

SOUTH AFRICA / JUDGMENT

S v Slingers (19/23) [2023] ZAWCHC 11; 2023 (1) SACR 522 (WCC) (31 January 2023)

[2023] ZAWCHC 11

COURT

Western Cape High Court, Cape Town

BEFORE

Lekhuleni, Henney

CASE / FILE NUMBER

19/23

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IN THE HIGH COURT OF SOUTH AFRICA

WESTERN CAPE

DIVISION, CAPE TOWN

High Court Ref: 19/23

Magistrate's

Serial No: BRC18/22

In the
matter

between:

THE STATE
And
JEROME
SLINGERS
ACCUSED**JUDGMENT**

LEKHULENI J

- [1] The regional magistrate of Worcester referred this matter to this court for special review in terms of section 304 of the Criminal Procedure Act 51 of 1977 ('the CPA'). The issue arising in this matter is whether a district magistrate can refer a matter in terms of section 114 of the CPA to the regional court for sentencing where the district magistrate, after receiving the SAP69 of the accused, has proceeded to listen to arguments in mitigation of sentence.

- [2] On 28 April 2022, the accused was arraigned before the magistrate court for the district of Worcester on a charge of housebreaking with intent to steal and theft. It was alleged that the accused on 17 February 2021, and at or near Bonnievale, the accused unlawfully and intentionally broke and opened the premises of the complainant and therein stole a pair of All-star tekkies valued at R600, the property of the complainant. The accused was legally represented at

the trial, and pleaded guilty to the charge. A statement in terms of section 112(2) of the CPA amplifying the accused's guilty plea was handed in by the defence in respect of the charge levelled against the accused.

- [3] The prosecution accepted the accused's plea, and the court convicted the accused on the offence charged. The accused's previous convictions were read into the record, and the accused admitted that he has four previous convictions of housebreaking with intent to steal and theft and one previous conviction of robbery. Subsequent thereto, the defence proceeded to address the court ex parte in mitigation of sentence. After placing the personal circumstances of the accused on record, the defence drew the magistrate's attention to the fact that the accused had previous convictions for housebreaking with intent to steal and theft similar to the offence he was convicted of. The defence also informed the court that the accused received a suspended sentence in the past and that he was also once sentenced in terms of section 276(1)(i) of the CPA. The court was informed that the accused was currently serving parole of 894 days.
- [4] The magistrate then indicated to the defence that she did not look at the previous conviction properly before she was addressed in mitigation of sentence. She then informed the State and the defence that the matter would have to be referred to the regional court for sentencing. When the case appeared before the regional court, the regional magistrate requested the parties to address her as to why she should proceed with the matter when the defence had already addressed the district magistrate on sentence. The prosecution and the defence addressed the court and implored the regional magistrate to finalise the matter alternatively, to refer it for special review. In her ruling, the regional magistrate found that it would not be in the interest of justice to sentence the accused in the regional court. She opined that the accused would be prejudiced if she proceeded to finalised the matter. She postponed the case to a further date and referred the matter to this court for special review. She petitioned this court to determine whether the accused should be sentenced in the regional or district court.
- [5] The regional magistrate noted further in her referral letter to this court that after reading the record, she observed that the district magistrate listened to argument in mitigation of sentence and only then transferred the matter to the regional court. The regional magistrate also asserted that the district magistrate was aware of the accused's SAP69 when she heard the arguments in mitigation of sentence. Notwithstanding, the district magistrate belatedly decided to transfer the matter to the regional court for sentencing. The regional magistrate opines that this was not correct. She believes that the district magistrate should finalise the

case as she was in possession of the accused's SAP69 when the defense addressed her in mitigation of sentence. She conceded that the accused was correctly convicted pursuant to his admissions made in his section 112(2) statement.

- [6] In a case like this, the starting point, in my view lies in the correct interpretation of section 114 of the CPA, which deals with the committal by a magistrate's court of an accused person for sentence by a regional court after a conviction on a plea of guilty. For completeness, section 114 of the CPA provides as follows:

'(1) If a magistrate's court, after conviction following on a plea of guilty but before sentence, is of the opinion—

- (a) that the offence in respect of which the accused has been convicted is of such a nature or magnitude that it merits punishment in excess of the jurisdiction of a magistrate's court;
- (b) that the previous convictions of the accused are such that the offence in respect of which the accused has been convicted merits punishment in excess of the jurisdiction of a magistrate's court; or
- (c)

the court shall stop the proceedings and commit the accused for sentence by a regional court having jurisdiction.

- (2) Where an accused is committed under subsection (1) for sentence by a regional court, the record of the proceedings in the magistrate's court shall upon proof thereof in the regional court be received by the regional court and form part of the record of that court and the plea of guilty and any admission by the accused shall stand unless the accused satisfies the court that such plea or such admission was incorrectly recorded.

- (3) (a) Unless the regional court concerned—

- (i) is satisfied that a plea of guilty or an admission by the accused which is material to his guilt was incorrectly recorded; or

(ii) is not satisfied that the accused is guilty of the offence of which he has been convicted and in respect of which he has been committed for sentence, the court shall make a formal finding of guilty and sentence the accused.

- (b) If the court is satisfied that a plea of guilty or any admission by the accused which is material to his guilt was incorrectly recorded, or if the court is not satisfied that the accused is guilty of the offence of which he has been convicted and in respect of which he has been committed for sentence or that he has no valid defence to the charge, the court shall enter a plea of not guilty and proceed with the trial as a summary trial in that court: Provided that any admission by the accused the recording of which is not disputed by the accused, shall stand as proof of the fact thus admitted.

