

SOUTH AFRICA / JUDGMENT

Riegert v S (CA&R67/15) [2017] ZANCHC 39 (5 May 2017)

[2017] ZANCHC 39

COURT

Northern Cape High Court, Kimberley

BEFORE

Williams, Lever

CASE / FILE NUMBER

CA&R67/15

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IN

THE HIGH COURT OF SOUTH AFRICA

(NORTHERN

CAPE HIGH COURT, KIMBERLEY)

CASE

NO.: CA&R 67115

Matter

heard: 06-02-2017

Delivered:

05-05-2017

In

the Appeal of:

ABRAHAM

RIEGERT Appellant

And

THE

STATE Respondent

WILLIAMS

J et LEVER AJ

JUDGMENT**WILLIAMS J:**

1. The appellant, Mr Abraham Riegert was convicted on 23 June 2015, in the Regional Court held at Fraserburg, of murder, read with the provisions of section 51(2) of Act 105 of 1997 (the Act). He was thereafter sentenced to 15 years imprisonment. This appeal lies only against the sentence imposed.
2. The appellant, who was initially charged with murder, read with the provisions of section 51(1) of the Act, pleaded guilty to murder, read with the provisions of section 51(2) of the Act on the basis that the offence was not planned or premeditated. The state refused to accept the plea and proceeded to adduce evidence in an attempt to prove planned or premeditated murder. The court a quo however held that there was no credible evidence upon which a finding of planned or premeditated murder could be made and convicted

the appellant of murder read with sec 51(2) of the Act and sentenced him to the minimum prescribed sentence of 15 years imprisonment.

3. The only issue to be decided on appeal is whether the court a quo misdirected itself in finding that no substantial and compelling circumstances existed which justified a deviation from the prescribed

minimum sentence.

4. The relevant facts in this matter are the following:

4.1 The deceased was the stepfather of the appellant. It appears to be widely known that the two did not have a good relationship due to the appellant's behavioural problems and that the relationship further deteriorated after the appellant's mother died during 2012.

4.2 As a result of the bad relationship between the deceased and the appellant the deceased would not allow the appellant to stay in the parental home.

4.3 The appellant, who at 27 years of age has an impressive list of previous convictions five thereof for housebreaking with the intent to steal and theft, four for theft and one for housebreaking with the intent to rape and rape - therefore after his last release from prison resorted to living on the local dumping site.

4.4 On the night in question, which was apparently particularly cold, the appellant proceeded to his parental home to ask for shelter. When the deceased refused, the appellant hit him over the head multiple times with a spade. The medical evidence is that the deceased died of head injuries caused by blunt force trauma consistent with being hit repeatedly with a large amount of force.

4.5 The appellant then covered the body of the deceased with plastic bags and clothing, attempted to clean up the blood from the scene and proceeded to live in the house with the deceased's body for two days before he told one of the state witnesses that he had killed his stepfather.

5. The court a quo had regard to the nature of the offence, the personal circumstances of the appellant and the interests of the community and in my view correctly found no substantial and compelling circumstances to exist. The appellant has proved himself to be a repeat offender and a danger to society with little prospect of rehabilitation. Mr Nel who appeared for the appellant, correctly conceded that the court a quo made no material misdirections nor can the sentence be described as startlingly disproportionate or harsh.

In the circumstances the following order is made:

The appeal against the sentence imposed is dismissed.

CC WILLIAMS

JUDGE

I concur

LLEVER

ACTING JUDGE

For Appellant: Adv Van Zyl Nel

Legal Aid SA

For Respondent: Adv Q Hollander

Office of the OPP

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