

SOUTH AFRICA / JUDGMENT

S v Khoza (Sentence) (CC46/2024)

[2025] ZAGPPHC 756 (5 June 2025)

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COURT

North Gauteng High Court, Pretoria

BEFORE

Mosopa

CASE / FILE NUMBER

CC46/2024

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IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION HELD AT PRETORIA

CASE NO: CC46/2024

DATE: 2025-06-05

(1) REPORTABLE: YES/NO

(2) OF INTEREST TO THE JUDGES: YES/NO

(3) REVISED.

DATE: 05/06/2025

SIGNATURE:

In the matter between

THE STATE

and

FANYANA KHOZA

Accused

SENTENCE

MOSOPA, J:

1. This is judgment on sentence. On 4 June 2025 I convicted the accused on the following charges:

Count 1: Murder read with provisions of section 51(1) of Act 105 of 1997

Count 2: Attempted robbery as defined in section 1 of Act 51 of 1977 read with the provisions of section 51(2) of Act 105 of 1997

Count 3: Contravention of section 49(1) of the Immigration Act 13 of 2002.

Count 6: Possession of stolen property in contravention of section 36 of the General Law Amendment Act 62 of 1955.

2. The accused is still represented by Mr Jacobs in these sentencing proceedings and the State is still represented by Mr Masekoameng.
3. The accused and his group meticulously and with more precision planned a robbery of the complainant mentioned in Count 2. It is indicative from the evidence that Zweli, who was not arrested for the commission of the offences, that the accused is convicted of, played a crucial role in informing the accused and his group about the movements of the complainant; the type of vehicle he was driving; the route that he uses travel to his place of residence and also

where the complainant resides. The Accused with his group followed the complainant on various occasions to his place of residence before the actual act of robbery was committed.

4. Brazenly, they have managed to secure firearms and ammunition and unfortunately, they could not secure a rifle as planned and that actually interfered with their planning, as in my considered view, if the rifle was used there was no way in which the complainant could have defended himself.
5. Section 12 of the Constitution of the Republic of South Africa, enshrines one's right to freedom and security of the person, and makes the following provision:

"[12] (1) Everyone has the right to freedom and security of the person, which includes the right -

- (a) not to be deprived of freedom arbitrarily or without just cause,
- (b) not to be detained without trial,
- (c) to be free from all forms of violence from either public or private resources,
- (d) not to be tortured in any way, and
- (e) not to be treated or punished in a cruel, inhumane or degrading way."
6. That is the right that the accused, together with his group arbitrarily decided to take away from the complainant in this matter, whereas the accused and his group's right to freedom and security of the person is secured and protected, at the time. Equally, the Constitution protects and enshrines the rights to human dignity and life in sections 10 and 11.
7. In *State v Zinn* 1969

(2) SA 537(A) Rumpff JA, stated that:

"What has to be considered is the triad of the crime, the offender and the interest of society. In determining what is an appropriate sentence, the dictum set out in Zinn ought to be invoked." A further layer of what needs to be considered was imposed in the sentencing regimein section 51(1) and (3) of Act 105 of 1997.

8. The accused testified in mitigation of sentence and his testimony can be succinctly summarised as follows;

- a) That he was born on the 9th of September 1973 and he will be 52 years in September of this year,
- b) At the time of commission of the offences in 2021, the accused was 47 years old,
- c) The accused is not married, but has three dependants, two daughters and a boy and the last born child was born on 3 November 2021, while the accused was in custody for this matter.
- d) The first-born child was born on 5 January 2001 and the second born child in 2004 and is currently 21 years old.
- e) The accused was born in the Hluhluwe in Kwazulu-Natal Province.
- f) His father passed away when he was still young and his mother passed away in 1993.
- g) His only brother died when he was released from prison on the 2 August 2015.
- h) The accused did not enjoy the privilege of having a formal schooling for reasons that were not ventilated in this matter, He only learned trade while he was in custody serving sentence, and was trained in upholstery, sewing and plastering. He also did a literacy course in prison when he was taught how to read and write.
- i) The accused was self-employed in what he described as a middleman, for people who brought taxis that were involved in collisions, and referred them to people who could panel beat and repair such taxis

for a fee.

