

(Inlexso Innovative Legal Services) / mr

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NO: CC59/2019

DATE: 2020.01.31

DELETE WHICHEVER IS NOT
APPLICABLE

(1) REPORTABLE: NO.

(2) OF INTEREST TO OTHER JUDGES:
NO.

(3) REVISED.



DATE: 2020.02.11

SIGNATURE

In the matter between

THE STATE

and

JOHN SLENDER

Accused

SENTENCE

JOHNSON, AJ: Mr Slender, the sentencing stage is the most difficult part of a trial. One must not lose sight of the fact that you are also a human being and that the court must treat you with humanity. You have however destroyed a person's life. Every person has a

constitutional right to life. You have taken that away from a fellow human being, and you have attempted to do the same to the complainant mentioned in count 2.

The aim of the court in sentencing you is not to destroy you. The court must blend its sentence with a measure of mercy. I must also keep in mind that a minimum sentence is prescribed by the provisions of section 51 (2) of the Criminal Law Amendment Act 105 of 1997 as far as the murder charge is concerned. According to it, the court is obliged to impose a minimum sentence of 15 years imprisonment for the charge of murder under the circumstances you committed it, unless substantial and compelling circumstances exist.

When the court considers a sentence and in a search for such circumstances, there are three factors which must be taken into account, namely your personal circumstances, the interest of society and the offences of which you have been convicted. The court must also take the impact that the offence has had on the family of the deceased into consideration.

Your two previous convictions are not relevant to

the offences of which you have been convicted. The court will therefore treat you as a first offender. You are 41 years of age and you are not married. You however have three minor children of which two are at school. The mother of the children is not employed. You stay in Soshanguve in a house that is bonded, and you repay R4200.00 per month. You were in the police services for 9 years and then subsequently dismissed as a result of these offences. You now generate an income by using your car as a taxi.

As for the offences of which you have been convicted are concerned, you say that you are sorry for the death of the deceased and the injury to the other student. The fact that a person is sorry for what he did does not establish remorse in the legal sense. Remorse is far more than just being sorry for what you did and the consequences thereof. In *S v Matyityi* 2011 (1) SACR 40 (SCA) at page 47 b - c, the court explained it as follows:

“Thus genuine contrition can only come from an appreciation and acknowledgement of the extent of one's error. Whether the offender is sincerely remorseful, and not simply feeling sorry for

himself or herself at having been caught, is a factual question. It is to the surrounding actions of the accused, rather than what he says in court, that one should rather look.

In order for the remorse to be a valid consideration, the penitence must be sincere and the accused must take the court fully into his or her confidence. Until and unless that happens, the genuineness of the contrition alleged to exist cannot be determined. After all, before a court can find that an accused person is genuinely remorseful, it needs to have a proper appreciation of, inter alia:

what motivated the accused to commit the deed;

what has since provoked his or her change of heart; and

whether he does indeed have a true appreciation of the consequences of those actions.”

We all appreciate the fact that the police do dangerous work. They are also provoked on occasions. In this instance you were called to quell violence at the University campus and to protect yourselves, you had to fire warning shots. You did exactly what your captain asked you to do and you dispersed the crowd and made it safe for you to exit

the gate. There was no reason for you to thereafter fire at them, after they had already left the entrance to the campus.

Police officers are trained in the use of firearms. In your case you were an experienced policeman - you had nearly 10 years' service. The court has no doubt that you knew what your responsibilities were, and that you could not fire at defenceless persons. Police are there to safeguard the community, and not attack them. In performing their duties, the police should not act reckless and endanger the lives of the public.

The court accepts that you were fearful and that you feared for your life, but the danger that you feared ended the moment the students dispersed. When a policeman uses his firearm, a high degree of caution is expected of him or her. Courts have a duty to send out the message to law enforcement officers that the reckless handling of firearms which cause death or injury to defenceless members of the public will not be tolerated. It is sometimes necessary to use a firearm, but the situation that you were in when you fired the two shots in the direction of the deceased and the

complainant, did not warrant such shooting. They did not pose any danger at that stage.

The result of you killing the deceased, has led to the fact that what you did, cannot be undone. The deceased has lost his life and that is the end for him. He can never come to life again. The court thinks that that fact would most probably haunt you for the rest of your life.

The court takes into account that you have lost your job as well as half of your pension, but that is as a result of your own doing.

From the evidence of Mr Monareng, it seems that the death of the deceased had a devastating effect on his family life. The deceased was his only son and he studied law. He was a mere 26 years of age. He said that the deceased was a dedicated student and that he is devastated by his death.

The community expects of courts to impose appropriate sentences upon conviction for these types of offences. Police officers are in the services of the community who pay for their salaries through taxes. They expect a high degree of caution and respect when

police interact with them. Law enforcement officers should never be allowed to act as if they were a law unto themselves. The court is also obliged to impose a minimum sentence of 15 years imprisonment for murder which was not premeditated, as I have already mentioned. The court has no discretion to deviate from that, unless there are substantial and compelling circumstances.

I have considered the situation that you were in when you shot at the deceased and the complainant, but it was not a shooting on the spur of the moment. You had time to reflect after the students left. On the contrary, you merely went ahead and shot in the direction of the deceased and the complainant for no apparent reason. You did not take the court into your confidence as to why you did it. One does not expect that type of conduct from a policeman. You should have known better.

In view of all these factors which are considered accumulatively, the court is of the opinion that there are no compelling and substantial circumstances as far as count 1 is concerned, that warrants me to deviate

from the prescribed minimum sentence. It is unknown what the effect of the shooting of the second state witness had on him. The court has not doubt that the injury that he had sustained was serious, and that it caused harm that would haunt him for the rest of his life.

In view of all these factors the court is of the opinion that the following would be an appropriate sentence. On count 1 you are sentence to 15 years imprisonment. On count 2 you are sentenced to 5 years imprisonment. In the interest of mercy I order that the sentence of 5 years imprisonment runs concurrently with the sentence of 15 years imprisonment.

Your counsel did not address the court as to the provisions of sections 103(1) of act 60/2000. He conceded that the court should order that you are unfit to possess a firearm. I agree with him that a person who uses a firearm in the way that you did to kill the deceased, is a risk and do not deserve to possess a firearm. The court therefore makes no finding in terms of section 103(1) of act 60/2000 which entails that you

are now automatically unfit to possess a firearm.



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JOHNSON, AJ

ACTING JUDGE OF THE HIGH COURT

DATE: 2020 02 11