- (4) The provisions of section 112(3) shall apply with reference to the proceedings under this section.'
- [7] It is now trite that courts are enjoined to adopt a purposive and contextual approach to interpretation. See *Natal Joint Municipal Pension Fund v Endumeni Municipality* 2012(4) SA 593 (SCA) at 18. A contextual or purposive reading of a statute must remain faithful to the actual wording of the statute. It is also a fundamental principle of our law that an interpretation that leads to absurd results must be avoided.
- [8] Section 114 of the CPA envisages a split procedure in which an accused person is convicted on a plea of guilty in the magistrate's court and thereafter committed for sentence in the regional court. See *S v Dzukuda and others; S v Tshililo* 2000(2) SACR 443 (CC) at para 15. From the reading of section 114, it is evident that a magistrate's court can only commit an accused person to the regional court for sentencing after a conviction on a plea of guilty but before sentence. This jurisdictional requirement must be met before an accused person can be committed to the regional court in terms of section 114.
- [9] In addition, section 114 sets out three grounds on which a magistrate court may refer a matter to the regional court for sentence; namely, if the court is of the opinion that the offence in respect of which the accused has been convicted merits a punishment exceeding the jurisdiction of the magistrate's court; if the accused's previous convictions are such that the offence in respect of which the accused has been convicted merits punishment exceeding the jurisdiction of the magistrate's court, and if the accused is a dangerous criminal as envisaged in section 286A(1). These grounds are independent of each other and need not all be present and need not all be viewed cumulatively. Once one of these grounds is satisfied,

the magistrate must stop the proceedings and commit the accused for sentence by a regional court having jurisdiction.

- [10] Accordingly, the referral must be done after conviction on a guilty plea but before sentence. This condition precedent must be satisfied before a matter is transferred to the regional court. In casu, the magistrate stopped the proceedings in her court and correctly committed the accused to the regional court, after she convicted him. The regional magistrate takes issue with the fact that the district magistrate was addressed in mitigation of sentence by the defence before she could decide to refer the matter to the regional court. She also argues that the magistrate was aware or should have been aware of the accused's previous convictions before she was addressed in mitigation of sentence. As a result, she contends that the accused will be prejudiced if she finalises the matter.
- [11] In my opinion, the contention of the regional magistrate is erroneous, mistaken and misses the point. Once an accused person is committed to the regional court in terms of section 114 of the CPA, the regional court retains an original sentencing jurisdiction, designed to place it in the same position as the trial court after it has convicted the accused. In this case, the accused was only convicted, but not yet sentenced. The magistrate only gave a direction for

the future conduct of the matter, namely, to refer the matter to the regional court for the accused to be sentenced by that court. See *S v Duma* 2012(2) SACR 585, para 10. In my view, the regional court must consider the mitigating factors placed on record before the district court when a sentence is imposed. After considering the mitigating and aggravating factors, and any other relevant evidence, the regional magistrate would be at large to impose any competent sentence he / she deems fit.

- [12] The jurisdictional competence of the regional court to hear a matter transferred from the magistrate's court is not ousted by the mitigating or aggravating factors placed before a district magistrate. In any event, before a regional court imposes a sentence, all evidential material relevant to sentencing must be placed before it. In so doing, the court is exercising its sentencing jurisdiction in the ordinary course. Notably, section 274(1) of the CPA provides that '[a] court may, before passing sentence, receive such evidence as it thinks fit in order to inform itself as to the proper sentence to be passed.' Meanwhile, section 274(2) provides that 'the accused may address the court on any evidence received under subsection (1), as well as on the matter of the sentence, and thereafter the prosecution may likewise address the court.' In my view, where a magistrate has heard arguments in mitigation and thereafter refer the matter to the regional court for sentence, the regional court will not be restricted to the mitigating factors adduced in the magistrate's court. The regional court will also not be limited to the material placed before it by the parties in terms of section 274 of the CPA. It may call for further evidence to ensure that all the necessary evidence for the purposes of sentence, is placed before it. See *S v Dlamini* 1991(2) SACR 655 (A) at 667.
- [13] For instance, if a minor child is involved, it may call for a probation officer's report. If the court considers the possibility of imposing a correctional supervision sentence in terms of section 276(1)(h) of the CPA, the court may call for a correctional officer's report etc. The court may also call for a victim impact statement to make an informed decision on the matter. The fact that the trial court has heard arguments in mitigation before transferring the case to the regional court is immaterial and inconsequential. In the converse, those mitigating factors on record are evidential material that the sentencing court would consider when considering the appropriate sentence to mete out. The regional court would still be enjoined to regard all the traditional factors, particularly the triad, in imposing sentence. See *S v Zinn* 1969(2) SA 537 (A); *S v Matyityi* 2011(1) SACR 40 (SCA).
- [14] Importantly, subsection 3(a) and (b) of this section enjoin the regional court to satisfy itself that the plea was correctly recorded or that the accused is guilty of the offence of which he has been convicted. In that event, the court must make a formal finding of guilt and sentence the accused. If the court is of the opinion that the plea of guilty was incorrectly recorded, the court must enter a plea of not guilty in terms of section 113 of the CPA and proceed with the trial. Thus, it is abundantly clear that the regional court must consider the record placed before it in its entirety, before it can sentence the accused. Therefore, the magistrate was wrong in refusing to proceed with the matter in the regional court.

ORDER

[15] In light of the forenamed reasons, the following order is granted:

[15.1] The regional court must proceed to finalise the matter.

LEKHULENI J

JUDGE OF THE HIGH COURT

I agree and it is so ordered:

HENNEY J

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