

SOUTH AFRICA / JUDGMENT

Mokoena v S (A139/2023) [2025]

ZAGPPHC 132 (18 February 2025)

[2025] ZAGPPHC 132

COURT

North Gauteng High Court, Pretoria

BEFORE

Janse van Nieuwenhuizen, Munzhelele

CASE / FILE NUMBER

A139/2023

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IN

THE HIGH COURT OF SOUTH AFRICA

GAUTENG

DIVISION, PRETORIA

Case

Number: A139/2023

(1)

REPORTABLE: NO

(2)

OF INTEREST TO OTHER JUDGES: NO

(3)

REVISED: NO

DATE:

18.2.2025

SIGNATURE: JANSE VAN

NIEUWENHUIZEN J

In

the matter between:

HOPOLANG

MOKOENA

Appellant

and

THE

STATE

Respondent

JUDGMENT

JANSE VAN NIEUWENHUIZEN J:

Introduction

[1] The appellant was found guilty on a charge of tampering alternatively damaging alternatively destroying essential infrastructure as envisaged in section 3(1)(a) of the Criminal Law Amendment Act, 18 of 2015 and sentenced to fifteen years imprisonment.

[2] The appeal is only against sentence.

Legal framework

[3] The Criminal Law Amendment Act, 105 of 1997 provides for the imposition of minimum sentences in respect of certain serious offences, In casu section 51(2)(a)(i) provides for a minimum sentence of 15 years imprisonment

[4] Section 51(3) (a), furthermore, provides as follows:

“If any court referred to in subsection (1) or (2) is satisfied that substantial and

compelling circumstances exist which justify the imposition of a lesser sentence than the sentence prescribed in those subsections, it shall enter those circumstances on the record of the proceedings and must thereupon impose such lesser sentence:”

[5] The circumstances in which a court of appeal may interfere in the sentence imposed by a lower court was succinctly summarised in *S v Malgas* 2001 (1) SA 469 (SCA) at para [13], to wit:

“...The tests for interference with sentences on appeal were evolved in order to avoid subverting basic principles that are fundamental in our law of criminal procedure, namely, that the imposition of sentence is the prerogative of the trial court for good reason and that it is not for appellate courts to interfere with that exercise of discretion unless it is convincingly shown that it has not

been properly exercised...”

[6] In order to succeed the appellant must, therefore, convince the court that the court a quo misdirected itself in not finding that substantial and compelling circumstances which justified the imposition of a lesser sentence existed.

Substantial and compelling circumstances

[7] In submitting that substantial and compelling circumstances exist, the appellant firstly relied on his personal circumstances, to wit:

[7.1] He was 26 years of age at the time of the commissioning of the offence, he was single, and had no children;

[7.2] He was part-time employed as a driver in a scrapyard and earned approximately R 1500, 00 per month;

[7.3] He was a first offender and pleaded guilty to the charge. In so doing, he did not waste the court's time and expressed true remorse for the crime that he committed;

[7.4] He wanted to sell the copper in order to open a tuck shop where his younger brother could work and earn an income; and

[7.5] He wanted to assist grandmother who was earning a small pension.

[8] Ms Simpson, counsel for the appellant, secondly and during her address pointed out that the appellant only cut two meters of 185 mm of 3 core copper cable which is valued at R12 181, 00. The fact that it was a small amount of copper coupled with the State's neglect to lead evidence on the impact the theft had on the Municipality and community, should, according to Ms Simpson, be important factors in determining whether substantial and compelling circumstances exist.

[9] In my view the amount of copper stolen is of no moment. It is the tampering alternatively damaging alternatively destroying of essential infrastructure that constitutes the crime. The fact that the State did not lead evidence in respect of the damage and inconvenience that was caused by the appellant's conduct, is also not a factor in the appellant's favour. This much is clear from the reasons for the enactment of the Act as set out in its preamble:

"RECOGNISING the importance of essential infrastructure in providing basic services to the public;

HAVING REGARD to the unacceptably high incidence of crime relating to essential infrastructure in the Republic which poses a risk to, among others, public safety, electricity supply, communications and transportation;

AND RECOGNISING the harmful consequences to the livelihood, well-being, daily operations and economic activity of the public if basic services cannot be provided due to loss, damage or disruption caused by essential infrastructure-related offences;

AND SINCE essential infrastructure-related offences are becoming increasingly more organised and are often committed by armed and dangerous criminal groups;

AND SINCE essential infrastructure-related offences on occasion manifest themselves in offences which of themselves are relatively minor but cause considerable damage to essential infrastructure (own emphasis");

MINDFUL of the negative impact of these offences on South Africa's economy and society and on peace and stability in the country,.."

[10] In considering the concept "substantial and compelling" "circumstances, the court in *Malgas supra*, stated inter alia the following at 479:

“B. Courts are required to approach the imposition of sentence conscious that the Legislature has ordained life imprisonment (or the particular prescribed period of imprisonment) as the sentence that should ordinarily and in the absence of weighty justification be imposed for the listed crimes in the specified circumstances.

C. Unless there are, and can be seen to be, truly convincing reasons for a different response, the crimes in question are therefore required to elicit a severe, standardised and consistent response from the courts.

D. The specified sentences are not to be departed from lightly and for flimsy reasons. Speculative hypotheses favourable to the offender, undue sympathy, aversion to imprisoning first offenders, personal doubts as to the efficacy of the policy underlying the legislation, and marginal differences in personal circumstances or degrees of participation between co-offenders are to be excluded.” (own emphasis)

Discussion

[11] I could not find, nor could the appellant point to any convincing reasons to justify a lesser sentence. To my mind, the court a quo did not misdirect itself in finding that substantial and compelling circumstances justifying a lesser sentence did not exist. In the result the appeal stands to be dismissed.

ORDER

The following order is granted:

1. The appeal against sentence is dismissed.

JANSE VAN NIEUWENHUIZEN J

JUDGE OF THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION

I agree.

MUNZHELELE J

It is so ordered.

DATE HEARD:

29 January 2025

DATE DELIVERED:

17 February 2025

APPEARANCES

For the Applicant: Advocate Simpson Instructed by: Legal Aid South Africa For the Respondent:
Advocate Mashile Instructed by: Director of Public Prosecutions, Pretoria

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