

SOUTH AFRICA / JUDGMENT

S v Davids (A145/2012) [2012] ZAWCHC 225 (30 October 2012)

[2012] ZAWCHC 225

COURT

Western Cape High Court, Cape Town

BEFORE

M.J. Dolamo, Y S Meer

CASE / FILE NUMBER

A145/2012

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Republic

of South Africa

IN

THE HIGH COURT OF SOUTH AFRICA

(WESTERN

CAPE HIGH COURT, CAPE TOWN)

Case

No.: A145/2012

In

the appeal between:

WILLIAM
DAVIDS

.....Appellant

and

THE
STATE

.....Respondent

ent

JUDGMENT

delivered on 30 OCTOBER 2012

DOLAMO AJ.

- [1] The Appellant was convicted in the Regional Court on his plea of guilty in terms of section 112 (2) of the Criminal Procedure Act 51 of 1977 (the “Act”) on one charge of contravention of section 4 (1) (a) of the Prevention and Combating of Corrupt

Activities Act 12 of 2004 (“Corrupt Activities Act”), and one charge of contravention of section 4 (a) of the Drugs and Drug Trafficking Act 140 of 1992. On 18 November 2012 he was sentenced to three years imprisonment of which 1 year was suspended for 5 years. The two counts were taken together for purposes of sentence. The Appellant thereafter remained in custody serving the aforesaid sentence until 14 December 2011 when he was granted bail in the sum of RIO 000-00 pending appeal. This was after a successful application for leave to appeal his sentence.

[2] The factual matrix in this matter can be gleaned from the detailed charge sheet as well as the Appellant’s statement in terms of section 112 (2) of the Act. These were briefly as follows: During December 2010 W/O Wessels applied for and obtained authorisation to conduct an operation in terms of section 252 A of the Act to entrap Correctional Service officials who were smuggling drugs into the Malmesbury Prison. For this purpose he approached one Zola Baba and tasked him with the duty to request the Appellant, a warden at the prison, to smuggle 10 Mandrax tablets to an inmate in the prison. He also booked out R1 500-00 in case, made copies of these notes and handed them to Baba with instructions to act as an agent. This was on 5 March 2011. On the same day and following an earlier telephonic conversation, the Appellant approached Baba and asked him whether he was “Peter” and whether he had something for him. Baba confirmed that he was Peter and had something for him. He handed to Appellant the 10 Mandrax tablets whereupon the Appellant demanded R1 000-00. Baba gave him R1 000-00 from the marked notes. The appellant was shortly thereafter confronted and arrested by W/O Wessels. His attempts to dispose of the drugs failed as Wessels was able to intercept him. Wessels also found in his possession the R1 000-00 notes which he got from Baba.

[3] In his written plea explanation the Appellant admitted that at all relevant times, he was a member of and employed by the Department of Correctional Services as a warden, stationed at Malmesbury Prison and as such a public officer and a person who was party to an employment contract as defined in section 1 of the Corrupt Activities Act. He confirmed that he received the Mandrax tablets as well as R1 000-00 on the understanding that he was to smuggle these into the prison, and that once the drugs were through the prison’s security system, somebody would collect them from him. He also admitted the lawfulness of the trap which was in accordance with the prescripts of section 252 A of the Act. He furthermore admitted to the wrongfulness of his conduct and his intention to act as he did fully conscious of the wrongfulness thereof.

[4] The Appellant’s conduct fell under the ambit of Sections 3 and 4 (1) (a) of the Corrupt Activities Act. These sections state and I quote :

“3. General offence of corruption. - Any person who, directly or indirectly -

(a) accepts or agrees or offers to accept any gratification from any other person, whether for the benefit of himself or herself or for the benefit of another person; or

- (b) gives or agrees or offers to give to any other person any gratification, whether for the benefit of that other person or for

the benefit of another person,

in order to act, personally or by influencing another person so to act, in a manner -

- (i) that amounts to the -

(aa) illegal, dishonest, unauthorised, incomplete, or biased; or

(bb) misuse or selling of information or material acquired in the course of the, exercise, carrying out or performance of any powers, duties or functions arising out of a constitutional, statutory, contractual or any other illegal obligation;

- (ii) that amounts to -

(aa) the abuse of a position of authority;

(bb) a breach of trust; or

(cc) the violation of a legal duty or a set of rules;

(iii) designed to achieve an unjustified result; or

(iv) that amounts to any other unauthorised or improper inducement to do or not to do anything, is guilty of the offence of corruption.

