

SOUTH AFRICA / JUDGMENT

S v T.E.M [2024] ZANWHC 232 (3 October 2024)

[2024] ZANWHC 232**COURT**

North West High Court, Mafikeng

BEFORE

N G Laubscher, A B Scarrott

CASE / FILE NUMBER

CA 35/2023

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Source record**IN****THE HIGH COURT OF SOUTH AFRICA****(NORTH-WEST****DIVISION, MAHIKENG)****CASE****NO.: CA 35/2023****REGIONAL****COURT CASE NO.: RC 27/2022****Reportable:**

YES/NO

Circulate

to Judges: YES/NO

Circulate

to Magistrates: YES/NO

Circulate

to Regional Magistrates: YES/NO

IN

THE CRIMINAL APPEAL**OF:**

T[...]

E[...] M[...]

APPELLANT

and

THE

STATE

RESPONDENT

Delivered: This judgment was handed down electronically by circulation to the parties' representatives via email.
The date and time for hand-down is deemed to be 10h00 am on 03 OCTOBER 2024.

JUDGMENT

CORAM: N G LAUBSCHER AJ AND A B SCARROTT AJ

BACKGROUND

RELEVANT TO THIS APPEAL:

[1] This is an appeal by the Appellant against the sentence of life imprisonment imposed upon him by the Regional Court in the Division of the North West held in Taung subsequent to being found guilty by the said court on a charge of murder.

[2] The record filed in this appeal reflects that the Appellant was charged with committing the crime of murder, with the following details:

"In that on or about 9 October 2022 and at or near Koilong Village in the Regional Division of the North West the said accused did unlawfully and intentionally kill M[...] C[...] M[...] a female person by stabbing her with a sharp object. "

[3] The charge sheet also stated that the above quoted charge of murder is "...read with the provisions of section 51(1) of the Criminal Law Amendment Act, Act 105 of 1997..." (hereafter "the Criminal Law Amendment Act") and section 15 of the Criminal and Related Matters Amendment Act, Act 12 of 2021 (hereafter "the CRMA" and which effects certain amendments to Part I of Schedule 2 to the Criminal Law Amendment

Act), as well as the provisions of section 258 of the Criminal Procedure Act, Act 51 of 1977 (hereafter "the Criminal Procedure Act").

[4] It was recorded by the State at the commencement on the Appellant's trial in the court a quo that the State contends that the offence of murder in casu was "premeditated". Hence, the invoking of the provisions of section 51(1) of the Criminal Law Amendment Act. As will be evident below this whole appeal pivots around this issue.

[5] At the commencement of the trial and before the Appellant was called upon to plead to the charge levied against him, the trial court explained the contents and effect of the "minimum sentence" requirements as set out in the Criminal Law Amendment Act to the Appellant.

[6] The Appellant, who was represented by a legal representative at all relevant times during the proceedings a quo, pleaded guilty to the charge of murder and proceeded to submit a statement in terms of section 112(2) of the Criminal Procedure Act. This

statement, which was signed by the Appellant on 29 May 2023, was read into the record, confirmed by the Appellant and handed in as an exhibit.

- [7] The contents of this statement are of import to this appeal and the relevant portions thereof read as follows:

“5. In that on the 9th day of October 2022 and at or near Kolong Village in the Regional Division of North-West, Taung, I did unlawfully and intentionally kill M[...] C[...] M[...], a female person by stabbing her with a sharp object.

