

SOUTH AFRICA / JUDGMENT

S v Mvelase (R68/23A) [2023]

ZAKZPHC 130 (10 November 2023)

[2023] ZAKZPHC 130

COURT

Kwazulu-Natal High Court, Pietermaritzburg

BEFORE

Mossop, Vahed

CASE / FILE NUMBER

R68/23A

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IN THE HIGH COURT OF SOUTH AFRICA

KWAZULU-NATAL DIVISION, PIETERMARITZBURG

Case number: R68/23A

In the matter between:

THE STATE

and

MSHIKASHIKA RONALD MVELASE

ACCUSED

REVIEW JUDGMENT

MOSSOP J:

- [1] This is a matter subject to automatic review in terms of the provisions of section 302(1)(a) of the Criminal Procedure Act 51 of 1977.
- [2] The accused appeared in the Newcastle Magistrate's Court on a charge of operating a taxi on a public road without being in possession of a valid permit to do so. When the charge of contravening section 50(1) read with section 90(1)(a)(b) of the National Land Transport Act 5 of 2009 was put to him, he pleaded guilty and was thereafter correctly convicted in accordance with his plea.
- [3] He was sentenced to a fine of R25 000 or, in default of such payment, to 6 months' imprisonment.

- [4] The accused was apparently neither the owner of the taxi nor its driver, but its operator. The vehicle belonged to his brother but it had been entrusted to the accused so that he could operate it for his own benefit. The taxi had been driven by his cousin when it had been pulled over and the lack of the necessary permit ascertained. This is of passing significance only because it transpired that the accused had a previous conviction for drunk driving.
- [5] In mitigation of sentence, the accused indicated that he earned an income of R2 000 per month with which he supported himself, his four children and two nephews and a disabled brother. All of this was accepted by the State.
- [6] It is not the fact of the accused's conviction that is disturbing. That conviction is in order. What is troublesome is the sentence imposed upon him, which appears to be out of the norm for similar offences committed in that district. Indeed, in my view, it induces a sense of shock, particularly when regard is had to the fact that the accused is a first offender and given his accepted monthly income. In my view the sentence imposed is unduly harsh.
- [7] In response to a query from this court on the sentence, the magistrate responded that she: '[h]ad considered suspending a portion of the sentence but these offences have become so prevalent within our district and the only way to deter the Accused and like minded persons is if such sentences are imposed.'
- [8] I, regretfully, do not agree with this line of reasoning. I would have thought that where there is a high incidence of this type of offence, a suspended portion of a sentence would serve to dissuade an accused, or other like-minded people, from offending or reoffending, as the case may be. The suspended portion of the sentence would hang over the accused's head like the proverbial sword of Damocles.
- [9] This court may interfere on review if a lower court imposes a sentence that is inappropriate. An inappropriate sentence is one that induces a sense of shock.[1] This court may also intervene if the lower court misdirects itself when imposing sentence.[2] In my view, it appears that the accused's personal circumstances have been relegated to a secondary consideration at the expense of the interests of the community. While the community needs protection from operators of public taxis that are not properly authorised to operate as such, it appears to me that the magistrate has not considered all sentencing options open to her that could be applied to achieve that result.
- [10] In my view, the sentence imposed is inappropriate and the magistrate has committed a significant misdirection in not suspending a part of the sentence that she intended to impose. This court has the power to intervene to ensure that an injustice does not result.
- [11] I would accordingly propose the following order:
1. That the conviction of the accused is confirmed;
 2. That the sentence imposed be set aside and replaced with the following sentence:

A fine of R25 000 or 6 month's imprisonment, half of which is suspended for a period of 5 years on condition that the accused is not again convicted of contravening section 50(1) of the National Land Transport Act 5 of 2009, which offence is committed during the period of suspension.

MOSSOP J

I agree:

VAHED J

Date of judgment: 10 November 2023

[1] S v De Jager and Another 1965

(2) SA616 (A).

[2] S v Kibido 1998(2) SACR 213 (SCA).

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