

SOUTH AFRICA / JUDGMENT

S v Smith (2007/0263) [2009] ZAGPJHC 107 (17 April 2009) [2009] ZAGPJHC 107

COURT

South Gauteng High Court, Johannesburg

BEFORE

P.A. Meyer

CASE / FILE NUMBER

2007/0263

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SOUTH GAUTENG HIGH COURT, JOHANNESBURG

Case No.2007/0263

Date:17/04/2009

In the matter between:

THE STATE

Versus

TEBOGO THOMAS SMITH.....Accused

SENTENCE

- [1] On 12 December 2008, the accused was convicted of the crime of assault with the intent to do grievous bodily harm. I requested a probation officer's report and later also a correctional supervision report. A probation officer's report compiled by Ms NL Linde, who is a registered social worker (exhibit S2), and a correctional supervision report compiled by a correctional supervision official, Ms TC Chaka (exhibit S3), were handed in by agreement and the content of each report was admitted. Ms Chaka testified. No other viva voce evidence was led by the State in aggravation of sentence or by the accused in mitigation of sentence. Counsel for the State, Adv Vilakazi, and for the accused, Adv Madyibi, addressed me on the issue of sentence.
- [2] The accused and Ms Phindile Mbonani were previously engaged, but they broke up during May 2007. On Sunday afternoon, 19 August 2007, Mbonani attended at the room where the accused stayed. She woke him and confronted him with their relationship. An argument ensued between them and the accused assaulted her.

- [3] Our country suffers an unacceptable and distressing incidence of violence, and especially violence against women. The needs of society require courts to impose severe punishments on such offenders, unless the circumstances of a particular case dictate otherwise.
- [4] The probation officer, Ms Linde, did not get co-operation from Mbonani and she was accordingly unable to address the impact of the violence committed against Mbonani in her report. Mbonani also did not testify at the sentence proceedings.
- [5] The accused is a first offender. He was born on 13 December 1976, and was accordingly 30 years of age at the time of the commission of the offence. He left school with a grade 10 qualification. He later attended a catering course and has, since 2001, been employed at Buffalo Bills Restaurant in Johannesburg as a waiter. He is not married and has no children, but he is the breadwinner of his family comprising his mother, who is unemployed, and two school going half siblings.
- [6] The probation officer stated in her report that '[t]he accused has admitted guilt to the offence and wishes to get an opportunity to make amends to the

victim's family which indicates that he feels remorse.' She also expressed the view that he 'can still be rehabilitated

if the court could give him a second chance to redirect his life.' She referred to the facts that the accused is gainfully employed, is the breadwinner of his family, and has a fixed residential address where correctional officers could supervise him. She recommended that consideration be given to a sentence of correctional supervision in terms of s 276(1)(h) of the Criminal Procedure Act 51 of 1977.

- [7] The correctional supervision official assessed and reported on the accused's suitability for a sentence of correctional

supervision. She expressed the opinion that the accused is a suitable candidate for correctional supervision in terms of s 276(1)(h) of the Criminal Procedure Act, and she recommended that house arrest, community service, and the participation in therapeutic/rehabilitative programmes on certain conditions be considered. She reported that the accused had verbalised remorse, realized the seriousness of the offence, and had accepted responsibility for his actions. She referred to the facts that the accused has a family support system, he has a fixed residential address, namely 390C Mphuthi Street, Jabavu, Soweto where he could easily be monitored, he is the main breadwinner of his family, and his employer had mentioned to her that '... the accused is an honest and hard working individual who is always willing to go an extra mile in performing his duties and this makes him a valuable member of his staff. He further stated that if the accused is sentenced in terms of this (correctional supervision) sentence option he is willing to arrange shifts that will ensure that the accused is able to perform his community service.' The correctional supervision official expressed the opinion that the accused will benefit from participating in a Life Skills Programme that is rendered by the social workers of the Social Re-integration Unit. It is a self-development programme that addresses issues, including anger

management and violence against women.

[8] Giving due consideration to the objectives of punishment, namely prevention, retribution, deterrence and rehabilitation, and weighing the personal circumstances of the accused against the seriousness of the crime committed by him and the interests of society, I am of the view that all the circumstances of this case dictate that a sentence of correctional supervision be imposed upon the accused as was recommended by the probation officer and by the correctional supervision official.

[9] In the result:

A. The accused is sentenced to three years correctional supervision in terms of s 276(1)(h) of the Criminal Procedure Act 51 of 1977, subject to the following conditions:

1. The accused shall be placed under house arrest for the full duration of the sentence.
2. The house arrest shall be served at 390C Mphuthi Street, Jabavu, Soweto.
3. The house arrest shall not apply during the time periods reasonably required for undertaking his employment at Buffalo Bills Restaurant in Johannesburg and during the time periods reasonably needed for the performance of community service, for the attendance of a Life Skills Programme and/or any other programme as required by the social worker, for the attendance of church, and for enjoying four hours free time per week.
4. The accused shall perform community service of sixteen hours for every month of the sentence at the Johannesburg Social Reintegration Office/Ipelegeng Multipurpose Centre in Soweto or at such other centre as determined by the Commissioner of Correctional Services ("the Commissioner").
5. The Commissioner is authorised to suspend any part or period of house arrest under paragraph 1 above and/or community service under paragraph 4 above and to re-introduce such part or period.
6. The accused shall attend and complete a Life Skills Programme and/or any other programme as may be required by the social worker at the time and place prescribed by the Commissioner.
7. The accused shall notify the Commissioner in writing prior to any change of residential address and shall not change his residential address or leave the magisterial district in which he resides, without prior approval of the Commissioner.
8. In terms of s 52 of the Correctional Services Act 111 of 1998, the Commissioner may set any other condition or conditions that are essential for the execution of the sentence of correctional supervision.

9. The Commissioner shall ensure that the conditions are complied with, and act in accordance with the provisions of s 70 of the Correctional Services Act 111 of 1998 upon the violation of the conditions.
10. The accused must within seventy two hours from the time when this sentence is imposed attend at the Johannesburg Social Registration Offices situated at the corner of Frederick and Loveday Streets, Johannesburg, where he must report to Mr Barnard (Tel. 011 376 8841).

B. The accused is declared unfit to possess a firearm.

P.A. MEYER

JUDGE OF THE HIGH COURT

17 April 2009

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