

**IN THE HIGH COURT OF SOUTH AFRICA
EASTERN CAPE, PORT ELIZABETH**

**CASE NO.: CC 34/2011
DELIVERED: 17-08-2012**

In the matter between:

THE STATE

And

GAVIN MINNIE

SENTENCE

BESHE, J:

[1] Mr Neal Alexander Domingo (deceased) whose age was 51 and a traffic officer was shot to death on the evening of the 12 August 2009. Mr Domingo had minutes before that parted with his daughter Ms Seafeld whom he had visited at her home. At the time of the shooting Mr Domingo was in his official motor vehicle, a marked traffic department sedan and clad in his uniform. He was also robbed of his service pistol.

[2] The offences were committed by the accused who was acting in concert with an unidentified companion. Both the accused and his companion were armed with firearms. This resulted in accused being convicted on four counts being:

Murder.

Robbery with aggravating circumstances.

Unlawful possession of firearms and ammunition.

[3] These proceedings have reached the stage where I should consider what sentence will be appropriate in the circumstances of this case. In doing so I will take the following into consideration: The nature of the crimes that the accused has been convicted of; his personal circumstances and the interests of the society. I will also endeavour to blend the sentence that I will impose with a measure of mercy according to the circumstances of this case. See in this regard

S v Kumalo 1973 (3) SA 697 (A)

[4] The accused is now 33 years old having been 30 years old at the time of the commission of the offences. He is one of four children. His siblings are all older than him. He went as far as grade 8 at school. He lost his father when he was ten years old. This resulted in his family having to move from a seven roomed house to two roomed house that is situated in notorious area known as Katanga or “Die Gat” and later to another two roomed house in Ibex Street, also in Gelvandale.

[5] The family survives on a monthly old age pension grant drawn by accused’s mother who is also suffering from ill-health. Attempt by the accused to find employment failed save for a period of 3 months in 2000 when he was employed as a casual worker. He has tried to earn a living by selling sweets, liquor and cigarettes from his home and by helping his brother-in-law who is a tiler. He is not married, but is the father to two minor children aged 10 and 2 years respectively.

[6] The accused is not a first offender. In 2000 he was convicted of indecent assault. In 2004 he was convicted of attempted rape. In 2010 he was convicted of 1. Attempted murder. 2. and 3. Unlawful possession of a fire arm and ammunition respectively.

[7] The offences that the accused has been convicted of attract the application of the Criminal Law Amendment Act 105 of 1997 as amended, also known as the Minimum Sentence Act. This prescribes minimum sentences that courts are enjoined to impose in the case of a conviction in respect of those serious offences. In respect of the murder charge, accused is liable to imprisonment for life because the death of the deceased was committed during a robbery.

[8] The robbery attracts a minimum sentence of 15 years imprisonment because aggravating circumstances were present in the commission of the robbery in that both the accused and his companion wielded firearms.

[9] Had accused been a first offender in so far as the possession of a semi-automatic firearm is concerned, he would have been liable to 15 years

imprisonment. This however is his second such conviction and he is therefore liable to imprisonment for 20 years.

[10] Section 51 (3) (a) of Sentencing Act referred to *supra* provides that if a court is satisfied that substantial and compelling circumstances exists which justify the imposition of a lesser sentence than the sentence prescribed by the Act, it shall enter those circumstances on the record of proceedings and thereupon impose such lesser sentence.

[11] It was submitted on behalf of the accused that the following factors amount to substantial and compelling circumstances, justifying the imposition of a lesser sentence by this court: The fact that accused is relatively young, something that bodes for rehabilitation. That this is further evidenced by the fact that he has voluntarily undergone rehabilitation courses in prison i.e. Bible study, anger management program as well as a life skills program. The fact that he was convicted on the basis of common purpose and was not the person who fired the fatal shot. I was also urged on his behalf to take into account that he did not have an easy childhood and must have been affected by the passing of his father at an early age and therefore did not have a role model. That there was no evidence that these offences were planned – they were committed on the spur of moment.

[12] Counsel for the state submitted that there were no substantial and compelling circumstances justifying the imposition of lesser sentences than those that are prescribed by the Sentencing Act. Further that accused is not a first offender that minimized the prospects of him being rehabilitated. Previous convictions or brushes with the law did not discourage him from engaging in crime.

