

SOUTH AFRICA / JUDGMENT

Sibande v S (A209/16) [2017] ZAGPPHC 754 (10 November 2017)

[2017] ZAGPPHC 754

COURT

North Gauteng High Court, Pretoria

BEFORE

C J van der Westhuizen, T A Maumela

CASE / FILE NUMBER

A209/16

Source: saflii.org · Research copy typeset by Esheria. Not court-issued or certified.

Source record

IN

THE HIGH COURT OF SOUTH AFRICA

GAUTENG

DIVISION, PRETORIA

CASE

NO: A209/16

Not

reportable

Not

of interest to other judges

Revised.

10/11/2017

In

the matter between:

SHEPPARD

SIBANDE APPELLANT

and

THE

STATE RESPONDENT

JUDGMENT

VAN DER WESTHUIZEN, A J

[1]. The appellant was arraigned in the Regional Court, Benoni, on four counts. He was acquitted on counts 1 and 2 and discharged. On count 3 (possession of an unlicensed semi automatic pistol) and count 4 (possession of unlicensed ammunition) the appellant was convicted and sentenced on count 3 to 15 years imprisonment and on count 4 to 12 years of imprisonment. The sentences were ordered to run concurrently, with an effective sentence of 15 years imprisonment.

[2]. With leave of the court a quo the appellant appeals against the sentence imposed on count 1.

[3]. It is submitted on behalf of the appellant that the sentence imposed induces a sense of shock and is harsh when regard is had to the personal circumstances of the appellant. At first blush, that submission seems inviting. However, for what follows the imposed

sentences are not to be interfered with.

[4]. On information received, the police attended at the place of residence of the appellant. Whilst questioning the appellant, the police searched the room/shack of the appellant. The appellant rented that shack from a landlord. Only the appellant lived there. A semi-automatic pistol and a revolver, together ammunition, were found hidden in the appellant's mattress. The serial numbers of the firearms were removed.

[5]. The evidence on behalf of the State revealed that when the firearms and ammunition were found, the appellant apologised profusely for possessing the said firearms and ammunition. He did not produce any license to possess the firearms or the ammunition. By agreement

between the State and the appellant's legal representative, who appeared on his behalf in the court a quo, a ballistics report was handed in. The appellant made admissions in respect of the semi- automatic firearm and the live ammunition, thereby conceding the requirements in that regard.

[6]. The evidence led on behalf of the appellant gave no explanation for the possession of the unlicensed firearms and ammunition. His only defence was that he did not know anything about the firearms that were found hidden in his mattress. He sought to suggest that his wife and mother also lived in the shack. The appellant's mother, who testified on his behalf, did not corroborate the appellant's version in respect of who else lived in the shack. She denied living there and testified that the appellant's wife lived elsewhere. The appellant's evidence was limited, concise and cryptic. In essence, it is a denial of any knowledge of the firearms found in his room/shack.

[7]. The criticism levelled at the imposition of the sentences relates to the following:

- (a) That the court a quo erred in not finding substantial and compelling circumstances to deviate from the prescribed minimum sentences;

(b) That the court a quo erred in imposing the prescribed minimum sentence on the count relating to the possession of the unlicensed

semi-automatic weapon.

[8]. It is further submitted on behalf of the appellant that the court a quo ignored mitigating factors relating purely to the personal circumstances of the appellant. In this regard, it is submitted that

in view of the fact that limited factors were placed before the court a quo, the court was obliged to investigate whether any substantial

and compelling circumstances were present to warrant a deviation from the minimum prescribed sentence. Counsel for the appellant relied on dicta in *S v Siebert* 1998(1) SACR 554 (A), *S v van de Venter* 2011(1) SACR 238 (SCA) and *S v Dlamini* SACR 266 (T) in support of the aforementioned submission.

[9]. The dicta relied upon in *Siebert*, supra, was uttered in the context where the appellant had pleaded guilty to a charge of being in possession of presumed stolen property. No detail was available as to the commission of the offence nor were appropriate factors placed before the trial court to enable that court to exercise its discretion in respect of the appropriate sentence and in particular that of correctional supervision.

[10]. In *van de Venter*, supra, the trial court ignored certain mitigating factors that were before it. The Supreme Court of Appeal considered itself compelled to interfere with the sentence imposed in view of that issue. The dicta relied upon was uttered in the aforesaid judgment with particular reference to the manner in which the trial court arrived at the sentence imposed. No indication was to be found, or factors appeared to have been cited, for the particular sentence imposed. The Supreme Court of Appeal was at a loss in that regard.