6. I admit on the 9th of October 2022, I was at my house doing the washing and there was no food in the house so I decided to wait for the deceased who was my wife to go to work, so that I could ask for money. I admit that I saw her walking to the taxi together with my two children. I admit that I then decided to follow them to the taxi to ask her for money. I admit that before she got in the taxi, we had an argument and I lost my temper. I admit that I then took out half of a scissor which was in my possession and I then started to stab her with it. I admit that the deceased then fell to the ground where I left her and I went home. I admit that the next day I went to the police station, where I handed myself over and I was arrested for murder.
7. I admit that I knew that my action were [sic] unlawful when I stabbed the deceased with the scissor. I further admit that I did not act in self-defence, when I stabbed the deceased, because the deceased was not in possession of any weapon and for that reason my life was never in danger.
8. I further admit that it was my intention to kill the deceased, a reasonable person in my position would have foreseen that the deceased might die if I stabbed the deceased several times on the chest and back with half of a Scissor and I therefore admit that the postmortem is true and correct I further admit that I did not have any defence in law for my actions.
9. I admit that I was at all material times aware of my actions, which is punishable by law.
10. I now regret what I have done and ask this Honourable court for mercy and leniency.”
- [8] After the contents of the above referred to statement was confirmed by the Appellant and the submitted into evidence, no questions were put to the Appellant by the court in terms of section 112(2) of the Criminal Procedure Act and the State confirmed that “...the State is calling no more witnesses...”.
- [9] Accordingly, the contents of the statement were the sum total of the evidence before the trial court.
- [10] The Appellant was then found guilty by the trial court of “premeditated murder” premised upon the contents of the above quoted written statement made by the Appellant.

- [11] The Appellant then made submissions to the trial court, by means of his legal representative and without testifying to same, in mitigation of sentence. These submissions were in summary that:
- (a) He is 41 years of age and a father of three children, a girl of 19 years old and two boys of respectively 16 and 8 years old.
 - (b) The children reside with the Appellant's in-laws.
 - (c) He attended school until Grade 12 and worked "piece" jobs, the last of which employed him as a security officer.
 - (d) He earned approximately R 4500.00 per month.
 - (e) At the time of the offence the Appellant was not staying with the deceased person (his wife) and his children, but he was staying with his mother and sister.
 - (f) The Appellant is a first time offender.
- [12] It was submitted on behalf of the Appellant, in addition to the above referred to submissions, that the fact that the Appellant pleaded guilty, can be rehabilitated and has remorse for the crime which he had committed constitute "substantial and compelling circumstances" as contemplated in section 51(3)(a) of the Criminal Law Amendment Act in order for the trial court to exercise its discretion to impose a lesser sentence than that the minimum sentences prescribed by the provisions of the Criminal Law Amendment Act. In this instance, premised upon the fact that the Appellant was found guilty of premeditated murder, the prescribed minimum sentence was imprisonment for life.
- [13] It was also submitted on behalf of the Appellant that the Appellant should be declared unfit to possess a firearm in terms of the provisions of section 103(2) of the Firearm Control Act, Act 60 of 2000 (hereafter "the Firearms Control Act").
- [14] In turn and in respect of sentence, the State proceeded to hand in the postmortem report compiled by the medical examiner who performed the autopsy on the deceased as well as a photo-album containing various photos of inter alia the wounds noted on the deceased and recording that the deceased had an unborn foetus and was pregnant at the time of her death.
- [15] Three victim impact statements were also placed before the trial court by the State. The contents of these statements set out the devastating effect which the murder of their mother by their father had on the three children. The Appellant murdered the deceased in a brutal fashion in full view of the children. As referred to above, it also became evident that the deceased was pregnant at the time when she was murdered. The photos handed in by the State depicts the fact that the deceased was pregnant at the time of her death.

[16] The State argued in respect of sentence that there are no “substantial and compelling circumstances” as contemplated in section 51(3)(a) of the Criminal Law Amendment Act present to allow for the imposing of a lesser sentence than imprisonment for life, the minimum sentence as prescribed by the said act.

[17] After these submissions by the respective parties before the court a quo, the trial court proceeded to deal with the sentencing of the Appellant. The said court dealt with the personal circumstances

of the Appellant, the heinous nature of the crime (as inter alia depicted by the photos) and proceeded to find that: “there are no compelling and substantial circumstances, justifying the deviation from the prescribed minimum sentence and the accused before Court is accordingly sentenced to life imprisonment.”

