

SOUTH AFRICA / JUDGMENT

S v Basson and Another (Sentence) (CC67/2020) [2025] ZAWCHC 194 (30 April 2025) [2025] ZAWCHC 194

COURT

Western Cape High Court, Cape Town

BEFORE

Da Silva Salie

CASE / FILE NUMBER

CC67/2020

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Policy**IN**

**THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE
DIVISION, CAPE TOWN)**

Case**number: CC67/2020****In the matter between:**

THE STATE
versus
EBEN
BASSON
Accused 1
CHIVARGO
FREDERICKS
Accused 2
Coram
:
Da Silva Salie, J
Written Judgment
delivered
:

30 April 2025
Counsel for the
State
:
Adv. J Ryneveld
Counsel for Accused
1
:
Adv. C Viljoen
Counsel for Accused
2
:
Adv. M Sebueng

JUDGMENT

DELIVERED ON WEDNESDAY, 30 APRIL 2025

DA SILVA SALIE, J

[1] This is the sentencing proceedings of the two accused before this Court for the murder of Ms. E[...] S[...], a 7 year old child and other charges preferred against Accused 1 and Accused 2. This is my judgment on sentence following the convictions handed down on 10 February 2025. No evidence was led in mitigation or aggravation. The accused's legal representatives made ex parte statements on their behalf. Counsel for the State also made ex parte submissions and 5 victim impact statements were placed before the Court deposed to by the minor brother of the deceased, both her parents and her two grandfathers.

E[...] had been playing outside of her home in Libra Road, Ocean View when she was shot and killed on 25 February 2020. She collapsed outside of her home as she was fleeing from hailing bullets which were fired from both sides of the road by you, Mr Basson on the cul de sac side and you, Mr. Fredericks from the opposite side of the road c/o Libra and Aquarius Roads. The Court also convicted you of attempted murder charges (Counts 4-7) for the attempted murder of the target of your shooting, Mr Anees Davis as well as 3 others whom had escaped your gunshots, namely, Mr. Marco Simon, Mr. Michael Daniels and Mr. Oscar Daniels. In respect of count 9 and count 10 you were both convicted of the charges in relation to the possession of an unlicensed firearm and unlawful possession of ammunition.

[2] Mr. Basson and Mr Fredericks, you stand before this Court today for an appropriate sentence to be meted out against you for the crimes you had committed and in respect of which this Court had found you guilty.

- [3] Submissions were made by your respective counsel in mitigation of sentence which basically means that they highlighted factors which they consider as reasons for me to impose a lesser sentence on you. Counsel for the State on the other hand, as you would have heard, pointed out factors which to the State are indicative for me to impose the prescribed sentence of life imprisonment in respect of the murder of E[...] and the harshest sentences for the remaining convictions.
- [4] Now is the time for me to meet out an appropriate sentence for each of you. I do so by explaining what goes through the mind of a presiding judge when considering and imposing sentence.
- [5] The Court in deciding upon an appropriate sentence takes into account the triad as was set out in *S v Zinn* [1969] (2) SA 537 (A) which established the fundamental principle in our law of the 3 factors which must be taken into account when determining a just and equitable sentence. The triad can be understood to be like a triangle with three corners: each corner representing a specific interest in the process of considering punishment:
- [6] These three factors are:
- i. The offender – that being the person who committed the criminal offence/s in question and to that extent your personal circumstances are taken into account.
 - ii. The crime committed – including the seriousness and nature of the crime.
 - iii. Thirdly, the Court must consider the interest of society and the need to protect our communities from the type of crimes in respect of which you had been convicted.
- [7] The legislature or otherwise known as the lawmakers have recognized that certain serious crimes must be met with a minimum or prescribed sentence. The count of murder in respect of which you had been convicted attracts a life sentence in that the offence was committed by you as a group of persons or syndicate acting in the execution or furtherance of a common purpose or conspiracy. The attempted murder charges each attract a sentence which I consider appropriate in the circumstances. The respective convictions of possession of an unlicensed firearm and unlawful ammunition can warrant the imposition of a term of up to 15 years.
- [8] As your counsel, Adv Viljoen and Adv Sebueng, would have informed you and as per the caution which had been explained to you at the time you were asked to plead to the charges which had been preferred against you, you have been informed that the offence of murder attracts a prescribed minimum sentence of life imprisonment if found guilty and that it becomes a mandatory sentence. This means that the Court must meet out a life sentence as a punishment given that you had now been convicted as charged of the murder. Similarly the prescribed sentence applies to the unlicensed firearm convictions. It is trite law however that only if a Court is satisfied that substantial and compelling circumstances exist which justify the imposition of a lesser sentence, the Court may impose a lesser sentence and in

