

SOUTH AFRICA / JUDGMENT

Tom and Others v S (A654/2010)

[2011] ZAWCHC 310 (29 April 2011)

[2011] ZAWCHC 310**COURT**

Western Cape High Court, Cape Town

BEFORE

Erasmus, Van Staden

CASE / FILE NUMBER

A654/2010

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

Source record**IN THE HIGH COURT
OF SOUTH AFRICA
(WESTERN CAPE HIGH
COURT, CAPE TOWN)
CASE****NUMBER:** A654/2010**DATE:** 29
APRIL 2011

In the matter between: MFUNDO
TOM
.....1st
Appellant
ZIMISELE
PUYIMANI
.....2nd
Appellant
SIKELLELA
NYENGANA
.....3rd
Appellantand
THE
STATE
.....Respondent

JUDGMENT

ERASMUS. J:

In this matter the appellants were convicted in the Wynberg Regional Court on charges of robbery, attempted robbery and attempted murder, stemming from a failed cash in transit heist and thereafter the robbery of a person whose vehicle they wanted to use to flee the scene. All three of the appellants were relatively young, in fact two of them were under 18 at the time of the commission of the offence and were sentenced to an effective term of 18 years imprisonment by the Regional Court magistrate, as he then was.

On the facts of the case it was clear that the appellants would have planned the event, armed themselves with, including a shotgun, an automatic machine gun, in an attempt to commit the offences. They were caught almost red-handedly and immediately arrested. They spent approximately two years as awaiting trial prisoners. The magistrate a quo obtained professional reports and inquired into the background and the possibility of rehabilitation of the appellants. He nevertheless

came to the conclusion that the sentence imposed was an appropriate sentence and may I add, expressed his disappointment that he could not be of further assistance to these youthful offenders. Sentence is always a difficult aspect of a criminal trial and more so, as Mr Pothier, on behalf of the appellants, correctly pointed out when one deals with youthful offenders. One must have regard to the fact that young persons often commit offences, because of their youthful exuberance and sometimes not properly thinking it through. One must always have regard to the fact that a person to be sentenced is mere human material that can change his ways and rehabilitate and must be given an opportunity, in appropriate circumstances, to effectively make a contribution to society upon his or her release. It is, however, unfortunate on the other hand that numerous of the serious offences that occur and that appear in these courts, are committed by young people. In this instant case, it was not a case of young persons not thinking their actions through, that have encountered criminality upon their way, but rather young persons who have planned to go out and commit these serious offences. It is common cause that a term of imprisonment was appropriate. The only complaint from the appellants are that the term was too lengthy. When a court of appeal deals with sentence, the first principle is that sentence is in the discretion of the court a quo and a court of appeal will not easily interfere with the imposed sentence unless it is clear that there are misdirections as to the facts or the law and the circumstances being taken into account for the imposition of the sentence. Alternatively where the sentence imposed by the trial court is excessive and that the sentence considered by the court of appeal would be substantially different to the one imposed by the trial court. In this instance I am of the view that neither of these aspects are applicable and that even if I had sat as a court of first instance, I would not have imposed a sentence which would have been materially less than what was imposed by the court a quo. I have referred to the fact that the learned magistrate has taken into account all factors and I must compliment him for the fact that he obtained far more information that is normally being done in cases of this instance. In my view, there is no merit in

the appeal on sentence and the sentence should be confirmed, it being an appeal only against sentence. VAN STADEN. AJ: I agree. VAN STADEN, AJ ERASMUS, J: It is so ordered, the sentence imposed by the Regional Court is confirmed and the appeal dismissed. ERASMUS, J

On the facts of the case it was clear that the appellants would have planned the event, armed themselves with, including a shotgun, an automatic machine gun, in an attempt to commit the offences. They were caught almost red-handedly and immediately arrested. They spent approximately two years as awaiting trial prisoners.

The magistrate a quo obtained professional reports and inquired into the background and the possibility of rehabilitation of the appellants. He nevertheless

came to the conclusion that the sentence imposed was an appropriate sentence and may I add, expressed his disappointment that he could not be of further assistance to these youthful offenders.

Sentence is always a difficult aspect of a criminal trial and more so, as Mr Pothier, on behalf of the appellants, correctly pointed out when one deals with youthful offenders. One must have regard to the fact that young persons often commit offences, because of their youthful exuberance and sometimes not properly thinking it through. One must always have regard to the fact that a person to be sentenced is mere human material that can change his ways and rehabilitate and must be given an opportunity, in appropriate circumstances, to effectively make a contribution to society upon his or her release.

It is, however, unfortunate on the other hand that numerous of the serious offences that occur and that appear in these courts, are committed by young people. In this instant case, it was not a case of young persons not thinking their actions through, that have encountered criminality upon their way, but rather young persons who have planned to go out and commit these serious offences. It is common cause that a term of imprisonment was appropriate. The only complaint from the appellants are that the term was too lengthy.

When a court of appeal deals with sentence, the first principle is that sentence is in the discretion of the court a quo and a court of appeal will not easily interfere with the imposed sentence unless it is clear that there are misdirections as to the facts or the law and the circumstances being taken into account for the imposition of the sentence. Alternatively where the sentence imposed by the trial court is excessive and that the sentence considered by the court of appeal would be substantially different to the one imposed by the trial court.

In this instance I am of the view that neither of these aspects are applicable and that even if I had sat as a court of first instance, I would not have imposed a sentence which would have been materially less than what was imposed by the court a quo. I have referred to the fact that the learned magistrate has taken into account all factors and I must compliment him for the fact that he obtained far more information that is normally being done in cases of this instance.

In my view, there is no merit in the appeal on sentence and the sentence should be confirmed, it being an appeal only against sentence.

VAN STADEN. AJ: I agree.

VAN STADEN, AJ

ERASMUS, J: It is so ordered, the sentence imposed by the Regional Court is confirmed and the appeal dismissed.

ERASMUS, J

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/ZAWCHC/2011/310.html>

CASE PAGE <https://chat.esheria.ai/case-law/south-africa/tom-and-others-v-s-unknown-topic-awchc-2011>

Prepared on 14 October 2026 · Esheria