

SOUTH AFRICA / JUDGMENT

Mponzo v S (A322/2013) [2013] ZAGPPHC 333 (10 December 2013)

[2013] ZAGPPHC 333**COURT**

North Gauteng High Court, Pretoria

BEFORE

K. Manamela, T.M. Makgoka

CASE / FILE NUMBER

A322/2013

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REPUBLIC
OF SOUTH AFRICA
NORTH
GAUTENG HIGH COURT,
PRETORIA
Case
No: A322/2013

DATE: 10 DECEMBER 2013
NOT
REPORTABLE
NOT
OF INTEREST TO OTHER JUDGES
In
the matter between: JABULANI
MPONZO.....APPELLANT
AND
THE
STATE.....RESPONDENT
DATE
OF HEARING 02 DECEMBER 2013
DATE
OF JUDGMENT 10 DECEMBER 2013

JUDGMENT

MANAMELA AJ

- [1] This is an appeal against a sentence of 17 years' imprisonment imposed on a 19-year old grade 11 scholar, by the regional court, Benoni. The appellant was charged with Mr. Simphiwe Yende. They both pleaded guilty to, and were convicted of, three counts, housebreaking with intent to rob and robbery (count 1); unlawful possession of a firearm (count 2) and unlawful possession of ammunition (count 3). They were each sentenced to 15 years' imprisonment on count 1, four years' imprisonment on count 2, and 1 year imprisonment on count 3. With the order of concurrency, the effective period of imprisonment was 17 years' imprisonment. The appellant appeals against that sentence with leave of the regional court. Mr. Yende is not a party to this appeal.
- [2] The brief factual background culminating in the conviction of the appellant and Mr. Yende is this. On 20 February 2007 entered the residence of the complainants, Mr. Kenneth Richard Malherbe and Ms. Jane Cecily Trembath and robbed them, at gun point, of household appliances and other valuables. They loaded the robbed items into the couple's Mercedes Benz vehicle, with which they drove off. The stolen items and the vehicle were valued at approximately R240 000. The police were alerted and shortly after driving off, the appellant and Mr. Yende were arrested. All the stolen items, including the motor vehicle, were recovered.
- [3] Count 1 attracted the minimum sentence of 15 years' imprisonment in terms of section 51 of the Criminal Law Amendment Act 105 of 1997. The regional court could only deviate from that sentence if substantial and compelling circumstances were present. The regional court found none, hence the 15 years' imprisonment in respect of count 1. One of the grounds of appeal on behalf of the appellant is that the regional court erred in not finding that substantial and compelling circumstances are present to allow for departure from the minimum sentence. In particular, it is submitted that the relative youth of the appellant should have been a weighty consideration for the regional court to depart from imposition of the minimum sentence, in addition to the fact that he is a first offender; supposed demonstration of remorse by pleading guilty; absence of physical harm to, or assault of the complainants; the time spent awaiting trial before the conviction and sentence; recovery of the stolen items coupled with lack of benefit from the crime by the appellant; spontaneity or lack of planning apparent from the commission of this crime. The state supports the sentences.
- [4] It is a settled principle of our law that sentencing or punishment is pre-eminently a matter for the discretion of the trial court and that although a court of appeal has the necessary discretion to interfere with a sentence imposed by a trial court, it must only do so where the trial court has misdirected itself or the sentence imposed is shockingly or disturbingly

inappropriate or there is an irregularity, occasioned by the trial court not properly and judicially exercising its discretion [S v Rabie 1975 (4) SA 855 (A) at 857D-E]. In S v PiUay 1977 (4) SA 531 (A) at 535D-F the court said the following about the concept of misdirection:

“Now the word “misdirection” in the present context simply means an error committed by the Court in determining or applying the facts for assessing the appropriate sentence. As the essential enquiry in an appeal against sentence, however, is not whether the sentence was right or wrong, but whether the Court in imposing it exercised its discretion properly and judicially, a mere misdirection is not by itself sufficient to entitle the Appeal Court to interfere with the sentence; it must be of such a nature, degree, or seriousness that it shows, directly or inferentially, that the Court did not exercise its discretion at all or exercised it improperly or unreasonably. Such misdirection is usually and conveniently termed one that vitiates the Court’s decision on sentence.”

[5] I am of the view that, the learned regional magistrate did not take sufficiently into account the cumulative effect of the various

relevant factors - the personal circumstances of the appellant, in particular his youth and that he is a first offender and; the

circumstances of the offence, in particular that, although a fire-arm was used, no physical injuries were sustained; and that the stolen goods were recovered. Failure by the learned regional magistrate to have regard to the cumulative effect of these factors constitutes, in my view, material misdirection.

[6] This court is therefore at large to interfere with the sentence and impose what it considers to be a suitable sentence in the

circumstances. In my view, taking into account the totality of factors, 8 years’ imprisonment would satisfy the aims of punishment, be fair to society and the appellant, in the sense that he would be given an opportunity for rehabilitation during a shorter period of incarceration. The sentences imposed in respect of counts 2 and 3 should be ordered to run concurrently with the sentence in count 1.

[7] In the result I make the following order:

- (a) the appeal against sentence is upheld.
- (b) the sentence of 15 years imprisonment on count 1 is set aside;
- (c) there is substituted for it a sentence of imprisonment for a term of 8 years;
- (d) the sentences imposed in respect of counts 2 and 3 are confirmed;
- (e) the sentences imposed in respect of counts 2 and 3 are ordered to run concurrently with the 8 years’ imprisonment in respect of count 1;
- (f) the substituted sentences are antedated to the 29th i\iovemberf/2007.

K. MANAMELA

(ACTING JUDGE OF THE HIGH COURT)

I agree

T.M. MAKGOKA

(JUDGE OF THE HIGH COURT)

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