[18] Inexplicably the trial court also proceeded to state that it makes “...no order in terms of section 103(2) of the Firearm Control Act, Act 60 of 2000...” (this Court’s emphasis). No cross appeal was noted by the Respondent against this part of the sentence.

THE APPEAL

[19] As stated above, this appeal was noted only against the sentence of life imprisonment imposed by the trial court and comes to this Court in terms of section 309(1)(a) of the Criminal Procedure Act. There was no appeal against the conviction of the Appellant.

[20] The appeal was heard by this Court on 20 June 2024.

[21] Adv Shakung appeared on behalf of the Appellant and Adv September appeared on behalf of the Respondent. In their respective heads of arguments and in argument before this Court it was submitted on behalf of the Appellant that because the Appellant took responsibility for his actions, showed remorse and is a first-time offender that there are “substantial and compelling circumstances” present to allow the court to deviate from imposing the minimum sentence as prescribed by the said act and the Respondent was of a contrary view.

[22] An issue which was not canvassed in the notice of appeal, or by the either parties before this Court is the glaring issue of the Appellant, on the facts as set out before the trial court and as contained in his section 112(2) statement, having been found guilty of “premeditated” murder – which of course and in turn allowed for the invoking of the provisions of section 51(1) of the General Law Amendment Act and ultimately the imposing of a sentence of life imprisonment.

[23] From the record in this matter (solely comprising of the Appellant’s section 112(2) statement) it is clear that there was no evidence before the trial court that the murder of the deceased was “planned or premeditated” by the Appellant. This Court will elaborate on this finding below. In the absence of a finding that the murder was premeditated, the provisions of section 51(1) of the General Law Amendment Act cannot find application.

- [24] The overarching principle of justice and the provisions of section 35(3) of the Constitution dictates that this Court must intervene in circumstances where the trial court and the respective representatives of the Appellant and the State misdirected themselves. Although there is no appeal against the conviction of the Appellant of premeditated murder – this is such a case.

THE SENTENCE OF THE APPELLANT AND THE PRESCRIBED MINIMUM SENTENCE

- [25] The Appellant was justly and correctly convicted of committing the offence of murder, and a heinous murder at that. This fact stands clear. It is the “premeditated” qualification of the verdict which compels this Court of appeal to intervene in the interests of justice.
- [26] Was the heinous murder in casu “planned” or “premeditated” by the Appellant? The relevance of this question, as intimated above, pertains to the invoking of the provisions of section 51(1) of the General Criminal Amendment Act.
- [27] The provisions of section 51(1) of the Criminal Law Amendment Act prescribe the following minimum sentence in a peremptory manner: “Notwithstanding any other law, but subject to subsections (3) and (6), a regional court or a High Court shall sentence a person[— (a) if it has convicted [a person] of an offence referred to in Part 1 of Schedule 2 ... to imprisonment for life.” (own emphasis)
- [28] The provisions of section 51(1) refer to Schedule 2, Part 1. In respect of this matter the applicable provisions of this Part of Schedule 2 are the part which deals with “murder”. The relevant portion of this part reads as follows:

“Murder, when – (a) it was planned or premeditated;....”

- [29] The conviction [i.e. “convicted”] is stated in section 51(1) as being a conviction of an offence “referred to in Part I of Schedule 2”. In this regard and as is stated by the author SS Terblanche in *A Guide to Sentencing in South Africa*[1] (the footnotes omitted):

“As in the case of section 51(1) offences, section 51(2) requires that the accused be convicted of an offence, not only included in Schedule 2, but as described in Schedule 2. The focus of this provision is on the characteristics of the offence and because the offender has to be convicted of exactly such an offence, these characteristics have to be proved before conviction. This principle was established in S v Legoa. Such characteristics do not have to be part of the essential elements of the offences. The court emphasised that the jurisdiction to impose the enhanced sentences is acquired only if all the elements of the offence, as described, are proved before conviction and the trial court finds them to be present. When the offence as described specifies an attribute of the accused instead of the offence, the principle does not necessarily

apply.

