

SOUTH AFRICA / JUDGMENT

T.B v S (CA&R198/2014) [2016] ZAECHGC 111 (28 October 2016)

[2016] ZAECHGC 111

COURT

Eastern Cape High Court, Grahamstown

BEFORE

N G Beshe, GG Goosen

CASE / FILE NUMBER

CA&R198/2014

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IN

THE HIGH COURT OF SOUTH AFRICA

(EASTERN

CAPE DIVISION, GRAHAMSTOWN)

CASE

NO.: CA&R198/2014

In

the matter between:

T.

B.

Appellant

And

THE

STATE

Respondent

JUDGMENT

BESHE J:

[1] The appellant was convicted in the Regional Court, Queenstown on a charge of murder. He was sentenced to ten (10) years imprisonment of which three (3) years were suspended for four (4) years. He is now appealing against sentence, leave to do so having been granted by this court on petition.

[2] It is trite that the task of imposing a sentence is within the discretion of the trial court. The appeal court does not have

unfettered power to interfere with the sentence that was imposed by the trial court. It may only do so on limited grounds. This principle was elaborated on in Kgosimore[1] as follows:

“[10] It is trite law that sentence is a matter for the discretion of the court burdened with the task of imposing the sentence. Various tests have been formulated as to when a Court of appeal may interfere. These include whether the reasoning of the trial court is vitiated by misdirection or whether the sentence imposed can be said to be startlingly inappropriate or to induce a sense of shock or whether there is a striking disparity between the sentence the Court of appeal would have imposed. All these formulations, however, are aimed at determining the same thing, viz whether there was a proper and reasonable exercise of the discretion bestowed upon the court imposing sentence. In the ultimate analysis this is the true inquiry. (Compare S v Pieters 1987 (3) SA 717 (A) at 727G-I.) Either the discretion was properly and reasonably exercised or it was not. If it was, a Court of appeal has no power to interfere; if it was not, it is free to do so.”

S v Malgas.[2] can also be seen in this regard.

[3] Having considered the appellant's personal circumstances, the nature of the crime in respect of which the appellant was convicted and the interests of the society, the learned Magistrate came to the conclusion that appellant's personal circumstances were outweighed by the interests of the society.

[4] It was submitted on behalf of the appellant that the Magistrate misdirected himself by coming to the conclusion that the interests of the society and nature of offence outweighed the appellant's personal circumstances. It was further submitted that the following personal circumstances count strongly in appellant's favour:

he is a first offender,

he was 17 years old when he committed the offence,

he only stabbed the deceased once,

he was provoked by the deceased who assaulted him first,

the probation officer stated that he was taking responsibility for his actions, and

he was still at school doing Grade 7.

- [5] It is trite that punishment must fit the criminal as well as the crime, be fair to society and be blended with mercy according to the circumstances of the case.[3] The personal circumstances of an accused cannot be considered in isolation. The sentencing court must endeavour to maintain a balance

between the convicted person's personal circumstances and the nature of the crime. There can be no doubt that the appellant was convicted of a very serious offence. He brought about the death of the deceased by stabbing him on the chest with a pair of shearing scissors. This, in circumstances where deceased did not merely pounce on him for no reason. They had attended a birthday party, where appellant without the permission of the host cut the birthday cake and ate it. Upon being confronted, he retorted that deceased also had some of the cake. Trouble started when deceased took offence with him saying he also ate the cake. They argued after which appellant left, presumably going home. He was followed by Mr Soyi who gave evidence for the state. Soyi came across the appellant who was on his way back to the house where a party was held. He noticed that appellant had shearing scissors in his hand. Soyi tried to persuade appellant to throw the scissors away but he refused and instead placed the scissors on his waist. By his own admission appellant stated that he was angry when he met with Soyi.[4] It was common cause that upon meeting with the deceased after he came back to the house where the party was held they started arguing

again. Deceased hit him with an open hand twice. Accused thereupon drew the shearing scissors from his waist and stabbed the deceased.

In my view it can hardly be said that the appellant was provoked by the deceased.

- [6] As regards appellant's personal circumstances, the Magistrate did take them into account. This is clear from the learned

Magistrate's judgment on sentence[5] where he states the following:

"Well in this case, this Court has noted, as already alluded to, has noted all your personal circumstances, now having therefore considered those personal circumstances, the crime you have been convicted of and the interest of society, it is the Court's view therefore that the interest of society and the crime you have been convicted of outweighs your personal circumstances in this case, this Court cannot see any reason why in the circumstances of this case you would use a sharp instrument, and stabbing the deceased in a delicate part of his body, that is the chest."

Well, having therefore considered the social worker's report, your submissions by our legal representative, address by the State, it is the Court's view therefore that notwithstanding the fact that you are a scholar, notwithstanding the fact that you are a first offender, notwithstanding that having been a first offender you were also a young man at the time of the commission of this offence. This Court also takes into account that you have been convicted of a violent crime, in cases of violent crimes the Court is entitled to sentence a first offender directly to jail if circumstances of that case so permit. It is therefore the Court's view therefore that this Court

cannot see its way clear in imposing any other sentence other than a sentence which is a term of imprisonment. However, because you are a first offender, this Court is of the view that part of that sentence should be suspended. That part of the sentence which has been suspended will be hanging over your head like the sword of Damocles.”

[7] Upon a consideration of all the relevant facts and the submissions made by counsel, I am not persuaded that the Magistrate misdirected

himself in any way, nor am I persuaded that he exercised the discretion bestowed on him improperly. There is therefore no basis in my view to interfere with the sentence imposed in the court a quo.

[8] The appeal is accordingly dismissed.

N G BESHE

JUDGE OF THE HIGH COURT

GOOSEN J

I agree.

GG GOOSEN

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[1] 1999 (2) SACR 238 at 241 [10].

[2] 2001 (1) SACR 469 at 478 [12] d-f.

[3] S v Kumalo 1973 (3) SA 697 (A).

[4] Page 22 of record line 13-17. Accused: "I did not reach my home, Your Worship, I turned on the way and when I was turning back I met Thandile Soyi. Thandile Soyi stopped me, Your Worship, because he could see that I was angry and he had a conversation with me."

[5] Page 83-4 of record.

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