this case, sentence you to a lesser sentence than life imprisonment in respect of the charge of murder and so too in respect of the so-called fire-arm and ammunition convictions. Those factors must be carefully assessed and weighed into the totality of the relevant facts of the matter. To this extent I am guided by the leading authorities in relation to the laws on minimum sentences as were set out in the oft quoted decisions such as *S v Malgas* [2001 SCA] and *S v Vilikazi* [2012 SCA] In essence these aforementioned cases set out the principle that whilst I am empowered to deviate from the imposition of life imprisonment and so too the prescribed sentence of up to 15 years in respect of the unlicensed fire arm charges, I cannot do so for flimsy reasons and I cannot lightly depart from same. I need to be satisfied that the imposition of such a sentence would not be disproportionate in the circumstances, and I must likewise be satisfied that the factors warranting a lesser sentence is of such a nature that it compels and justifies the departure of the prescribed sentence which I have referred to earlier.

- [9] In the aforesaid process the Court must remain mindful of the objectives of sentencing which are the following: retribution, deterrence, rehabilitation and restitution. The appropriate weight to attach to each objective will differ from case to case depending on the prevailing facts and circumstances of each matter. Retribution is as per the meaning of the word: to impose a punishment as a penalty for the wrong you had committed. Deterrence which is also an objective of sentencing, serves not only to deter you from repeating unlawful behavior but also deters other would-be offenders. Rehabilitation is the appreciation and recognition that you as wrongdoers can repent and reform your conduct and strive to become law abiding citizens in the future as responsible members of society. Lastly, restitution is aimed to protect our community from you and harmful and unlawful actions being perpetuated against our community. Mercy is an important consideration in the course of determining an appropriate punishment. I pause to add that a sentencing Court must also guard against handing down punishment in anger.
- [10] I will now apply the aforesaid discussion of the various legal principles to the facts and circumstances of this matter and explain how and why I impose the sentence upon you to which I have come.

YOUR PERSONAL CIRCUMSTANCES:

- [11] Accused number 1, Mr. Basson, I will start with you first. Your counsel addressed me in respect of your personal circumstances in so doing submitted those factors which I need to keep in mind to arrive at a proportionate and just sentence. In other words, these are facts which justify a lesser sentence and in particular for me to deviate from the prescribed sentences which I have discussed above. I have considered that you have been raised in an area rife with hardships and gangsterism. When you committed these offences on 25 February 2020, you were still relatively young, and today, at the age of 31 you still have a measure of youthfulness on your side. You appear before this Court for sentencing as a first offender.

You have been in custody since February 2020 pending finalization of these proceedings, that being a period to date of approximately 5 years. During this time, your partner, Ms. Tammy Mostert who was pregnant at the time of the commission of these crimes had given birth to your daughter whilst you had been in custody. Ms Mostert, who testified before this Court, is the primary carer of your daughter and is gainfully employed.

- [12] Accused number 2, Mr. Fredericks, you hail from a similar background as that of your co-accused, you have no previous convictions and thus stand before this Court as a first offender. Born in 2000, you were almost 20 at the time of the offence and 5 years later, you are now 25. You are by all accounts still a young man. Like that of Mr. Basson, the Court considers that you have been in custody for a period of approximately 5 years from the date of your arrest pending the finalization of this matter.
- [13] I have also considered the pre-sentencing reports prepared recently dated 31 March 2025 by the Department of Social Development for each of you after consultation conducted with you and with certain of your family members or collateral sources of information. I need not repeat the contents thereof, same have been noted and taken into account particularly so where it relates to your personal circumstances and other relevant considerations as set out therein. It is significant that neither of you have displayed remorse for the crimes you have committed. Had you expressed any contrition for your actions, I would have taken that into account as a mitigatory factor and to impose a lesser sentence. However, you did not do so and in fact no such submission had been placed before the Court on your behalf. Mr. Basson, in your case, this is evidently so as you stood by your position that you are a victim of a manipulated justice system, and that you have no sympathy for your victim, the late 7 year old E[...], nor her family and their grief and that in fact you are suffering as the victim. The position in this regard is similar for you, Mr. Fredericks, who has not displayed any remorse or sympathy for the family of E[...] who had lost their child and sister. I hasten to add that had either of you displayed genuine remorse for the crimes and loss of life you had caused it could have been considered as a factor in mitigation of your sentence, however the converse does not apply. Your lack of remorse or refusal to take accountability for your unlawful actions and its consequences does not amount to an aggravating factor in the imposition of an appropriate sentence. In other words, your sentence cannot be increased for lack of remorse or accountability.