This does not mean that the conviction must necessarily be for an offence as described in the Schedule. What is required is that the facts referred to in the Schedule must be fixed at the time of conviction, even if by necessary implication only. In particular, once the accused has been convicted of the basic offence, the state cannot then surprise her with additional evidence in an effort to bring the provisions of the Act into play.

Proof beyond a reasonable doubt is required. If a conviction is based on a plea of guilty, the relevant section 112 statement should address all the elements described in the Schedule.”

(this Court’s emphasis).

[30] Accordingly, the trial court may only invoke the provisions of section 51(1) of the Criminal Law Amendment Act if the murder of the deceased by the Appellant was “planned or premeditated” and such facts were proven before the trial court. In this regard, the following was stated by Cameron JA in *S v Legoa*[2] as follows:

“It is correct that, in specifying an enhanced penal jurisdiction for particular forms of an existing offence, the legislature does not create a new type of offence. Thus, ‘robbery with aggravating circumstances’ is not a new offence. The offences scheduled in the minimum sentencing legislation are likewise not new offences. They are but specific forms of existing offences, and when their commission is proved in the form specified in the Schedule, the sentencing court acquires an enhanced penalty jurisdiction. It acquires that jurisdiction, however, only if the evidence regarding all the elements of the form of the scheduled offence is led before verdict on guilt or innocence, and the trial court finds that all the elements specified in the Schedule are present...” (this Court’s emphasis)

[31] The question posed above can therefore be repeated and remains: were all of the elements specified in the schedule, proven at the time of conviction i.e., was the murder of the deceased in *casu* planned or premeditated? To answer this question, one must have regard to what constitutes the committing of a planned or

premeditated crime.

PLANNING AND PREMEDITATION

[32] The concepts of “planned” or “premeditated” as set out in Schedule 2, Part 1 of the Criminal Law Amendment Act, are not defined in the said act or its schedules. Same has however been the subject of judicial consideration. The position in this regard was well set out by Satchwell J in *S v Taunyane*[3]:

“...in Raath supra planned or premeditated murder was described as follows (p 53 para [16]): ‘Clearly the concept suggests a deliberate weighing-up of the proposed criminal conduct as opposed to the commission of the crime on the spur of the moment or in unexpected circumstances. There is, however, a broad continuum between the two poles of a murder committed in the heat of the moment and one which had been conceived and planned over months or even years before its execution... Only an examination of all the circumstances surrounding any particular murder, including not least the accused’s state of mind, will allow one to arrive at the conclusion as to whether a particular murder is ‘planned or premeditated’. In such an evaluation the period of time between the accused forming the

intent to commit the murder and carrying out this intention is obviously of cardinal importance but, equally, does not at some arbitrary point, provide a ready-made answer to the question of whether the murder was ‘planned or premeditated’.

Raath was quoted with approval by the Supreme Court of Appeal in *Kekana v The State* (629/2013) [2014] ZASCA 158 (1 October 2014).

The distinction between ‘planning’ and ‘premeditation’ was made on the basis of dictionary definitions in *Raath supra* but has subsequently been examined in some detail in *S v PM* 2014 (2) SACR 481 (GP) where it was found that the concepts were distinct from each other – premeditation referring ‘to something done

deliberately after rationally considering the timing or method of so doing, calculated to increase the likelihood of success, or to evade detection or apprehension’ while planning refers to ‘a scheme, design or method of acting, doing, proceeding or making which is developed in advance as a process, calculated to optimally achieve a goal’ (at para [36]).

The period of time which may elapse between a perpetrator forming an intention to commit the murder and carrying out such murder is of importance but does not, as was said in *Raath supra* “prove a ready-made answer to the question of whether the murder was ‘planned or premeditated’ or, as was said in *Kekana supra*, ‘time is not the only consideration.

