

SOUTH AFRICA / JUDGMENT

Sithole v S (A996/2011) [2012] ZAGPPHC 227 (4 October 2012)

[2012] ZAGPPHC 227

COURT

North Gauteng High Court, Pretoria

BEFORE

A. M.L Phatudi, D.S. Molele

CASE / FILE NUMBER

A996/2011

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NOT

REPORTABLE

NORTH

GAUTENG HIGH COURT, PRETORIA

REPUBLIC

OF SOUTH AFRICA

Case

No: A996/2011

Date

heard: 04 October 2012

Date

of judgment: 04 October 2012

In

the matter between:

ELIAS

PHILEMON SITHOLE.....Appellant

and

THE

STATE.....Respondent

JUDGMENT

PHATUDI J:

- [1] The appellant is convicted on one count of fraud and one of forgery in Amersfoort Regional Court.
- [2] The appellant was sentenced to 4(four) years imprisonment on fraud count and 3 (three) years imprisonment on forgery.
- [3] Leave to appeal is granted only against sentence on forgery.
- [4] It is trite that sentencing remains pre-eminently within the discretion of the sentencing court. It is further trite that the appeal court can only interfere if misdirection on the part of the trial can be found.
- [5] The state conceded that the trial court ought to have order the sentence on forgery to run concurrently with that of fraud. The state refers me to section 280 (2) of Criminal Procedure Act 51 of 1977 that permits the sentencing court to order various sentence s which have been imposed to run concurrently.
- [6] On perusal of the record and having heard submissions made, I am of the view that the trial court did misdirected itself by not letting the sentence on count 2 to run concurrently with that on count 1.

I, in the result, would make the following order:

1. The appeal is upheld.
2. The sentence imposed by trial court is set aside and replaced with the following

'Count1

- Accused is sentenced to 4 (four) years imprisonment

Count 2 - Accused is sentenced to 3 years imprisonment. The sentence in count 2 is ordered to run concurrently with the sentence on count 1. Effective sentence is 4 (four) years imprisonment

A. M.L Phatudi Judge of the High Court

I agree.

D.S. Molele

Acting Judge of the High Court

On Behalf of the Appellant: M. Jungbluth

Botha & Van Dyk Inc

30 De Clerq Street

Ermelo

Attorney: Mr. M Jungbluth

On Behalf of the Respondent: Director of Public Prosecutions

Church Square

Adv. N. R. Motaung

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