

SOUTH AFRICA / JUDGMENT

Scott v S (A793/2013) [2014]

ZAGPPHC 183 (1 April 2014)

[2014] ZAGPPHC 183

COURT

North Gauteng High Court, Pretoria

BEFORE

A.M Baqwa, N.M Khumalo

CASE / FILE NUMBER

A793/2013

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NORTH GAUTENG
HIGH COURT PRETORIA
(REPUBLIC OF
SOUTH AFRICA)

Case

no: A793/2013

DATE:

01 APRIL 2014

In the matter

between:

CHRISTOPHER

SCOTT.....APPELLANT

AND

THE

STATE.....RESPONDENT

JUDGMENT

BAQWA J; KHUMALO J

- [1] This is an appeal against sentence only from a judgment of the Northwest Regional Magistrate's Court sitting at Potchefstroom in which the appellant was charged on three counts of murder, theft of a motor vehicle and fraud.
- [2] At the beginning of the trial in the court a quo he pleaded guilty to counts 2 and 3 and not guilty to count 1. He tendered a plea explanation in terms of section 115 of the Criminal Procedure Act 51 of 1977 in which he pleaded guilty to manslaughter in regard to count 1.

- [3] The Magistrate found him guilty of manslaughter on count 1, theft of a motor vehicle on count 2 and guilty of fraud on count 3.
- [4] Appellant was sentenced to serve seven (7) years imprisonment on count 1, five (5) years on count 2 and one (1) year on count 3 was ordered to run concurrently with the sentence on count one. This meant that appellant would serve an effective sentence of ten (10) years.
- [5] A brief background to this case is as follows:

The deceased and the appellant had a relationship and they had co-habited for about three

- (3) weeks. Appellant wanted to exit the relationship. This led to a verbal altercation which ultimately led to a physical scuffle or fight. It was during this fight that the deceased in count 1 was eventually choked to death by the appellant.
- [6] It is trite law that in every appeal against sentence the court hearing the appeal should be guided by the principle that punishment is pre-eminently a matter for the discretion of the trial court. The appeal court should be careful not to erode such discretion, hence the further principle that the sentence should be altered only if the discretion had not been judicially or properly exercised.
- [7] The circumstances entitling a court to interfere in a sentence imposed by a trial court were recapitulated in *S v Malgas* 2001(1) SACR 469 (SCA) 2001(2) SA 1222; 2001(3) ALL SA 220 where Marais J.A held;

“A court exercising appellate jurisdiction cannot, in the absence of material misdirection by the trial court, approach the question of sentence as if it were the trial court and then substitute the sentence arrived at by it simply because it prefers it. To do so would be usurp the sentencing discretion of the trial court... However, even in the absence of material misdirection, an appellate court may yet be justified in interfering with the sentence imposed by the trial court. It may do so when the disparity between the sentence of the trial court and the sentence which the appellate court would have imposed had it been the trial court is so marked that it can properly be described as ‘shocking’,

‘startling’, or ‘disturbingly inappropriate.’”

- [8] Counsel for the appellant submits that appellant was remorseful of his actions and that this is demonstrated by the plea of guilty to two of the counts with which he was charged. As far as count 1 is concerned he tendered a plea of guilty to the crime of manslaughter.
- [9] The previous records of the appellant which he has admitted demonstrate that he is not prepared to learn from previous brushes with the law. He has progressively committed more serious crimes over time from theft to robbery and now manslaughter, theft and fraud.
- [10] Despite the seriousness of the offences for which he was convicted and despite his previous records which were relevant to those offences, the

Regional Magistrate demonstrably balanced the three considerations, namely, the crime, the criminal and the interests of the society.

- [11] To suggest as counsel for the appellant does "that appellant was sacrificed on the altar of deterrence, thus resulting in his receiving an unduly severe sentence". With reference to the dictum of Howie AJA in *S v So* 1992(20 SASV 613(A) at 617 is in my view overstating the appellant's case. Appellant received an effective sentence of ten (10) years for all the crimes charged. In my view there was no misdirection or irregularity committed by the Regional Magistrate in handing down sentence.
- [12] It can hardly be said that the appellant was remorseful. He committed the crimes in a very calculated and deliberate matter. He strangled or choked the deceased, dragged him to his bedroom, removed his personal items including his credit cards and thereafter stole his motor vehicle to boot. That was not the end. He went on to commit various acts of fraud at various institutions using the deceased's credit cards before finally escaping with deceased's motor vehicle. There was no place to hide when appellant pleaded guilty and his apparent remorse could be very well likened to the proverbial crocodile tears.
- [13] Having listened to all the submissions by counsel and having considered the matter I have come to the conclusion that the sentence by the Regional Magistrate was the appropriate one in the circumstances.
- [14] In the result I propose that the following order be made.

14.1. The appeal against sentence is dismissed.

A.M BAQWA

(JUDGE OF THE HIGH COURT)

I agree.

N.M KHUMALO

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