[33] It was further stated in *S v Taunyane*[4]:

“The question ... is whether or not appellant “weighed – up” his proposed conduct either on a thought-out basis or an arranged-in-advance basis (as set out in Raath supra ..., or, whether or not appellant “rationally considered the timing or method” of the killing, or, prepared a “scheme or design in advance” for achieving his goal of killing the deceased (as set out in PM supra ...).”

[34] On the same subject *Kruger in Hiemstra’ Criminal Procedure*[5] states:

“A murder can be found to be planned or premeditated if there was a deliberate weighing-up of the proposed criminal conduct as opposed to an act committed on the spur of the moment or in unexpected circumstances. The period of time between forming the intent to murder and the carrying out of the intention is of cardinal importance but does not provide a ready-made answer to the question as to whether the murder was planned or premeditated (S v Rath 2009 (2) SACR 46 (C) par [45] per Bozalek J). In S v PM 2014 (2) SACR 481 (GP) the court took the view that “premeditated” and “planned” are two different concepts and discussed their meaning (par [36]. In S v Jordaan and Others 2018 (1) SACR 522 (WCC) Binns-Ward J undertakes a comprehensive overview of the law on “planned or premeditated” and points out (par [129]) that the Supreme Court of Appeal in an appeal from S v PM found it unnecessary to decide whether “planned or premeditated” denotes a single concept. In assessing whether a murder was planned or premeditated, the question I whether the accused weighed up proposed conduct, rationally considered the timing or method, or prepared a scheme or design in advance (S v Taunyane 2018 SACR (1) 163 (GJ) par [29]). The state bears the onus of establishing factors indicating planning or premeditation (S v Jordaan (supra) par [130]). The court should specify in its verdict whether the murder was planned or premeditated because such murder attracts a different

minimum sentence (S v De Besch 2018 (2) SACR 22 (NCK) par

- [131] per Tlaletsi JP). The factual matrix of the case will indicate whether the murder was premediated (S v Peloele 2022 (2) SACR 349 (SCA) par [15]).” (own emphasis)
- [35] It is accordingly clear from the above referred to authorities that planning or premeditation involves the prior rational planning and/or consideration of the committing of the crime so as to constitute a scheme or designed plan conjured up in advance of the committing of the crime.
- [36] The contents of the section 112 statement of the Appellant contain no proof of a rational planning and/or consideration of the committing of the murder so as to constitute a scheme or designed plan conjured up in advance of the committing of the murder. If anything, the opposite seems to be true, and the contents of the Appellant’s statement is rather indicative of “...the commission of the crime on the spur of the moment or in unexpected circumstances..”. At the very least this conclusion is reasonably possible on the wording of the section 112 statement.
- [37] The contents of the statement in terms of section 112(2) of the Criminal Procedure Act made by the Appellant and accepted by the State and the trial court states: “I admit that before she got in the taxi, we had an argument and I lost my temper. I admit that I then took out half of a scissor which was in my possession and I then started to stab her with it.” (this Court’s emphasis)
- [38] The statement admits the murder of the deceased, but does not contain any facts or proof that the Appellant planned the murder and/or rationally considered the timing or the method of the murder in advance to its execution, or that the murder was committed in the execution of a scheme or a design in advance. The Appellant states that the murder was committed in a fit of rage because he lost his temper.
- [39] As such, there was no evidence before the trial court that the murder of the deceased – heinous as it was - was “planned” or “premeditated”. The element of planning and/or premeditation as included in the charge against the Appellant was simply not proven by the State. As the elements of planning or premeditation were not addressed in the section 112 statement on which the conviction was based, there was no basis for a conviction of planned or premeditated murder.
- [40] Therefore, the respective representatives of the Appellant and the State, as well as the trial court misdirected itself in dealing with the sentencing of the Appellant by dealing with same on the premise that the provisions of section 51(1) of the Criminal Law Amendment Act, read with Schedule 2, Part 1 of the same act, are applicable, whilst in truth they were not.

