

SOUTH AFRICA / JUDGMENT

S v Bezuidenhout (Sentence) (CC10/2023) [2024] ZAWCHC 344 (4 October 2024)

[2024] ZAWCHC 344**COURT**

Western Cape High Court, Cape Town

BEFORE

Gamble

CASE / FILE NUMBER

CC10/2023

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IN THE HIGH COURT OF SOUTH AFRICA

EASTERN CIRCUIT LOCAL DIVISION, KNYSNA

CASE NO: CC10/2023

DATE: 2024.10.04

In the matter between

THE STATE

and

WAYDON BEZUIDENHOUT

Accused

SENTENCE

GAMBLE, J:

INTRODUCTION

1. When a Court hands down sentence in criminal proceedings it to achieve a number of ends. The particular accused must be punished for the crimes he has committed, and in that sense, the sentences serve as retribution for the wrongs visited by him on the members of society directly affected by the crimes of which he has been convicted.

2. In addition, the sentence must serve as a deterrent for that individual offender to dissuade him from offending again, and also more generally, for other likeminded persons who may be considering going down the same path. In appropriate cases the Court's sentence must take into account the prospect for rehabilitation of the offender and for his reformation upon release from prison.
3. In seeking to achieve these purposes the Court must have regard to the so-called triad approach, which takes into account the three fundamentals of any just sentence: consideration of the crimes involved, the interests of society, and the personal circumstances of the accused concerned. See *S v Zinn* 1969(2) SA 537 (A).
4. All of these considerations must be blended with an element of mercy or compassion, having regard to the innate weakness of all human beings. Lastly, the Court must take into account the cumulative effect of the sentences it will impose in order that they do not have a crushing effect on the offender.
5. In this case, the State gave notice at the commencement of the proceedings that it intended asking the Court to impose the minimum sentence which the legislature deemed appropriate when it passed the Criminal Law Amendment Act 105 of 1997, ("the minimum sentencing legislation"). In terms of Section 51 of that Act, read with the relevant schedules, the minimum sentence applicable in this matter is life imprisonment in respect of the murder conviction on count 2.
6. During his address on sentence, Mr Badenhorst that the State persisted with its request that the Court consider adhering to the minimum sentence. The conviction on the murder count attracts a minimum sentence of life imprisonment under Part 1 of Schedule 2 to the minimum sentencing legislation, because –

"(a) it was planned or premeditated, and...

(d) the offence was committed by a person, group of persons or syndicate acting in the execution or furtherance of a common purpose or conspiracy."
7. Mr Badenhorst asked that the minimum sentence of five years be imposed on the kidnapping conviction on count 1 under Part 4 of Schedule 2, because, he argued, the accused used a firearm in the commission of the offence. But that is not correct. The Court found that the accused's version that a firearm was used to escort the deceased to the car at 5:00 in the morning was not reasonably possibly true. On Wandu's version regarding the abduction around 22:30, there was no firearm involved.
8. The minimum sentencing legislation was introduced by Parliament in 1997 as an interim response to the extraordinarily high levels of crime which pervaded our young democracy at the time. And yet more than 27 years on the levels of serious and violent crime have not abated. The opposite is rather the reality which we all face on a daily basis. Rampant crime in public places, at the workplace, and in our homes, as was the case here. And more recently there has been a surge in cases of kidnapping and extortion. The courts are

therefore bound to have regard to what Parliament has determined as appropriate sentences in the prevailing circumstances.

9. The minimum sentencing legislation obliges a Court to impose the prescribed statutory minimum, and it is only entitled to deviate therefrom if it is satisfied that there are substantial and compelling circumstances present which warrant a deviation from what is regarded as the sentence which should ordinarily be imposed. In the result, the minimum sentencing legislation shifts the emphasis to the objective gravity of the offence concerned and the public's need for effective sanctions against it. See *S v Malgas* 2001(1) SACR 469 SCA.

10. The Court in *Malgas* at paragraph 25 made it clear that:

"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 or for flimsy reasons. Speculative hypotheses favourable to the offender, undue sympathy, aversion to imprisoning first offenders, and personal doubts as to the efficacy of the policy underlying the legislation...are to be excluded.

