

SOUTH AFRICA / JUDGMENT

S v Blignault (CC20/2018) [2018] ZAECPEHC 57 (19 September 2018) [2018] ZAECPEHC 57

COURT

Eastern Cape High Court, Port Elizabeth

BEFORE

Chetty

CASE / FILE NUMBER

CC 20/2018

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IN

THE HIGH COURT OF SOUTH AFRICA

(EASTERN

CAPE LOCAL DIVISION, PORT ELIZABETH)

In

the matter

between:

Case No: CC 20/2018

THE

STATE

And

MORNE

BLIGNAULT

Coram:

Chetty J

Heard:

12 September 2018

Delivered:

19 September 2018

JUDGMENT

Chetty J:

- [1] The unearthing of a veritable hoard of abalone in a nondescript shed on the small holding, Oliphant's Kop farm by Warrant Office Leon Martin Eksteen (Eksteen), on 11 August 2017 led, in time, to the arrest of nine persons and spawned five separate criminal trials over the past two years which ultimately unmasked the accused as the arch villain in the widespread plunder of abalone from our coastal waters. His management in the operation and activities of the poaching enterprise was, notwithstanding the arrest of Messrs Zhenyong, Kekun and Kilian on 11 August 2014, only finally revealed when Kilian deposed to a written statement to the police on 28 April 2015 wherein he chronicled the accused's direct managerial participation in the enterprise's pattern of racketeering activities.
- [2] His evidence established that The Gables in Kruisrivier Road on the outskirts of Uitenhage, No. 34 King Edward Street, Newton Park and No. 24 Waterford Street, Bridgemead in Port Elizabeth were used as storage facilities as from July 2013. It moreover finds corroboration in Eksteen's evidence and the photo album compiled by Warrant Officer Bekker (exhibit "G") and exhibit "F" and I have no hesitation in accepting that the accused either owned the properties or was the de facto lessee. The vehicles used to transport the abalone and collect and ferry the gas cylinders were likewise his property notwithstanding the deception created surrounding their ownership. Eksteen's investigations established that the registration of the Isuzu Bakkie, depicted on photographs 4 and 5 of exhibit "B", in the name of one Ms Zono was false and this illustrates the accused's modus operandi to conceal his guiding hand.
- [3] It is furthermore evident from Eksteen's testimony that the procurement of the premises on Oliphant's Kop farm was the brainchild of the accused. Exhibit "A" bears testament to the isolation of the processing facility and its location is reflective of the meticulous planning and machinations of the accused in securing premises away from prying eyes in which to conduct the enterprise's activities. The equipment vividly depicted in exhibit "B", in particular, the large pots in which the abalone was cooked are clearly not the conventional over the counter products. It must, on the probabilities have been conveyed to the farm shortly after the owner, Mr Erasmus, agreed to lease the premises to the enterprise. It is apparent from Kilian's evidence that those premises were being utilised prior to him becoming a member of the enterprise and the inference can properly be made that abalone was being processed shortly after the shed was acquired.
- [4] The presence of Zhenyong and Kekun was, notwithstanding the coyness of their explanation for being on the premises, integral to the success of the operation. In their plea explanations, in both the Regional Court and the High Court, the supposition advanced was that their residency on the farm was purely accidental post their arrival in South Africa. The plea explanation tendered by their attorney in the criminal trial in the Regional Court on 11

November 2014 is a model of disingenuity. It limits their involvement in the processing of abalone during August 2014 and yet, an analysis of the plea explanation tendered before Makaula J establishes their involvement in the enterprise's business as from July 2013.

- [5] The notion that they arrived on these shores as economic migrants before being absorbed into the enterprise's criminality first surfaced in the plea explanation in the Regional Court and was persisted with in their trial before Makaula J. The transcript of those proceedings are properly before me and, notwithstanding the propositions advanced in that forum trivialising their role in the cooking process I am satisfied that their expertise was specifically solicited by the enterprise given the enormous concomitant financial benefits. During Mostert's testimony in the Regional Court, he adverted to the involvement of syndicates from China and Hong Kong and the inference is inescapable that Zhenyong and Kekun were specifically assigned to the enterprise to process the abalone under the accused's aegis.
- [6] The accused's role in this transnational criminal syndicate was integral to its success and, given the duration of the activity on the farm, must have yielded handsome financial rewards. Exhibit "C",

and in particular photographs 1 - 4, constitutes a pictorial record of The Gables and vouchsafes Eksteen's testimony concerning its market value. The submissions made during mitigation by Mr Griebenow concerning the accused's relative penury beg the question as to the origin of the finances used to fund it and the other properties referred to by Kilian in exhibit "H". It is furthermore obvious from Eksteen's testimony that the sale of the property to the accused's teenage son was a mere ploy to conceal the accused's affluence and to posit him as penniless. Contrariwise, the property portfolio attests to the rich rewards his poaching activities yielded.

- [7] Allied to the portrayal of the accused as a person struggling to subsist and thus vulnerable to temptation to engage in poaching activities is the submission that the change in his plea was an expression of genuine contrition. Remorse can properly be considered to be a mitigating factor but it all depends on the circumstances. The guilty plea followed upon Eksteen's testimony which, as adumbrated earlier, unveiled the accused as the enterprise's mastermind. If he was truly remorseful he would, prior to the separation of his trial from that of his then co-accused, have taken full responsibility for his role but he desisted. The not guilty plea was a strategy to test the waters and only after a sober realisation of its futility post Eksteen's testimony, was the altered plea entered. It is disingenuous in the extreme to assert that genuine remorse triggered the plea.
- [8] The statutorily ordained penalty for a contravention of sec 2(1) of the Act is a fine not exceeding R1 million or imprisonment up to life. In argument before me Mr Griebenow was constrained to concede that whilst the offences merited a custodial sentence, the accused's personal circumstances decreed that I temper its duration to a period considerably less than the sentence which I imposed in the Roberts[1] matter. The distinction sought to be drawn between the factual matrix in Roberts and those in casu is illusory. The mere fact that the

criminal activity in Roberts endured over several years as opposed to the one (1) year adverted to in the indictment is inconsequential. The sheer volume of the abalone found on 11 August 2014 militates against assessing sentence within time frame parameters.

- [9] The scale of the enterprise's activities extended far beyond provincial boundaries and establishes the reach of its organisational tentacles. It is not in issue that a substantial amount of the abalone found originated from the Western Cape, no doubt because of the plunder and depletion of the resources along the Eastern Cape coastline. Although the accused's previous conviction for possession of an excessive amount of abalone can perhaps be described as antiquated, it cannot be ignored. It manifests a predilection for repeat offences and the associated financial rewards no doubt provided a clear inducement to continue as this case so graphically portrays. The extent of the enterprise's activities was, as the evidence revealed, not of recent vintage. The paraphernalia found at the shed attests to the longevity of the poaching activities.
- [10] The sentences on Roberts and his coterie were imposed six years ago and the judgment attracted wide publicity. In it I emphasized that past sentencing patterns had to be revisited and that the time had arrived for a complete reassessment of the sentencing options. It is apparent from this and other matters of similar ilk presently before this division that my admonishments have attracted utter disdain rather than obeisance. The plunder continues unabated and the stage has been reached for appropriate sentences to stem the unrelenting poaching tide. The accused is sentenced as follows -

Counts 1, 2 and 3 are taken as one for purposes of sentence and the accused is sentenced to twenty (20) years imprisonment.

D. CHETTY

JUDGE OF THE HIGH COURT

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- [1] S v Roberts and Others 2013(1) SACR 369 (ECP)

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