THE SENTENCE OF IMPRISONMENT FOR LIFE

[41] The trial court, departing from the now indicated incorrect premise that the provisions of section 51(1) of the Criminal Law Amendment Act were applicable to the matter, sentenced the Appellant to imprisonment for life.

[42] During the hearing of this appeal before this Court, the Court confronted both Adv Shakung and Adv September with the prima facie view of the Court that the planning/premeditation element of the murder of the deceased was not proven by the State and as such the trial court erred in its application of the provisions of section 51(1), read with Schedule 2. Part 1 of the Criminal Law Amendment

Act.

[43] Both the Appellant and the Respondent's counsels were provided an opportunity to make submissions to this Court in this regard. Adv September conceded that the element of premeditation was not proven by the State and Adv Shakung in turn confirmed the absence of the element of premeditation - but had to concede the utterly heinous nature of the murder and the aggravating circumstances that were present.

[44] In dealing with sentencing the correct approach, in the absence of evidence to support a conviction on murder that was "...planned or premeditated..." as envisaged in Schedule 2, Part , was to invoke the provisions of section 51(2)(a)(i), read with Schedule 2, Part 2 of the Criminal Law Amendment Act, i.e., a conviction of "...murder in circumstances other than those referred to in Part 1...".

[45] The minimum sentence which the trial court accordingly should have applied in the matter (murder – not as contemplated in Part 1 of Scheule 2, but as contemplated in Schedule 2, Part 2 and the Appellant being a first offender as per section 51(2)(a)(i) of the Criminal Law Amendment Act) was a period of not less than 15 years imprisonment.

[46] The provisions of section 51(2) of the Criminal Law Amendment Act also prescribes the maximum sentence jurisdiction which the trial court possessed in this matter. The provisions of section 51(2) of the Criminal Law Amendment Act concludes by states that: "Provided that the maximum term of imprisonment that a regional court may impose in terms of this subsection shall not exceed the minimum term of imprisonment that it must impose in terms of this subsection by more than five years." (own emphasis)

[47] As such, the trial court's jurisdiction as to sentence in this matter was statutorily restricted to imposing a term of imprisonment

not exceeding 20 years. The trial court exceeded this statutory jurisdictional limit in sentencing the Appellant to imprisonment for life.[6]

[48] Under the above referred to circumstances this Court of appeal must interfere with the sentence imposed by the trial court. This is clear from the following authorities:

- (a) In *S v Hewitt*,^[7] Maya DP (as she then was) held that: “It is a trite principle of our law that the imposition of sentence is the prerogative of the trial court. An appellate court may not interfere with this discretion merely because it would have imposed a different sentence. In other words, it is not enough to conclude that its own choice of penalty would have been an appropriate penalty. Something more is required; it must conclude that its own choice of penalty is the appropriate penalty and that the penalty chosen by the trial court is not. Thus, the appellate court must be satisfied that the trial court committed a misdirection of such a nature, degree and seriousness that shows it did not exercise its sentencing discretion

at all or exercised it improperly or unreasonably when imposing it. So, interference is justified only where there exists a “striking” or “startling”

or “disturbing” disparity between the trial court’s sentence and that which the appellate court would have imposed.

And in such instances the trial court’s discretion is regarded as having been unreasonably exercised.”^[8] (this Court’s emphasis)

- (b) In *S v Bogaards*,^[9] Khampepe J in the Constitutional Court held the following, that:

“It can only do so [i.e. interfere with the sentence imposed] where there has been an irregularity that results in the failure of justice; the court below misdirected itself to such an extent that its decision on sentence is vitiated; or the sentence is so disproportionate or shocking that no reasonable court could have imposed it.”

- [49] Consequently, this Court of appeal may interfere with the sentence where the trial court’s exercise of its inherent jurisdictional powers as to sentence or discretion was patently misdirected or incorrect.