Part 2: Offences in respect of corrupt activities relating to specific persons

4. Offences in respect of corrupt activities relating to public officers. -

- (1) Any -

(a) public officer who, directly or indirectly, accepts or agrees or offers to accept any gratification from any other person, whether for the benefit of himself or herself or for the benefit of another person; or”

[5] In the determination of sentence the learned Magistrate considered the Appellant’s

personal circumstances, the interests of society and the offence for which the Appellant was convicted. The Appellant was 52 years old at the time and had been married for 28 years with 2 dependent children aged 17 and 20 years respectively. He had been in the employ of the Department of Correctional Services since 1981, but no longer works there as a result of his conviction. The Appellant is diabetic and has high blood pressure. Cognisance was also taken of the fact that the Appellant was a first offender and had pleaded guilty.

[6] Against the above considerations, the Magistrate emphasised that corruption was an extremely serious offence, prevalent in our society; that it was the Appellant’s duty, as an officer of the Department of Correctional Services, to ensure that the objectives of the Department were upheld; that the setting of the trap suggested that drug trafficking activities were on-going at the

prison and that the Appellant had transgressed prison regulations merely to enrich himself. The learned Magistrate also alluded to the fact that he had considered other non-custodial forms of sentences, in particular correctional supervision, but found such to be inappropriate as such a sentence would create the impression that corruption was nothing but a trivial form of crime. He nevertheless considered it to be the duty of the court in sentencing a person to show mercy. He concluded that an appropriate sentence was the one set out in paragraph 1 supra and proceeded to impose it.

- [7] It would appear that in sentencing the Appellant, the court a quo made an inference, that the Appellant acted as part of an ongoing smuggling activity at the prison. The sentence imposed was influenced by such inference. The Magistrate in passing sentence remarked: "I could not be accepted that a trap would be set unless there were reports of this kind of activity going on. And when one has recourse to your section 112 statement, the fact that the approach that was made to you, the fact that you readily accepted the approach that was made, the court must ask itself as to whether this was really an isolated incident or whether it was the incident when you came unstuck. "
- [8] It is common cause that no evidence was adduced in support of such inference. The State certainly lead no evidence in aggravation of sentence which detailed the Appellant's involvement in the "on going" drug smuggling. Other than a passing reference to a need to trap wardens at Malmesbury Prison who were alleged to be smuggling drugs to inmates, no details of the nature and extent of the problem or the Appellant's involvement therein was furnished. In the absence of such information the inference drawn by the court a quo that this is not an isolated incident, was a misdirection. There being no proof of Appellant's involvement in ongoing drug smuggling activities in the prison, the sentence imposed, in my view stands to be interfered with on appeal, especially in light of the Appellant's personal circumstances and importantly that he is a first offender.
- [9] Corruption, especially by Government Officials such as the Appellant, who are entrusted with the responsibility of facilitating the rehabilitation of offenders in prisons is to be frowned upon and be visited with an appropriate sentence. Imprisonment per se, even for a first offender, therefore cannot be termed shockingly inappropriate. It may be shockingly inappropriate where the period of imprisonment was influenced by factors which were not placed before the court or were not synchronized with the personal circumstances of the offender. That I believe to have been the case in the court a quo. Given the Appellant's profile I am of the view that the court a quo ought to have considered other forms of sentencing whilst still meeting the legitimate expectations of society that corrupt officials be duly punished for this serious offence. In my view a sentence in terms of section 276 (1) (i) of the Act would have had the desired effect of emphasising the seriousness of the crime of corruption, the interests of society whilst at the same time accommodating the personal circumstances of the Appellant.

[10] Taking all the relevant circumstances into consideration I am of the view that a sentence of three years imprisonment in terms of section 276 (1) (i) of the Act would be an appropriate sentence.

[11] I would accordingly on appeal order as follows:

- 1) The appeal against sentence is upheld;
- 2) The sentence imposed by the trial court is set aside and substituted with the following sentence:

“The Appellant is sentenced to three years imprisonment in terms of section 276 (1) (i) of the Criminal Procedure Act 51 of 1977”.

M.J. DOLAMO

Acting Judge of the High Court

I agree and it is so ordered.

Y S MEER

Judge of the High Court

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Prepared on 9 October 2026 · Esheria