

SOUTH AFRICA / JUDGMENT

Momoke v S (CA29/2024) [2024]
ZANWHC 290 (26 November 2024)
[2024] ZANWHC 290

COURT

North West High Court, Mafikeng

BEFORE

R D Hendricks, N Morei

CASE / FILE NUMBER

CA29/2024

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IN

THE NORTH WEST HIGH COURT, MAFIKENG

CASE NO: CA29/2024

Reportable: YES / NO

Circulate to Judges: YES
/ NO

Circulate to Magistrates:

YES / NO

Circulate to Regional
Magistrates: YES / NO

In the matter between:

JOHN
MOMOKE
Appellant
AND
THE
STATE
Respondent
DATE
OF HEARING
: 22
NOVEMBER 2024
DATE
OF JUDGMENT
:
26
NOVEMBER 2024
FOR THE
APPELLANT
:
MR.

GONYANE
FOR THE
RESPONDENT
:
ADV.
PHETLHU

JUDGMENT

Delivered: This judgment was handed down electronically by circulation to the parties' legal representatives via email. The date and time for hand-down is deemed to be 10H00 on 26 November 2024.

ORDER

Resultantly, the following order is made:

- (i) The appeal against sentence fails.
- (ii) The sentence imposed by the trial court is confirmed.

HENDRICKS JP

Introduction

- [1] The appellant, Mr. John Moloke, was arraigned before the Regional Court, Klerksdorp on a charge of attempted murder. It was alleged that on 03 August 2022 and at or near the Klerksdorp Correctional Centre, he unlawfully and intentionally attempted to kill Alfred Mbalula, 'by stabbing him in the neck and on the arm'. On 26 September 2023 he pleaded guilty to the charge. A plea explanation in terms of section 112 (2) of the Criminal Procedure Act 51 of 1977, as amended, was read into the record, the contents of which was confirmed by the appellant. All the elements of the offense was admitted.
- [2] In the plea explanation the appellant state, amongst others, that he was in the courtyard of the Correctional Centre at Klerksdorp, where he was detained on 02 August 2022. He saw the complainant, Alfred Mbalula, assaulting his (appellants') friend, Mapanga. He did not intervene. He was part of the L7 gang and the complainant was a member of the rival VL gang. He was assaulted by one Gauta, a member of the VL gang. He was taken to consult a medical doctor.
- [3] The following day, 03 August 2022, he saw the complainant. The complainant was alone. He then took a knife and stabbed the complainant in his neck and arm. The State accepted the plea explanation. He was consequently found guilty based on the plea and explanation tendered. He was sentenced to ten (10) years imprisonment and declared unfit to possess a firearm in terms of the provisions of section 103 (1) of the Firearms Control Act 60 of 2000. The appeal lies against sentence only.

[4] The sentence is assailed on the following grounds enlisted in the Notice of Appeal, namely:

- (i) 'that the trial court misdirected itself by failure to impose a lesser sentence other than 10 years imprisonment...'
- (ii) 'that the imposed sentence is shockingly and inappropriately severe on a charge of attempted murder when considering the appellants cumulative personal circumstances in mitigation.'

The following personal circumstances of the appellant was placed on record, namely: that he is 41 years old; he is single; he has two minor children aged 15 and 12 years respectively; he is a detainee; his highest education is Grade 10; he has previous convictions and is therefore not a first offender; he pleaded guilty which is a sign of remorse or contrition; he is a member of a gangster group.

[5] The appellant admitted his previous convictions. He was convicted on a charge of robbery on 23 January 2001 and sentenced to 4 years, which was conditionally suspended for a period of 5 years; and on 19 October 2021 he was convicted on a charge of murder and three charges of robbery, and sentenced to 15 years imprisonment for the murder and 10 years imprisonment for the three counts of robbery; and on 27 February 2013 he was convicted of the unlawful possession of a firearm, ammunition and pointing of a firearm. Four years imprisonment was imposed for the unlawful possession of a firearm and ammunition and also another 4 years imprisonment for pointing of a firearm. On 14 September 2017 he was convicted of robbery and sentenced to 15 years imprisonment.

[6] It is trite that a court of appeal will not likely interfere with the sentencing discretion of a trial court. A court of appeal will only interfere in certain limited instances.

See: *S v Mtungwa en 'n Ander* 1990

(2) SACR 1(A);

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

S v L 1998 (1) SACR 463 (SCA);

S v Kgosimore 1999

(2) SACR 328 (SCA).

[7] The appellant is not a first offender as illustrated by the list of previous convictions. The trial court in its well reasoned judgement on sentence, dealt comprehensively with all the relevant facts and circumstances and cannot be faulted in this regard. No fact, factor or circumstance was either over or under-emphasized, but was carefully balanced in order to arrive at an appropriate sentence. No misdirection is to be found in the judgment on sentence. This Court, sitting as court of appeal is not at liberty to interfere with the sentence imposed by the trial court, in the absence of any misdirection. The sentence imposed is not 'shockingly and inappropriately severe' as contended. No misdirection was committed by the trial court 'by its failure to impose a lesser sentence...', as submitted. In the absence of

any misdirection, the appeal against sentence should fail. No appeal lies against the order declaring the appellant unfit to possess a firearm.

Order

[8] Resultantly, the following order is made:

- (i) The appeal against sentence fails.
- (ii) The sentence imposed by the trial court is confirmed.

R D HENDRICKS

JUDGE PRESIDENT OF THE HIGH COURT,

NORTH WEST DIVISION, MAHIKENG

I agree

N MOREI

ACTING JUDGE OF THE HIGH COURT,

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