- [50] As stated above this appeal comes to this Court of appeal in terms of the provisions of section 309(1) of the Criminal Procedure Act. Accordingly, this Court of appeal has the jurisdictional powers as set out in section 304(2) and section 309(3) of the Criminal Procedure Act. Section 309(3) of the Criminal Procedure Act states as follows: “The provincial or local division concerned shall thereupon have the powers referred to in section 304 (2), and, unless the appeal is based solely upon a question of law, the provincial or local division shall, in addition to such powers, have the power to increase any sentence imposed upon the appellant or to impose any other form of sentence in lieu of or in addition to such sentence: Provided that, notwithstanding that the provincial or local division is of the opinion that any point raised might be decided in favour of the appellant, no conviction or sentence shall be reversed or altered by reason of any irregularity or defect in the record or proceedings, unless it appears to such division that a failure of justice has in fact resulted from such irregularity or defect.”

- [51] Having carefully considered the facts of this matter, as they appear from the record of the appeal (in respect of both the proceedings pertaining to the conviction of the Appellant and the sentencing of the Appellant) and thus the crime itself, the personal circumstances of the Appellant and public interest,[10] there is no doubt in the mind of this Court that although the trial court erred in imposing the sentence of imprisonment for life (i.e.,
- (i) upon the incorrect application of the minimum sentence provisions as set out in section 51(1) Criminal Law Amendment Act and (ii) upon a correct construction of the facts in this matter but in transgression of its jurisdictional powers in respect of sentencing), the maximum sentence which the trial court was statutorily empowered to hand down, is warranted and constitutes an appropriate and proportional[11] sentence in this case.

CONCLUSION

AND JUDGEMENT:

- [52] Having regard to the contents of the above set out facts and reasoning of this Court of appeal, this Court hereby makes the following order:
- (a) The appeal against sentence is upheld and the sentence of life imprisonment imposed by the court a quo is set aside and replaced with the following sentence: “Twenty (20) years imprisonment in terms of section 51(2) of the Criminal Law Amendment Act, Act 105 of 1997.”
- (b) The sentence in paragraph (a) above is ante-dated to 17 July 2023, the date of sentence in the court a quo.
- (c) The Appellant is declared unfit to possess a firearm in terms of section 103(1) of the Firearms Control Act, Act 60 of 2000.

N G LAUBSCHER

ACTING JUDGE OF THE HIGH COURT,

NORTH-WEST DIVISION, MAHIKENG

I AGREE

A B SCARROTT

For the Appellant: Adv Shakung

For the Respondent: Adv September

Date of hearing: 20 June 2024

Date of judgment: 03 October 2024

[1] Third Edition, page 66.

- [2] 2003
- (1) SACR 13 (SCA) at para 18.
- [3] 2018 SACR (1) 163 (GJ) paras 26 – 28.
- [4] Para [30].
- [5] LexisNexis (Issue 17) at 28-25 and references to authorities included.
- [6] See *Moatshe v S* (CA 82/2018) [2024] ZANWHC 100 (9 April 2024) at para 42 to 46.
- [7] 2017 (1) SACR 309 (SCA).
- [8] At paragraph [8].
- [9] 2013 (1) SACR 1 (CC) at para [41].
- [10] See *S v Zinn* 1969
- (2) SA 537 (A) at 540G to H.
- [11] See *S v Dodo*
- [2001] ZACC 16; 2001
- (5) BCLR 423 (CC) at paras [37] and [38] wherein inter alia the following was stated: “In order to justify the deprivation of an offender’s freedom it must be shown that it is reasonably necessary to curb the offence and punish the offender. Thus the length of punishment must be proportionate to the offence. To attempt to justify any period of penal incarceration, let alone imprisonment for life as in the present case, without inquiring into the proportionality between the offence and the period of imprisonment, is to ignore, if not to deny, that which lies at the very heart of human dignity.”

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