[11]. The dicta in *Dlamini*, supra, relied upon, was uttered in criticism of the obligation to impose minimum sentences in respect convictions in respect of certain stipulated offences.

[12]. In my view, the dicta relied upon does not require, that irrespective of the particular circumstances, a trial court is obliged to undertake an enquiry in every matter before it. It is trite that each matter is to be considered on its own merits.

[13]. In the present instance, the trial court took into account that the appellant was at that stage 23 years old, generally unemployed,

although being employed as a gardener or construction worker at some stage prior to his arrest. The appellant was at that stage living with a common law wife, with whom he had a six month old child and the wife being the primary breadwinner in view of the appellant's unemployment. The trial court also considered that the appellant hailed from Zimbabwe, had no passport nor identity document or any asylum documents. The appellant claimed to have lost his passport. The trial court accepted that the appellant was a first offender.

[14]. The trial court, in aggravation, considered the rife use of unlicensed firearms in the commission of serious offences as well as the prevalent possession of unlicensed firearms. A further factor considered by the trial court was that the appellant had apparently

failed to supply the police with a permanent address and that the appellant did not consider bringing a bail application whilst

awaiting trial. In that regard, the trial court drew an inference that the appellant had no fixed address despite the claim that the appellant was in South Africa since 2007.

[15]. In my view, the fact that the appellant attempted to distance himself from any possession of the semi-automatic firearm and his denial of any knowledge thereof, coupled with his illegal presence in South Africa outweighed his personal circumstances. The appellant not being candid about the legality or otherwise of his presence in South Africa, his inability to provide a fixed address of residency further impact upon the undertaking of any further investigation on the part of the trial court in respect of the exercising of the discretion to depart from the prescribed minimum sentence. Furthermore, the appellant's admissions in respect of the prescribed requirements relating to a semi-automatic firearm the trial court acquired the enhanced penalty of sentencing jurisdiction. See in this regard *S v Thembaletu* 2009(1) SACR 50 (SCA).

[16]. Counsel for the appellant submitted that the sentence imposed should not be disproportionate to the offence. It is further submitted on behalf of the appellant that other courts of appeal have on appeal granted lesser sentences than the prescribed minimum sentence of 15 years in respect of a first offender on a charge of possession of an unlicensed semi-automatic firearm. Counsel for the appellant submitted that the only recorded authority that on appeal confirmed a sentence of 15 years imprisonment for possession of an unlicensed semi-automatic firearm is that of *Thembaletu*, supra. It was further submitted that the matter of *Thembaletu*, supra, is distinguishable in that a further offence was committed with the said unlicensed semi-automatic firearm, which is absent in the present matter. In my view those submissions are without merit. The SCA in *Thembaletu*, supra, considered the provisions of s 51(2) of the Criminal Law Amendment Act, 105 of 1997 and held that those provisions are couched in unambiguous and peremptory terms. That court further held in paragraph [7] of the

judgment that "... once it is proved in a trial that an accused is guilty of an offence in terms of which he or she unlawfully possessed a firearm ... and it is proved or admitted that the firearm was 'semi-automatic' the application of its provisions relating to sentencing is triggered." In the present instance the appellant admitted that the firearm was semi-automatic. The SCA further held that in such circumstances, the court acquires the enhanced penalty or sentencing jurisdiction. The court a quo found no substantial or compelling circumstances to deviate from the minimum prescribed sentence of 15 years imprisonment.

[17]. Further in my view, it has not been shown that the trial court had erred in any material respect when exercising its discretion in respect of imposing sentence, nor has any other reason been shown to be present in terms of which this court could and should interfere.

[18]. It follows that there is no merit in the appeal against sentence.

[19]. I propose that the appeal against sentence be dismissed.

C J VAN DER WESTHUIZEN

ACTING JUDGE OF THE HIGH COURT

I agree, and it is so ordered.

T A MAUMELA

JUDGE OF THE HIGH COURT

On behalf of the Applicant: Ms M B Moloi

Instructed by:

Pretoria Justice Centre

On behalf of the Respondent: Ms P Vorster

Instructed by:

Director of Public Prosecutions

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.saflii.org/za/cases/ZAGPPHC/2017/754.html>

CASE PAGE <https://chat.esheria.ai/case-law/south-africa/sibande-v-s-unknown-topic-agpphc-2017--6a3ea50f3b1caa91298078e2>

Prepared on 11 October 2026 · Esheria