

SOUTH AFRICA / JUDGMENT

S v Mrona (R09/ 2020) [2020] ZAMPMHC 14 (8 June 2020)

[2020] ZAMPMHC 14**COURT**

Middelburg High Court, Mpumalanga

BEFORE

HF Brauckmann, SS Mphahlele

CASE / FILE NUMBER

R09/ 2020

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IN THE HIGH COURT OF SOUTH AFRICA,

MPUMALANGA DIVISION, MIDDELBURG

(LOCAL SEAT)

CASE NO: R 09/ 2020

IN THE MATTER BETWEEN

THE STATE APPELLANT

And

DARIUS WRONA RESPONDENT

JUDGMENT

(SPECIAL REVIEW)

BRAUCKMANN AJ

[1] On 21 may 2020 this special review case was referred to this court by the Magistrate eMalahleni. The accused, Mr Wrona, was charged with two counts in the Magistrates' Court:

Count 1. That on or about 20 May 2019 and at or about Tasbet Park eMalahleni, the accused unlawfully and intentionally assaulted Torri KaroIri by pulling her and slapping her on the body.

Count 2: : that on or about 28 May 2019 and at or near Tasbet Park eMalahleni Mr Wrona illegally and unlawfully conducted himself in such a manner or published such words that had or have the effect that it might reasonably be expected that the natural and probable consequences thereof would be that a person perceiving the act, conduct, utterance or publication fears for his own safety or the safety of his property or security of his livelihood or for the safety of any other

person or the safety of any other person's security or the livelihood of any other person in that he said to Torri Karoire that she must get ready the Nigerians are going to rape her

[2] Mr Wrona pleaded guilty to both counts. He was found guilty to both charges on 9 July 2019 by the Magistrate and was given the following sentence 29 January 2020:

Count one: one

(1) year imprisonment. Accused is unfit to possess a firearm in terms of section 103 (1) of act number 60 of 2000; and

Count two: six months imprisonment, wholly suspended for a period of 5 years on condition that the accused is not convicted of assault and on condition that he does not make contact with his sister Miss Torri (sic) committed during the period of suspension.

[3] The case was subsequently postponed for a pre-sentence report and medical examination. The Magistrate intended to send the accused for treatment for drug addiction. On 29 January 2020 the accused informed the Magistrate in no uncertain terms that he would not cooperate with the rehabilitation process and will not stop using drugs. He told the court that the court would be wasting its time by trying to rehabilitate him.

[4] During February 2020 the Magistrate was approached by the prosecutor who represented the state in the case. He was informed by the prosecutor that the Constitutional Court declared section 1 (1) (b) of the Intimidation Act, Act No. 72 of 1982 ("The Act") unconstitutional and invalid during October 2019. The Magistrate is totally forthcoming in acknowledging that at the time of sentencing the accused he was not aware of the fact that the section no longer existed.

[5] On 17 March 2020 the Magistrate succeeded in having Mr Wrona appear in court and released him after he explained to him that he would be referring the matter to the High Court for review. The Magistrate states that the suspended sentence imposed on Mr Wrona for assault was too harsh in that the condition of suspension that he may not make contact with his sister for a period of five years was unreasonable. More so because his sister had already obtained a protection order against him.

[6] The Magistrate seeks an order setting aside the sentence in respect of the conviction on the count of intimidation that had been declared unconstitutional, and setting aside the condition to the effect that Mr Wrona may not contact his sister in count two. In the judgement of Moyo and Another v The Minister of Police and Others; Sonti and Another v The Minister of Police and Others 2020 (1) SACR 373 (CC) (22 October 2019) the Constitutional Court made the following order in respect of the Act: "It is declared that section 1 (1) (b) of the Intimidation Act, Act 72 of 1982, is unconstitutional and invalid". The order of invalidity was retrospective.

- [7] The accused was sentenced after the declaration of unconstitutionality of the relevant section of the Act. The sentence by the Magistrate therefore stands to be reviewed and set aside.
- [8] In respect of the suspended sentence for assault on his sister, I am of the view that the condition laid down by the Magistrate speaks to the individual Miss Torri, and does not serve the purpose of a suspended sentence. In *R v Cloete* 1950 (4) SA 191 (EDLD) the accused was charged with drunken driving alternatively reckless or negligent driving. He was convicted of negligent driving and given an additional suspended sentence to the sentence imposed. The condition of suspension was that he should not buy, receive, or drink any intoxicating liquor during the period of suspension. This condition was held to be unlawful since it included in its wide terms prohibitions which are divorced from the offence of which the accused had been convicted. In my view the condition is inappropriate. Any suspended sentence is both a deterrent and a measure to protect society from perpetuated illegal conduct by the accused. Its purpose is to deter the accused from committing further similar crimes.
- [9] In *S v Koko* 2006 (1) SACR 15 (C) at [21] Van Reenen J said that the purpose of suspending the whole or any part of a sentence is twofold:

“The first is to avoid a repetition in the future of the criminal conduct of which an accused has been found guilty and the second is to obviate the deleterious consequences that direct imprisonment may have”.

S v Maake 2007 (1) SACR 403 (T) emphasised the deterrent and preventive effect of suspending a portion of imprisonment. Others are also deterred by a suspended sentence, since the accused serves as an example to others when he refrains from committing another offence because of the suspended sentence hanging over him. See also *S v P* 1967 (2) SA 228 (N) 229- at [7].

- [10] The offence of which the Mr Wrona was convicted is indeed a serious crime. Assaulting another person is certainly a gratuitous infraction of that person's right to human dignity and to be free from all forms of violence from either public or private sources (Sections 10 and 12 of the Constitution of the Republic of South Africa 1996). The gravity of this offence cannot be minimised. What is required in sentencing an offender is an informed and balanced approach to determine a just and fair sentence, and Magistrates are required not to let their natural indignation override their better judgment. In this matter the Magistrate was correct in sentencing Mr Wrona to direct imprisonment, and suspending the sentence. He made the suspended sentence very personal to Mr Wrona's sister, whilst he was aware of the fact that a protection order served the purpose he wanted to achieve with the suspension he applied. I am of the view that the condition serves no purpose in its current form.

[11] The Magistrate is correct in requesting this court to review the sentence and set it aside. The sentence that I am going to impose will serve the purpose the Magistrate had in mind when he handed down his sentence. The community must be protected against Mr Wrona who, in no uncertain terms, informed the court that he would not stop abusing drugs. The drug abuse, according to the Magistrate contributed to the assault and intimidation. That much appears from the judgment handed down by the Magistrate.

[12] I am of the view that the following condition should be attached to the sentence: “that the accused is not convicted of assault committed during the period of suspension, for which he is sentenced to direct imprisonment without the option of a fine”.

[13] I therefore make the following order:

[13.1] The conviction and sentence in respect of count 1 is hereby reviewed and set aside, and replaced with the following: “The accused is found not guilty”.

[13.2] The sentence in respect of count two is hereby reviewed and set aside and replaced with the following sentence: “The accused is sentenced to 6 months imprisonment, wholly suspended for a period of five years on condition that the accused is not convicted of assault committed during the period of suspension, for which he is sentenced to direct imprisonment without the option of a fine” committed during the period of suspension.

HF BRAUCKMANN

ACTING JUDGE OF THE HIGH COURT

I AGREE AND IT IS SO ORDERED

SS MPHAHLELE

JUDGE OF THE HIGH COURT

DATE OF JUDGMENT: 08 JUNE 2020

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