E. The legislature has, however, deliberately left it to the Courts to decide whether the circumstances of any particular case call for a departure from the prescribed sentence. While the emphasis has shifted to the objective gravity of the type of crime and the need for effective sanctions against it this does not mean that all other considerations are to be ignored.

F. All factors other than those set out in D above traditionally taken into account in sentencing, whether or not they diminish moral guilt, thus continue to play a role. None is excluded at the outset from consideration in the sentencing process.

G. The ultimate yardstick of all the circumstances relevant to sentencing must be measured against the composite yardstick ("substantial

and compelling") and must be such as cumulatively justify a departure from the standardised response that the legislature has ordained."

Against that background I turn to the specifics of this case:

THE ACCUSED

11. Mr Waydon Bezuidenhout is 32 years old and a first offender. He is married, with one child from that marriage, and four other children by other mothers. The status of his relationship with those other children is not known. At the time of his arrest the accused conducted the funeral parlour business referred to in the main judgment and had also procured a tender to install fibre cables for Wi-Fi in Knysna. He has been in custody for just over two years, awaiting trial.

12. Ms Luterek called the accused's father, Mr Willem Bezuidenhout, to address the Court in mitigation. This was at the express request of Mr Bezuidenhout Senior. The accused's father is an upstanding retired person who has faithfully attended court every day to support his younger son. The Court noted that Mr Bezuidenhout Senior was always formally dressed, as a sign of respect to the court proceedings. The Court commends him for that. Other members of the accused's family have also regularly attended court to support him.
13. Unfortunately, Mr Bezuidenhout Senior was excluded from the Court when his son gave evidence in camera and was therefore not privy to his son's admissions of involvement in the local drug underworld and of his adultery with a teenager in high school. But perhaps that was a blessing in disguise, for I am sure it would have pained him greatly.
14. Mr Bezuidenhout Senior made an address to the Court and those in the public gallery who were here to support the Kondlo family, and he made that address on behalf of the Bezuidenhout family, expressing their deep regret at the pain and suffering that the death of the deceased has occasioned the Kondlo family. It was a heartfelt demonstration of regret by the head of the family, which the Court accepts as genuine.
15. In addition, Ms Luterek handed up a handwritten letter from the accused, EXHIBIT VV, in which he expressed sympathy with the deceased's family and asked for forgiveness. He maintains that he still fears for his life, having spoken out at last. Perhaps the Kondlo family would have preferred to have heard those words directly from the accused in the witness box where he could be cross-examined. But rather he chose to do so from the dock, as is his right. I will accept that there has a measure of remorse expressed by the accused.

THE FAMILY OF THE DECEASED

16. The State handed up four victim impact reports written by Ms Kondlo and the three children. The reports were drafted in March 2023 and so the Court does not know what the current position is as far as the psychological harm the family has suffered, is concerned. The Court can only hope that the counselling the family has received has helped in some small way to alleviate the pain and hurt they have all experienced. The Court repeats that it was very impressed with Wandu and Umtha when they gave evidence and hopes they make a success of their school careers and beyond, in honour of their late father.
17. The statements by the children in particular are heartbreaking to read. They all adored their father very much and looked up to him with great admiration. He was their role model and confidant. He was a good man and an important member of his society, who did not deserve to die young, and certainly not in such a brutal manner. Now they have no-one in his place. It is clear that this event has caused the children psychological harm and trauma and the Court can only hope that the consequences thereof do not affect them unduly as they grow older.

18. There are truly no winners in a situation such as this. The accused leaves behind a wife and a young child, who will also have to bear the consequences of his criminal conduct and unfaithfulness of which she has only recently become aware. It is the Court's sincere wish that the families, who are all faith-based people, will find it in themselves to reach out to one another and begin the process of healing. Perhaps Mr Bezuidenhout Senior, you can start that process by putting your heartfelt words in the witness box into deeds? I leave it in your hands.