NATURE OF THE CRIME:

- [14] Turning to the crimes which you have committed, it is a starkly and shocking feature of the offences that it had been committed in a place and space which ought to be a safe area for the residents, being their home and play area. These children and the adults on that fateful day were going about their daily affairs. E[...] was just an innocent child, who played with other children after school and before preparing for bathtime, dinner and bed. The facts of this matter illustrate that you were not only indifferent to their presence, but I consider it significant that these children were not one of your own so to speak. The facts accepted by this Court are that they were children of the road and the shooting did not risk any of your

children or loved ones. The chance that any one of them could get harmed or killed was a factor clearly prevailed in your minds when you decided to launch this lethal and brazen attack. An injury or death of these children, albeit they were not the main target, would in any event facilitate the rival warfare between your gang and that of the territorial gang as the residents would be less tolerant of the presence of the Taylor Gang in this area thereafter. It is quite evident that you were alive to this. It is a most disturbing feature of this offences that it was done with this children caught in the middle of these

gunshots, with these young and vulnerable children having to run for protection. E[...] was shot in her back as she ran to the safety of her home and that of her mother. The bullet exited through her chest and another gunshot hit her hand. She fell to the ground in her garden. She was playing with her friends in an area which you decided to make your shooting range and battlefield. An act which lacks and defies basic humanity.

[15] The photographs also depict what her loved ones had to face and must come to terms with: that being her body lying fatally wounded on the ground, blood oozing from her young and lifeless body. You both had time to reconsider and reflect on what you had planned to do that day. You had time to refrain from your conduct. You saw the children playing in the road. Even during the shooting, you had time to stop and hold your fire. Yet, you mercilessly continued to rain bullets over these children.

[16] This Court heard and read the sentiments which E[...]’s brother (10 years old at the time of her passing, now 15) had endured with her death. He suffers daily, haunted by flashbacks, missing his sister and robbed of the joy of having his sister grow up and old with him and their other sibling. E[...] had an infectious laugh he stated, she had unwavering kindness, and she had shone a light to their family. The grief and loss stated by her mother, her father, both her grandfathers gave this Court a very clear indication of the loss they have suffered and how they continue to mourn her death and the cruel manner in which she has been executed. This family remain in anguish and anxiety and they continue to experience immeasurable pain as they come to live without E[...] and cope with her savage murder. They have to accept that their child had

been brutally robbed of her life and dreams. She had a flair for fashion and beauty, she had dreams of being a beautician, she showed the talent for being a successful businesswomen in the beauty and fashion industry. She also did not get to fulfil her other wishes, having a family and children of her own. This family and the community’s star had fallen. Your unlawful conduct has caused them a permanent loss with this traumatic event and consequences continuing to haunt them and the community.

This is indeed aggravating in the determination of an appropriate sentence. The emotional devastation caused to this child’s

parents, grandparents, siblings and community is glaring and devastating. The collective trauma inflicted on the community,

particularly where children can no longer feel safe is aggravating. The shooting of a child, particularly in a public place in broad daylight, reflects extreme callousness and cruelty on your part with complete disregard for the sanctity of life. Gang related shootings are also an aggravating circumstance as it endangers the public and undermines the rule of law. The crime does not only kill an innocent child but also instills ongoing fear and terror in the community, making ordinary life unsafe.

[17] This crime represents one of the most disturbing and devastating acts of violence to come before it. A seven-year-old child, innocent, unarmed and engaged in the most ordinary of childhood pursuits, playing outside after school. She was entirely incapable of protecting herself. Her death, under such a violent circumstance, is an egregious breach of her right to life, safety and dignity. This space in the cul de sac, with blocks marked to facilitate their ballgames and playing, should be considered a space which is sacrosanct, particularly for the children. The use of semi-automatic firearms in a densely populated street further compounds the complete disregard of your vicious acts. Gang related shootings for drug and turf control amounts to domestic terrorism in its most destructive form, shattering families and robbing communities of a peaceful life in their residential areas and hope for a better future. The lives of those who have been affected have been irreversibly altered. The grief they carry, the trauma experienced, and the psychological scars inflicted on them as set out in the Victim Impact Statements by her loved ones are relevant in this consideration of an appropriate sentence along with other factors.

THE INTEREST OF SOCIETY

[18] Society demands that brutal murders such as these must be dealt with very seriously. These sentiments also apply to the possession of unlicensed firearms and unlawful possession of firearms which causes the continued spiral of our country to greater depths of violence and crime. The Court has a duty to protect innocent people from being murdered by imposing long term prison sentences. Failing that, the community will lose faith in the Courts and our country's judicial system. This event is tragic to say the least and yet it has become a common occurrence in our communities.