9. The accused is suffering from hypertension, but he is receiving medication for such in prison. The accused was released on parole on 6 March 2015, and such parole was rescinded after his arrest in this matter, and he is currently serving an imprisonment term of 30 years. This means that the accused committed the offences that he is currently convicted of whilst serving his parole term.

10. On 12 September 2002, the accused was convicted on two counts of robbery and sentenced to 15 years imprisonment for each count of robbery. The accused maintains that he was only sentenced to 18 years imprisonment, following that conviction. On 6 December 2004, he was sentenced to 3 years imprisonment, alternatively R2000,00 fine for being in possession of drugs.
11. On 28 January 2005, at Meyerton, the accused was sentenced to 15 years imprisonment for robbery. On the 29 June 2005, the accused was sentenced to five years imprisonment for housebreaking, and it was ordered that that sentence runs concurrently with the 15-year sentence for robbery. The accused's previous convictions are as listed on the SAP69.
12. The accused added that he was sentenced to 10 years imprisonment for "hijacking a motor vehicle" in 2004 or 2005 and that is when he was arrested trying to bring drugs to court. This conviction is not listed on the accused's SAP69, as supplied by the South African Police.
13. This basically indicates the type of a person that the accused is, A person who was in wanton disregard of the law and with little respect to other people's properties. The accused has dependants, and it shows that the time he spent serving various sentences, made him to delegate his responsibilities of raising his children to his partner. The accused is also not responsible for their maintenance. He does not have formal identification documents.
14. The accused grew up without a father figure in his life, as his father passed away when he was still young in his life. His mother also died when the accused was still a young person. Despite the Court's finding relating to his status in the country, the accused insisted that he is a South Africa citizen, born in South Africa.
15. The State did not lead evidence in aggravation of sentence and also did not present the victim impact statements. However, it is the evidence of Mr Gani that after the commission of the offence, he considered emigrating to another country and then thought against it. There was a time when he took his family and spent a considerable time in a foreign country, because of what happened to him. He has now involved the services of a security company, who act as his protectors. Mr Gani feels that his freedom is taken away from him, and as he must always be in the company of his protectors
16. Mr Gani's motor vehicle was damaged during the incident, fortunately for him, he had insurance which swiftly replaced his damaged vehicle. He was not seriously injured during the incident, but only sustained cuts to his hands and his face which was as a result of his vehicle window, when it was broken with a hammer by his attackers.
17. The recent South Africa Police Statistics show that violent contact crimes are on the rise. The offences that the accused has been convicted of, currently and in the past, except for the possession of drugs, have in them elements of violence and the majority of them are committed with the use of firearms.

18. Violent crimes by and largely affects the majority of South African people. The situation is compounded by a lack of capacity and resources in the law enforcement agencies. This offence was committed in a busy public road, which is situated next to the military establishment in full view of passerby and bystanders, but the police could not detect the commission timeously to arrest the perpetrators. It is because of a bravery displayed by the complainant, Mr Gani, that the commission of the offences could not materialise and one of the robbers met his death.
19. In light of the current high levels of violence and the serious crimes in the country, when sentencing such crimes the emphasis should be on retribution and deterrence. In *State v Mhlakaza* 1997 (1) SACR 515 (SCA) Harms J, when dealing with the public interest stated that:

"The object of sentencing is not to satisfy public opinion but to serve the public interest. A sentencing policy that caters predominantly or exclusively for public opinion is inherently flawed. It remains the court's duty to impose fearlessly an appropriate and fair sentence, even if the sentence does not satisfy the public."
20. However, it is acceptable for the Court to take account of public feelings as was expressed in the matter of *R v Karg*. The point that I want to emphasise in this judgment, is that it appears that there are serious problems with our parole system. It is not unusual to hear in the news or to read newspapers that most people who commit serious crimes are released on parole and such crimes are committed whilst having their parole time. It appears that the monitoring of parolees is also a problem in our country. The accused had time to plan these offences, travelled to other places without being detected by officials monitoring him, and eventually committing the offences.
21. The accused first sentence of 15 years, 18 years on his version, was in 2002. In January 2005, he was already convicted again of a serious violent crime. The indication is that, he was out on parole when he committed that offence. Again, when he committed the current offences, he was out on parole. One wonders how the Parole Board failed to consider the offences the accused committed after his first release on parole. Did such record serve before the Parole Board, which decided to release the accused on 6 March 2015?
22. The accused was released on parole without proper documentation which includes the identification book. I am going to recommend that a copy of this judgment to be served on the Minister of Correctional Services to determine the parole process of sentenced prisoners.
23. The accused is convicted of murder which falls squarely within the purview of section 51(1) of Act 105 of 1997, as it was committed in the process of a robbery and committed by a group of people acting in concert. The accused, in terms of section 51(3) may show the existence of substantial and compelling circumstances to avoid life imprisonment term. In *State v Roslee* [2006] ZASCA 14; 2006 (1) SACR 537 para 33, it was stated:

"There is no onus on the accused to prove such circumstances, but that he should at least pertinently raise such circumstances for consideration if he wants the Court to consider them seriously."

24. The essence of Malgas can be separated into four different aspects:

1. That the prescribed sentence is the point of departure.
2. If a departure is called for, the Court should not hesitate to depart.
3. The Court should weigh all the traditional circumstances for departing when the prescribed sentence would be unjust.

Malgas also cautioned us not to depart from the Prescribed Sentences for flimsy reasons.

25. The accused, despite overwhelming evidence against him, maintains his innocence and this signals lack of remorse. This is so despite making a confession statement to the police. However, a lack of remorse cannot amount to an aggravating factor.
26. Mr Jacobs cannot find what can be substantial and compelling circumstances on the part of the accused, but that I must consider the fact that the accused did not have a father figure in his life, when he grew up, as he was raised by his mother who also died when the accused was still young. Mr Masekoameng also could not find substantial and compelling circumstances on the part of the accused, so is this Court.
27. The accused is the type of person who made crime his livelihood. This is demonstrated by the fact that he does not have a birth certificate, ID-Book and documentation in this country. I do not see the accused being a suitable candidate for rehabilitation, despite previously being given a second chance to make amends in his life. Accused, you are a habitual criminal with total disrespect for human rights and properties.
28. Your co-accused who testified in this court and who are already serving their sentences, are also illegal immigrants in this country. The sentence that I am going to impose, I want it to be a sentence that serves as a measure of deterrence and retribution to the people who choose your criminal path. It is unfortunate that I have to sentence you to imprisonment for a very lengthy period of time at your age. Failure to show existence of substantial and compelling circumstances, I am left with no choice but to sentence you to the prescribed sentence. I am alive to the fact that the sentence that I am going to impose, is an ultimate penalty that our courts can impose, and such sentence should be imposed after a thorough consideration.
29. In the matter of *State v Vilakazi* 2009 (1) SACR 552 it was said that:

"In the event or case of conviction of a serious crime, the personal circumstances of an accused recedes to the background."
30. It is for the above that the following will be your sentence:

Count 1: You are sentenced to life imprisonment.

Count 2: You are sentenced to 10 years imprisonment.

Count 3: You are sentenced to 2 years imprisonment.

Count 6: You are sentenced to 12 months imprisonment.

31. The sentence in Count 1, which is life imprisonment will together with sentences imposed on Counts 2, 3 and 6 run concurrently with the sentence that the accused is currently serving.

Yes, that will be your sentence.

MOSOPA, J

JUDGE OF THE HIGH COURT

DATE: 05/06/2025

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