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION, JOHANNESBURG.

I agree.

RM KEIGHTLEY

JUDGE OF THE HIGH COURT OF SOUTH AFRICA

COUNSEL FOR THE APPLICANT:

Mr R Gissing.

INSTRUCTED BY:

BDK Attorneys.

COUNSEL FOR THE RESPONDENT:

Mr E N Makua.

INSTRUCTED BY:

State Attorney, Johannesburg.

DATE OF HEARING:

8 August 2019.

DATE OF

JUDGMENT:

18 October 2019.

[1] S v M 2007 (3) SACR 539 (CC).

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Prepared on 11 October 2026 · Esheria