

SOUTH AFRICA / JUDGMENT

S v Hobkirk (SS99/00) [2000]

ZAGPHC 27 (28 September 2000)

[2000] ZAGPHC 27

COURT

High Courts - Gauteng

BEFORE

Willis

CASE / FILE NUMBER

SS99/00

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IN THE HIGH COURT OF SOUTH AFRICA

(WITWATERSRAND LOCAL DIVISION)

JOHANNESBURG

CASE NO: SS99/00

DATE:2000.09.28

In the matter between

THE STATE

and

NORMAN PETER HOBKIRK.....Accused

SENTENCE

WILLIS, J: It is well established in these courts and reflects the accumulated wisdom of many generations that sentence should fit the criminal as well as the crime, be fair to the state and to the accused, and be blended with a measure of mercy. It must also reflect the interests of society.

The accused is 26 years of age. He has a minor child although he has never been married. Before the time of his most recent arrest he was employed as a truck driver, earning between R300.00 and R400.00 per week.

The accused has a string of previous convictions for theft, housebreaking and robbery. He is currently serving a six-year sentence for culpable homicide. Clearly the previous convictions of which violence were an element are relevant to sentence in this case. He has shown no remorse.

The expert, Dr Micki Pistorius, who testified in this case said that she had no doubt from her interviews with the accused, and the circumstantial evidence applied to her expert knowledge that the accused, as a child had been sodomised by his father and two of his cousins. He had, as a child, frequently been in orphanages and reformatories where he was sodomised.

This induces a sense of anger, humiliation and powerlessness. The sodomising of young boys stimulates the prostate and induces an

involuntary erection. This causes confusion. There is pain and pleasure at the same time. There is guilt at experiencing a refracted

sense of pleasure during an act which is painful and which the boy senses is wrong. To conquer these feelings of anger, humiliation,

guilt and powerlessness which arose from sexual abuse as a child, the accused would fantasise about humiliating, conquering and controlling another man in a sexual way.

A person such as the accused would not derive sexual pleasure from his acts of killing, humiliating the deceased and removing their

trousers, but rather for a brief moment in time regain a sense of power.

The accused is a pyromaniac, that is a person who derives sexual pleasure from lighting fires.

The explanation for the accused acting out these fantasies lies in the fact that, as a child he did not have the benefit of a positive

influence from his father or another adult male role model. For reasons which are not yet fully understood, fathers, particularly in relation to boys, have a critical role to play in developing a superego, a sense of right and wrong, a conscience or morality. This is especially important in boys between the ages of 6 and 12. Deprive a child of this and there will be serious repercussions later on, Good fathers, it seems, have a critical role to play in the making of a good society.

The accused had serious doubts as to whether his putative father was indeed his real father.

The accused's life has been a tragedy with tragic consequences.

The accused has been convicted of three counts of murder. These are very serious crimes indeed. All the victims were innocent. All died gruesome deaths. All were viciously stabbed. All had their trousers and underpants removed. In the last two cases the victims were burned after being stabbed. The killings were random and the victims defenceless.

These crimes were deliberate. They were ruthlessly executed. Crimes such as these affect society at the core of its being. Ordinary citizens know that they cannot carry on their ordinary, everyday activities without fear for their safety.

In addition to what I have said in the opening lines of this judgment, sentence also has five important functions: 1. It must act as a general deterrent, i.e. it must deter other

members of the community from committing such acts or thinking that the price for wrongdoing is worthwhile.

2. It must act as a specific deterrent, i.e. it must deter this individual from being tempted to act in such a manner ever again.
3. It must enable the possibility of correction, unless this is very clearly not likely.
4. It must be protective of society, i.e. society must be protected from those who do it harm.
5. It must serve society's desire for retribution, i.e. society's outrage at serious wrongdoing must be placated.

Clearly in this case a lengthy period of imprisonment is warranted in order to serve each of these five functions. I have no doubt that the community as a whole cries out aloud for a lengthy and severe sentence in a case such as this.

The accused is a serial killer.

While each of us is responsible for his or her acts, it has to be accepted that each of us is the product of his or her times and circumstances.

I accept that the accused has had a dreadful life and that his background substantially shaped his personality such that he was

capable of committing these crimes.

Dr Micki Pistorius was a most impressive expert witness. She is an expert in serial murders and serial rapes. She has a doctorate in serial killing. She has published a book on serial killings. She has studied and taught abroad. Her credentials were unchallenged in cross-examination.

Her considered opinion is that the accused is incapable of rehabilitation. Her gloomy prognosis is that in this regard the prospects are none. This is the view of experts around the world when it comes to serial killers. If released, he will sooner or later, kill again.

This case raises the most complex moral and intellectual issues involving sentencing. There are many who do not wish to believe that anyone is beyond rehabilitation. Rehabilitation is an ideal close to the heart of every humane human being. Our Constitution reflects our ideals as a society. Among these ideals is that freedom is a most precious condition of men and women.

There is an ancient adage, which goes back some two-and-a-half thousand years, to the days of the Roman Republic. *Salus populi suprema lex*. The safety of the people is the supreme law.

However sorry I may feel for the accused, however much I may accept that his life circumstances shaped his dreadful deeds, however forlorn Or Pistorius' view of humanity may be, I should be failing in my duty as a representative of the judicial pillar of the sovereign state if I did not give a judgment designed to ensure that no member of our society ever falls victim to the accused's murderous tendencies again. This consideration overrides all others.

In the case of *S v Tcoeib* 1996 (1) SA 390 (NmS) our late Chief Justice Mohamed {then acting in his capacity as Chief Justice of Namibia) eloquently as usual, held that it would be wrong to extinguish any flicker of hope for an accused that he would ever be released on parole (see 397I-399A).

In that case he referred with apparent approval to the European case of *Thynne, Wilson and Gunnell v The United Kingdom* EHRR 666 in which it was accepted that life imprisonment is appropriate where there is a very real risk of repetition (at 669).

He also referred with apparent approval to the South African case of *S v Mdau* [1990] ZASCA 126; 1991 (1} SA 169 (A) where similar views were expressed.

He held that as there was provision in appropriate circumstances for parole to be given, life imprisonment in circumstances approved in the *Thynne, Wilson and Gunnell v The United Kingdom* case (supra) could be the proper sentence.

It is trite that whatever particular provisions there may be in any statute, the executive enjoys the prerogative of parole. This we inherited from our common law.

Although life imprisonment is the effective sentence that I shall impose in this case, the executive may, in circumstances it considers

appropriate, release the accused on parole. Nevertheless, I believe that it is my bounden duty and entirely reasonable to draw the executive's attention to the very real risks associated with such a measure in this case. I shall take the unusual step of making a specific recommendation in this regard. I consider this to be justifiable in the circumstances of the present case. Whether or not the executive will follow that recommendation is for it to decide. I wish to make it clear that, in making this recommendation, I in no way wish to deprive the executive of the opportunity to exercise a proper discretion, taking into account all relevant considerations which may, from time to time, arise.

I accept that on account of the accused's youthfulness at the time that the first count was committed requires a sentence of less than life imprisonment on this count.

Taking all the above into account the following are the sentences that i impose:

Count 1: murder, 20 years' imprisonment.

Count 2: murder, life imprisonment.

Count 3: murder, life imprisonment.

I recommend that the accused, as a serial killer, with no prospects of rehabilitation, and who, according to the expert evidence is likely to commit a similar offence again, if released, is never to be released on parole.

ON BEHALF OF THE STATE:ADV MOHLALA

ON BEHALF OF THE ACCUSED: ADV D THINANE

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