[19] The broader community impact cannot be ignored. The evidence before this Court is that the residents of this area have been left reeling, fearful and angry. Children are no longer safe to play in their own streets. It is the Court's duty to signal, through sentencing, that such conduct will be met with the full weight of the law.

FINAL

ANALYSIS:

[20] From the discussion above, the factors submitted to be sufficient to justify a departure from the prescribed sentence of life imprisonment must be considered collectively and not in isolation. I need to weigh this against each other to consider what would be a just and appropriate sentence. Relative youth, being a first offender and incarceration time when dealing with a life sentence is not a guaranteed factor to amount to a substantial and compelling circumstance warranting a deviation from a life sentence.

[21] Whilst it was argued on behalf of counsel that the accused both illustrate relative youth, it was not the case that evidence had been placed before me that your background, level of intelligence and mental capacity was of such a nature that your respective ages can be suggestive of reduced blameworthiness. In *S v Matyityi* [2011]

(1) SACR 40 (SCA) at para 11 the Court held that:

“This whilst someone under the age of 18 years is to be regarded as naturally immature, the same does not hold true for an adult.

In my view a person of 20 years of more must show by acceptable evidence that he was immature to such an extent that his immaturity

can operate as a mitigating factor.”

[22] The evidence of this case illustrates to the contrary that both accused had capably planned the ambush, with a well-orchestrated plan and ambush attack tactics, illustrating your advance intellect and intuitiveness, capacity to have insight and foresight. There is certainly no lack of maturity in those actions.

[23] As regards the time spent in custody, the test is not whether on its own the period of detention constitute a substantial and compelling circumstance to depart from the life sentence but rather whether the sentence proposed by the State (that being the imposition of the prescribed sentence of life) is proportionate to the crimes committed. It is trite law that pre-sentencing incarceration is but one of the factors to take into consideration when determining the existence of circumstances which are substantial and compelling to deviate from a life sentence. A Court cannot approach a factor submitted as a mitigating factor such as time spent in custody on a piecemeal basis to consider departure nor is deducting the period from the proposed sentence permissible as a standalone factor. In *S v Kammies* [2019] ZAECPHC 86 paras 34 – 49 this approach presents conceptual difficulty when life imprisonment is the prescribed sentence. There is no rational way in which to take the pre-sentencing detention into account. The answer is not a mere calculation by deducting the incarceration time from a

life sentence. These factors though need be considered as a whole.

- [24] As regards both accused standing before this Court as first offenders, I need emphasise that Section 51(1) unlike Section 51(2) does not differentiate between first and multiple or repeat offenders. The fact that the accused is a first offender may, in combination with other factors, lead a Court to the conclusion that the prescribed sentence of life would be disproportionate however this factor must be considered cumulatively and holistically with all prevailing factors and evidence.
- [25] The aggravating features of this offence hardly need to be emphasized. Notwithstanding the fact that no evidence had been placed before me that the accused at 25 years (Accused 1) and 19 and 11 months (Accused 2) lacked maturity, I am though satisfied that together with other mitigatory factors such as time awaiting trial and being a first offender would make a life sentence for the murder disproportionate and that a sentence of 22 years would be just and equitable. In my considered view the four (4) attempted murder charges warrant a sentence of 5 years each to run concurrently. The convictions in respect of possession of the unlicensed firearm and unlawful possession of ammunition warrant the imposition of a sentence of 8 and 3 years each, both sentences to run concurrently with each other.

CONCLUSION:

[26] I thus impose the following sentence upon both accused 1 and 2:

(a) Count 3 – murder:

The accused is sentenced to 22 years direct imprisonment.

(b) Counts 4 to 7 – attempted murder:

The accused is sentenced to 5 years direct imprisonment ordered to run concurrently.

(c) Count 9 and 10 – Possession of an unlicensed firearm and unlawful possession of ammunition:

The accused is sentenced to 8 years in respect of count 9 and 3 years in respect of count 10. The sentences in respect of count 9 and 10 are ordered to run concurrently, resulting in an effective 8 years' imprisonment for both these counts.

(d) It is further ordered that the sentences in respect of count 3 shall run consecutively with the sentences imposed in respect of counts 4-7 and 9 and 10 resulting in an effective period of 35 years direct imprisonment.

(e) In terms of section 103(1) of the Firearms Control Act 60 of 2000 both accused are declared unfit to possess a firearm.

DA SILVA SALIE, J

JUDGE OF THE HIGH COURT

WESTERN CAPE

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