

DATUM: 22 OCTOBER 2010

FREDERICKS DAVIDS Appellant

THE STATE	Respondent
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JUDGMENT

MIA, AJ

[1] On the 4 May 2009 the appellant, a farm worker was convicted of murder and attempted murder. On the 15 May 2009 the appellant was sentenced to twenty years imprisonment on the first count and 10 years' imprisonment on the second count. The Court *a quo* ordered that five years of the sentence on the second count should run concurrently with the sentence on the first count. The appellant was 18 years and 9 months old

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and was employed by the deceased on his farm when the offences were committed. The appellant pleaded guilty to the charges of murder and attempted murder.

5 [2] The appellant was legally represented before the Court *a quo* and elected not to give evidence in mitigation. A Probation Officer's report was compiled to assist the Court in gaining insight into the appellant's personal circumstances. The report also referred to a consultation
10 with the wife of the deceased who is also the complainant in the second count. The State, in order to place aggravating circumstances before the Court, led her evidence. The Probation Officer's recommendation was that a period of imprisonment was the only option
15 available.

[3] With the leave of the Court *a quo* the appellant now appeals against sentence alone. In his notice of appeal the appellant contends that the Court *a quo* erred in
20 overemphasising the seriousness of the crime and underemphasising the personal circumstances of the appellant. Furthermore, it was argued that the trial Court underemphasised that the appellant was very young when the offence was committed.

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[4] In sentencing the appellant, Zondi, J approached the sentence on the basis that life imprisonment is the prescribed sentence for murder which falls within the ambit of section 51 of Act 105 of 1997 and specifically Part I of Schedule 2, unless there are substantial and compelling circumstances which indicate that there ought to be a departure from the prescribed sentence.

[5] The sole issue which must be considered in this appeal is thus whether the sentence imposed on the appellant is shocking or disproportionate to the offence.

Background

[6] At the time of the commission of the offence the appellant was employed by the deceased and had recently been told to leave. The appellant's parents had also worked for the deceased but had left after there was a difference of views regarding work to be done. After the appellant's father left his employment, the appellant continued working on the farm. Three months prior to the commission of the current offences, the appellant was in prison for another crime.

[7] The evidence of the complainant on count two was that

she was requested by the deceased to bake bread and cook meat for the appellant in view of the fact that he was residing on the farm without his family. There had been a disagreement between the appellant and the deceased resulting from a disagreement over damaged farming implements. The appellant alleged he was blamed for this unfairly. As a result of this disagreement, he was paid only part of the full month's salary. The appellant was aggrieved and even threatened the deceased. The appellant indicates in his statement in terms of section 112(2) of the Criminal Procedure Act, Act 51 of 1977, at paragraph 4.2 as follows:

"4.7 Ek het die oorledene gedreig en aan hom gesê dat hy sal sien wat ek met hom gaan maak."

[8] The appellant then described how he persuaded the deceased to accompany him to his place of residence on the pretext that he wished to repair a pipe. He then hit the deceased with a hammer and stabbed him with a knife several times in the direction of his neck area, upper body and chest. After stabbing the deceased the appellant returned to the stable where he found the

deceased's wife. He requested money from her and when she would not acquiesce he stabbed her several times. The deceased's daughter witnessed this incident and ran to her room wherein she locked herself. The appellant then went to a neighbour's house, called the police and, handed himself over to them on their arrival. He was in custody since his arrest for approximately eleven months.

- 10 [9] In the present matter the appellant is a repeat offender, having committed at least four housebreaking and theft offences in his early teens. The appellant was convicted of housebreaking with intent to steal and theft in 2003 but the passing of sentence was postponed and he was placed under supervision of a Probation Officer. He was convicted of similar offences in January, March and April 2004 and suspended sentences were imposed. In 2005 he was found guilty of possession of drugs and once more a suspended sentence was imposed. Later in 2005 he was again convicted of housebreaking with intent to steal and theft and was sentenced to 18 months' direct imprisonment. In March 2008 he was found guilty of assault with intent to do grievous bodily harm after he had threatened a traffic officer with a knife. He was sentenced to 12 months' imprisonment in terms of §

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276(1)(i) of Act 51 of 1977.

5 [10] Notwithstanding his punishment having been postponed in 2003 and having been referred to a social worker to participate in rehabilitation programmes, the appellant went on to commit at least six more offences.

10 [11] The Probation Officer's report indicates that his parents experienced him as a "naughty" teenager who was involved in crime along with his peers. From the record and the Probation Officer's report there does not seem to have been an attempt to rehabilitate himself. The appellant has also not utilized the numerous opportunities he had when his sentence was suspended to change his behaviour. Having regard to the previous
15 offences, the offences *in casu*, have increased in gravity and the consequences for the community have become dire with the passage of time.

20 [12] It was submitted on behalf of the appellant that there is a degree of disparity between the sentence imposed and that which ought to have been imposed such as to justify interference by this Court. The submission that the Court *a quo* underemphasised the appellant's young age is
25 unfounded. The Court *a quo* in fact mentions the tender

age of the appellant and in fact found that substantial and compelling circumstances exist to justify a deviation from the prescribed sentence.

5 [13] The Probation Officer mentions in the report that the parents of the appellant have a history of alcohol abuse and family violence. It is evident from the report that the appellant had to leave school to start working and thus was deprived of a schooling opportunity. This factor on
10 its own does not suffice to reduce the sentence imposed. The appellant was exposed to life skills programmes when his first sentence was postponed. It appears that the opportunity to learn life skills was presented at an early age and before he progressed to further crimes.

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[14] The submission on behalf of the appellant that the appellant was left without religious foundation or a proper value system is incorrect. The Probation Officer's report is that the parents of the appellant attend church
20 every second week. This would have exposed the appellant to some religious foundation and a value system. The appellant's father also experienced problems with the deceased. This did not result in the appellant's father retaliating negatively against the
25 deceased.

[15] Having regard to the circumstances surrounding his dismissal, it may well have been that he was disenchanted by the reduced wage/salary that he received, however, the response in relation to the problem it posed was inappropriate and disproportionate to the dispute that existed between the appellant and the deceased.

10 Finding

[16] The autopsy report as well as the J88 have reflected a gruesome picture. Having regard to the purpose of punishment and the seriousness of the offences, the only appropriate sentence is a long term of imprisonment. Zondi, J had regard to the youthfulness of the appellant as well as his upbringing as indicated in the record at paragraph 22. Further, at paragraph 25, the Court *a quo* notes that the appellant's youth as well as his plea of guilty are both indications of remorse. In the light of the aforementioned, the Court *a quo* had regard to the provisions of section 51(3)(b) and found that the appellant's youthfulness constituted a substantial and compelling reason to justify imposing a lesser sentence. There is no disparity between the sentence and the

gravity of the offences. In the result the sentence is not shocking or inappropriate and I can find no reason to interfere with the sentence handed down by Zondi, J.

5 Order

[17] For the reasons given, I propose that the appeal against the sentence should be dismissed.

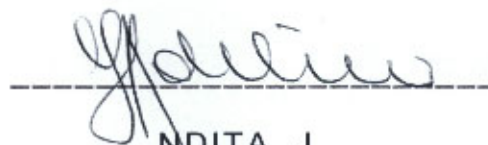
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MIA, AJ

I agree.

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NDITA, J

20 I agree and it is so ordered.

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HLOPHE, JP