THE CRIMES

19. I agree with the State that this was a most horrific premeditated crime. For a reason we still do not know, an upstanding member of the Knysna community was taken from the sanctuary of a home which he had proudly built up into a business, held hostage, probably tortured, and eventually brutally attacked, suffocated and murdered.
20. According to the accused's evidence the plan was hatched more than three weeks before and he was given an unlicensed firearm to do the job because the deceased was his friend and he would thus be able to get close to him easily. The fact that the accused went to collect a firearm on the Saturday morning when he and the deceased drove through to The Craggs, suggests that he was contemplating doing the job then, but we really do not know.
21. But imagine the shock of the deceased on the Saturday night when he saw that the man he affectionately called "Master" was part of the plot to abduct him. And, imagine his fear and horror at the Denron scene when he saw that the deceased was back to participate in the attack which ended his life. It was a complete and utter betrayal of the trust he had in the accused. Like Julius Ceasar he might have thought "et tu Brute."
22. The accused had ample opportunities to secretly caution the deceased of the impending attack and afford him an opportunity to avoid it, but he did not do so. Rather, he abused the trust the deceased placed in him and allowed him to fall prey to his attackers in his own home. And importantly, the accused was there when the deceased was abducted and would have known of his desperate call to Umtha, yet he did nothing. Perhaps he was powerless to do anything at that stage because the abductors were operating in concert with each other and it would have compromised his own safety if he had broken ranks. But, that is how criminal gangs operate: once you are in, there is no way out.
23. But the accused walked into this with open eyes. It was he who went to Ali and asked to become a member of their underworld syndicate. No-one forced him to join in. And he must have been aware of the risks he was taking on at that stage already. After all, as he said he knew that these were violent men who part of the local underworld who resorted to extortion and the like.

24. Similarly, no-one forced him to go to the deceased's house that night, because as the accused claims, Mavusi had lost faith in his ability to get rid of the deceased and had arranged for an assassin to come down from Port Elizabeth. The movement of the Mali phone confirms that there was a movement of one or more person from PE to Knysna and back that weekend and that that phone was in the deceased's house.
25. The accused could have avoided going to the house that night. He is good at making excuses and hoodwinking people, and he might even have arranged a flat tyre or the like which could have legitimately kept him away from 147 Mbethane Street. But he did nothing of the sort. He went to the house and actively participated in stealthily luring the deceased out of the house, thereafter leaving him in the hands of others while he went off and danced the night away.
26. Having allegedly dropped his wife off at home after a night on the town, at 5:00 in the morning the accused went to the deceased's house. And when the children told him he was not there, he rushed through to the Denron scene, where the deceased was brutally assaulted. He stayed there for almost 20 minutes before setting off back down the R339, where he stopped at the Gadafi store, probably to buy insulation tape and a bag to cover the deceased's head. From there he went down to the N2 and after making a U-turn rushed back to the drop scene. It is likely that the accused was not alone at that stage as he needed someone to help him get the body in and out of the X-Trail.
27. The fact that the accused only idled for two minutes at the drop scene suggests that the deceased had already been bound up at the Denron scene and was ready to be dumped. Then the accused drove up and down the Bokkoppie Road passing the body scene on another two occasions. That could only be because he wanted to make sure that the deceased was not moving.
28. Once again, it was open to the accused to avoid having to drive to the Denron scene. Surely his presence was not required if Mavusi procured a hitman who was armed? The fact that the accused persisted in driving on to the Denron scene clearly suggests that he intended to be there. Just why he had to be there we will never know because the accused has still not taken the Court into his confidence and explained the reason for this senseless killing.
29. For these reasons I am of the view that the accused's moral blameworthiness in relation to the kidnapping and the murder is at a very high level. But it did not stop there. After he had dropped the deceased he went back to the house and duped the children into believing that their father was still alive by asking them whether he was at home, when in fact he knew very well that he had just dumped him the forest and left him for dead. How callous can a person be? And that attitude persisted in the days thereafter when the accused lied to, and misled, both Mrs Kondlo and the police and the children, doing his level best to keep the police away from the car.