[13] In ***DPP KwaZulu Natal v Ngcobo 2009 (2) SACR Navsa JA*** stated that ***S v Malgas 2001 (1) SACR 469 SCA*** was a good place to start when faced with the question whether substantial and compelling circumstances exist. *Marais JA* in ***Malgas's*** case stressed that courts are required to approach the imposition of sentences cautiously that the legislature has ordained certain periods of imprisonment for those particular offences as the sentences that should ordinarily

be imposed. The Honourable Judge of Appeal cautioned against departure from the prescribed sentences for flimsy reasons.

[14] In ***S v Matyityi 2011 (1) SACR Ponnann JA*** found that the fact that accused in that case was 27 years old was a neutral factor; because there was no evidence that he was immature or that any influence was brought to bear upon him to cause him to act in the manner he did.

[15] The accused in this matter is 33 years old, he cannot be said to be youthful in the sense that he is still immature. Is the accused a candidate for rehabilitation? As indicated earlier on he has previously been convicted and sentenced to go to jail with part of the sentences being suspended. This does not seem to have had the desired effect, namely discouraged him from committing crime. The present offences were committed a few days after his step-daughter Bianca was buried. Bianca had been shot at accused home. This does not seem to have brought it home to him that firearms place human beings' lives in danger. He went around armed with a firearm with a companion who was also armed with a firearm and it would seem the only reason deceased lost his life was so that accused and his friend could add to their collection of firearms. In my view you do not keep a firearm to admire it - but to use it to fire shots.

[16] Just as accused has minor children, mother and siblings, the deceased was ± 51 years old gainfully employed and had a family. I have no doubt that he also had hopes and aspirations about his future and all that was brought to a halt on the 12 August 2009.

[17] I have no doubt that members of the community at large, deceased's family and friends are watching with keen interest whether they enjoy protection of law from people who behave like the accused.

[18] Growing in a stricken area with a single parent or being an orphan, joblessness is a fate that confronts many in our country because of the socio-economic conditions prevailing in our country. But I do not believe that this justifies that people should commit offences – kill others and engage in other

crimes. If anything I know of many people who were motivated by those same circumstances to work hard so that they can have a better life to make sure that their children do not suffer the hardship they did. I do not understand how committing crimes such as one committed by the accused helps to improve his situation.

[19] I will however be mindful to what was stated by *Harmse JA* in ***S v Mhlakaza 1997 (1) SACR 515 SCA*** namely that – “The object of the sentencing is not to satisfy public opinion but to serve the public interest. A sentencing policy that predominantly for public opinion is inherently flawed. It remains the court’s duty to impose fearlessly an appropriate and fair sentence even if the sentence does not satisfy the public.” *Harmse JA* went on to say:

“Given the current levels of violence and serious crime in this country, it seems proper that, in sentencing such crimes, the emphasis should be on retribution and deterrence.”

[20] However having considered the circumstances of this case as well as the personal circumstances of the accused I consider the following to be substantial and compelling circumstances.

1. That there is no evidence that the murder and robbery of deceased were premeditated.
2. Accused was convicted on the basis of common purpose, he is not the person who pulled the trigger.

Be that as it may, I am of the view that the offences that accused has been convicted of require the imposition of stiff sentences.

[21] I will be mindful of the fact that in imposing lesser sentences than the one that are prescribed, I should take account of the fact that these crimes have been singled out for severe punishment and that the sentence to be imposed in lieu of the prescribed sentences should be assessed paying due regard to the benchmark which the legislature has set.

[22] I am satisfied that lengthy terms of imprisonment for each of the offences will serve the interest of justice which includes the interest of the society, serve as a

deterrent to accused and the would-be offenders and serve as punishment.

[23] In the circumstances I consider the following sentences to be appropriate:

Count 1: Accused is sentenced to undergo 28 years imprisonment.

Count 2: To undergo 12 years imprisonment.

Count 3: To undergo 10 years imprisonment.

Count 4: To undergo 2 years imprisonment.

Half of the sentence in count 2, as well as the sentences in respect of counts 3 and 4 are ordered to run concurrently with the sentence in respect of count 1.

**N G BESHE
JUDGE OF THE HIGH COURT**