

SOUTH AFRICA / JUDGMENT

S v Mteshi (SS98/98) [1999] ZAGPHC 4 (30 March 1999)

[1999] ZAGPHC 4**COURT**

High Courts - Gauteng

BEFORE

Willis

CASE / FILE NUMBER

SS98/98

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IN THE HIGH COURT OF SOUTH AFRICA

(WITWATERSRAND LOCAL DIVISION)

JOHANNESBURG

CASE NO: SS98/98

DATE:1999-03-30

In the matter between

THE STATE

and

THABO BRIAN MTESHI..... Accused

SENTENCE

WILLIS, J: It is well established law that when it comes to sentencing the court must try to strike a balance such as the sentence should fit the criminal as well as the crime, be fair to the state and the accused and be blended with a measure of mercy. It must also reflect the interests of society.

The accused is a relatively young man. He is 20 years of age. At the time that this murder was committed he was 18 years of age. He completed school until standard 9 and then left school by reason of economic circumstances. He has received some training in the repair of motor vehicles. The accused has a previous conviction for theft which was imposed in 1995. He received a sentence of three years for that offence. As this previous conviction is not an offence of which violence is an element it shall largely be disregarded for purposes of sentence. The Court does however take into account that the accused is clearly not a completely fallen angel.

The accused claims that he has shown remorse. The Court is not satisfied that he has done so. He persisted with his defence of self defence which against the overwhelming weight of the evidence simply cannot reasonably possibly be true. The murder was premeditated, it was cold-bloodedly executed. The deceased was a very young man. He was the only son of his mother. His death has caused his family a great hardship.

Killings especially where firearms are used by unlicensed persons have reached such high proportions that society cries out aloud for firm measures in an attempt to put a stop to it. I fully accept that the causes and cures for crime are far too complex for reliance to be placed on heavy sentencing alone. Sentence 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 believing that the price for wrongdoing is worthwhile.
2. It must act as a specific deterrent, in other words 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 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 satisfy society's desire for retribution, i.e. society's outrage at serious wrongdoing must be placated.

Clearly a lengthy period of imprisonment is warranted in order to serve each of these five functions.

The accused's youthfulness at the time of the commission of this offence counts heavily in his favour. Were it not for the fact that he was so young at the time of the commission of this offence a very much more severe sentence overall would have been imposed.

I have given anxious consideration to the submissions by Mr Van Sittert his counsel, that the sentences for the unlawful possession of arms and ammunition should run concurrently with the sentence imposed for the murder conviction. I have decided that although the sentence for the unlawful possession of ammunition may run concurrently with the sentence for unlawful possession of a firearm that the sentence in respect of the charge relating to the unlawful possession of a firearm and the sentence relating to the unlawful possession of ammunition may not run concurrently with the sentence for murder. The reason for this relates to a point which I made earlier during the course of this sentence, namely that killings especially where firearms are used by unlicensed persons have reached such high proportions that society cries out aloud for firm measures in an attempt to put a stop to it. I wish to emphasise in handing down the sentence which I shall in a few moments that the unlawful possession of arms and ammunition is in itself a very serious offence. Indeed if it were not for the unlawful possession of arms and ammunition the rate of murders and culpable homicides in our society would substantially decline.

For the first charge, that is the murder charge the following sentence is imposed: 15 years. For the second charge, the charge of unlawful possession of a firearm in contravention of the arms and ammunition act, the sentence imposed is two years. For the third charge, that is the unlawful possession of ammunition the sentence imposed is six months. It is ordered that the sentence on charge 3 is to run concurrently with the sentence on charge 2, but that none of

the sentences imposed on charges 2 and 3 are to run concurrently with charge 1. In other words, in order to avoid any possible confusion, the total effective sentence imposed is 17 years.

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