THE INTERESTS OF SOCIETY

30. Murder is rife in our society and the daily crime statistics that one reads about in the media are truly staggering. Assassinations are now common place all over the country. Ordinary people going about their daily work and chores are sick and tired of the level of violence that pervades our society and they look to the courts for protection. And if the courts fail them, they take the law into their own hands and society descends further into lawlessness.
31. It is thus important that the courts do what they can to look after the interests of society as best they can. Kidnapping in particular has become rife of late. The prosecutor submitted crime statistics that show that for the period July 2023 to September 2024 there have been 4 300 reported cases of kidnapping. That figure is truly worrying.
32. As far as the obstruction of the administration of justice is concerned, the delays caused and the extra work which the police must do when they are obstructed in the course of their duties comes at a price for the public purse. The law-abiding public demands that crimes be investigated without hinderance and perpetrators brought to book as soon as possible.

SUBSTANTIAL AND COMPELLING CIRCUMSTANCES

33. The minimum sentencing legislation requires that the Court consider the entire factual matrix of the case and determine whether there are circumstances which, when considered cumulatively, are serious enough to avoid the imposition of a sentence which the legislature has directed should be imposed in these circumstances. These must be truly convincing circumstances of substance, and not flimsy reasons. Ms Luterek suggested in this regard that the accused was relatively young and could benefit from corrective programmes in prison. With the latter I agree. But the accused is hardly young at 34 years old. He is a mature adult who ran his own business and served the community as an undertaker, which is no easy task. His age is not a mitigating factor.
34. Then Ms Luterek said that the accused had spent two years as an awaiting trial prisoner. It is a regrettable aspect of our criminal justice system that there are delays in getting matters into court. That is because our court rolls are overloaded and cases take time. This case has taken seven weeks to bring to finality. The protraction of this case may well have been arrested earlier if the accused played open cards with the police and the Court. In the circumstances of this case therefore I do not consider the awaiting trial period to be a compelling reason to avoid the mandatory sentence.
35. Ms Luterek said that the accused continues to be subjected to threats by his henchmen. Of that I have little doubt. When one member of a gang falls foul of the law the rest will certainly do their best to ensure that they are not ratted out. But that is now, and I have found that the accused did not commit these crimes because he was threatened by others at the time. The threats that he has received are after the event and they are not a factor that led to the commission of the offence. They should therefore not be considered as a compelling reason to avoid the mandatory sentence.

36. The fact that the accused was not present throughout the detention of the deceased might, in appropriate circumstances, be said to reduce a person's moral blameworthiness. But here, his involvement at the beginning and at the end of the escapade are, as I have already said, significant and carry a high degree of moral blameworthiness. It is not a factor to avoid the mandated sentence.
37. Lastly, there is the evidence that the accused drank regularly that night. But in his evidence he never raised this as a factor for consideration. Rather, he bragged about it. It was he who told his fellow criminals that he might need a little Dutch courage to do the job. But his actions that night were rational and goal-directed. His consumption of alcohol is thus not a substantial and compelling reason to avoid the designated punishment.
38. Sentencing is not an easy task for a judicial officer. One has another fellow human being's future in one's hands; but that is what the criminal process requires to be done, and it must be done. I have thought long and hard about this matter, but I am unable to find any substantial or compelling reason to deviate from what the minimum sentencing legislation requires me to do.

THE SENTENCES OF THE COURT ARE AS FOLLOWS:

COUNT 1 - KIDNAPPING:

FIVE (5) YEARS IMPRISONMENT.

COUNT 2 - MURDER:

LIFE IMPRISONMENT

COUNT 3 - DEFEATING OR OBSTRUCTING THE ADMINISTRATION OF JUSTICE:

TWELVE

(12) MONTHS' IMPRISONMENT.

IN TERMS OF SECTION 39 OF THE CORRECTIONAL SERVICES ACT 111 OF 1998 THE SENTENCES ON COUNTS 1 AND 3 WILL RUN CONCURRENTLY WITH THE SENTENCE OF LIFE IMPRISONMENT.

GAMBLE, J

JUDGE OF THE HIGH COURT

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