



IN THE HIGH COURT OF SOUTH AFRICA /ES
(GAUTENG DIVISION, PRETORIA)

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: YES / NO

(2) OF INTEREST TO OTHER JUDGES: YES / NO

(3) REVISED

DATE

SIGNATURE

CASE NO: A273/2012

DATE: 14/7/2015

IN THE MATTER BETWEEN

WILLEM HENDRIK JACOBUS CASTELYN

APPELLANT

AND

THE STATE

RESPONDENT

JUDGMENT

PRINSLOO, J

[1] On 16 October 2002, and in the Circuit Local Division for the Western Circuit District, held at Klerksdorp, the appellant was convicted on one count of murder, one count of robbery with aggravating circumstances and one count of theft.

[2] On the same date, the learned Judge *a quo* sentenced the appellant as follows:

1. in respect of count one, the murder conviction, to imprisonment for life;

2. in respect of count two, the robbery with aggravating circumstances, to eight years imprisonment;
3. in respect of count three, the theft, to two years imprisonment.

The learned Judge did not order the sentences on counts two and three to be served concurrently with the sentence of life imprisonment on count one, but this follows automatically *ex lege* – see section 32(2)(a) of the Correctional Services Act, Act 8 of 1959.

- [3] On 20 November 2006, four years later, the appellant applied to this court for leave to appeal against the sentence. It does not appear from the record, but it is reasonable to assume that the application for leave to appeal was only against the sentence, because, in the trial, the appellant pleaded guilty to the charges.

The application for leave to appeal was refused.

- [4] The appellant petitioned the Supreme Court of Appeal, and on 22 April 2010, almost another four years later, that court granted the appellant leave to appeal to the Full Court of this division against the sentence imposed by the learned trial Judge.

- [5] On 30 October 2012, the appeal against sentence came before the Full Court of this division. On that occasion, the appellant applied for leave to present further evidence with regard to the sentence on the following subjects:

- "1. Die vooruitsig op die moontlike rehabilitering van die appellant.

2. Enige aspek van die persoonlikheid van die appellant wat hom daartoe gedryf het om die misdrywe te pleeg of bygedra het tot die pleging van die misdrywe waarvan hy skuldig bevind is of wat hom in die toekoms tot die pleging van geweldsmisdade kan dryf.
3. Die feit of the appellant in die verlede gely het aan enige persoonlikheidsversteuring of teenswoordig daaraan ly, soos bv psigopatie."

Without dwelling on the details of the lengthy order made by this court on that occasion, it can be said that leave was granted for the appellant to be examined by a psychiatrist and/or a forensic clinical psychologist and for a report or reports by such experts to be submitted to this court. The matter was postponed *sine die*.

[6] On 17 April 2015, the appeal on sentence came before us.

On that occasion, Mr Van As, on instructions from the Pretoria Justice Centre, appeared for the appellant, and Mr Maritz appeared for the State.

Earlier, in February 2015, the appellant also filed a psychological report, dated 21 July 2014, prepared by Ms Sunette van den Heever, Educational Psychologist with a special interest and training in Psycho-legal work. The report was filed pursuant to the order of this court of 30 October 2012.

Before compiling her report, Ms Van den Heever conducted three extensive interviews with the appellant on 25 April, 9 July and 16 July 2014 in the Pretoria Central prison (now known as Kgosi Mampuru prison).

- [7] When the matter came before us on 17 April 2015, we debated the following issue with counsel: there was no leave to appeal applied for or granted in respect of the convictions. We had formed a *prima facie* view that the conviction on the second count of robbery, appeared to us not to be in order. The undisputed evidence of the appellant was that after he had committed the murder, and on his way out of the home of the deceased, he noticed the handbag and the car keys of the deceased lying on the kitchen table. He took these items on the spur of the moment. Consequently, the deceased was not deprived of the items by force so that the actions of the appellant did not amount to robbery, but rather to theft. Moreover, in the absence of a robbery committed during the murder, the provisions in the Criminal Law Amendment Act, Act no 105 of 1997 ("the Act"), and more particularly section 51(1) thereof read with Part I of Schedule 2 thereof, were such that the minimum sentence of life imprisonment in this particular case would have fallen away. The minimum sentence can, amongst others, be imposed "when the death of the victim was caused by the accused in committing or attempting to commit or after having committed or attempted to commit ... robbery with aggravating circumstances as defined in section 1 of the Criminal Procedure Act".

Consequently, although the absence of a robbery conviction, as we anticipated, would only impact on the sentence for the murder, all these factors indicated that, in order for

justice to be served, leave had to be sought, and obtained if a court entertaining the application agreed thereto, to appeal against the convictions as well.

On this basis, the appeal was again postponed to 22 June 2015 but it was arranged for the parties, represented by the counsel mentioned, to appear before the Deputy Judge-President on 21 April 2015 to apply for leave to appeal against the convictions. On that occasion, leave was granted to appeal against the convictions on counts 1 and 2.

[8] It was against this, rather tortuous, procedural background, that we entertained the appeal on 22 June 2015.

[9] I turn now to the appeal against the convictions, and the sentences, in that order.

Appeal against the convictions

[10] Leave to appeal was only granted against the convictions on counts one and two.

[11] Count one is the murder charge. It is alleged (and it was admitted by the appellant when he pleaded guilty) that the appellant, on 20 February 2002, stabbed the deceased, a 61 year old single lady, Anna Margaretha Nieuwoudt, to death in her home in the Silwerjare Ouetehuis in the district of Schweizer-Reneke.

[12] Count two, the robbery charge, in respect of which the appellant also pleaded guilty, amounts to an allegation by the state (admitted by the appellant) that on the same date and at the same place, he assaulted the deceased and, by force, deprived her and

robbed her of a number of assets. The assets are listed, and I do not consider it necessary to mention all of them, but, importantly, it included the Nissan Sentra motor vehicle of the deceased, two remote control buttons, a cell phone, a pair of scissors and a handbag containing, *inter alia*, the Standard Bank Gold Mastercard of the deceased as well as a Standard Bank document containing the personal identification number ("PIN") of the deceased with regard to the aforementioned credit card. A cheque-book was also taken.

- [13] Count three involves two incidents of theft, taken as one in the same count, namely that between 20 and 21 February 2002 at or near Wolmaransstad, the appellant, unlawfully, withdrew an amount of R880,00 at an automatic teller machine from the bank account of the deceased and, the next day, he did the same in Gezina, Pretoria when he withdrew a further R1 000,00.

Before the commencement of the proceedings, the appellant, through his counsel, made the usual admissions, namely that the post-mortem report correctly reflects the cause of death (in this case "two stab wounds of the chest"), that the body did not sustain further injuries up to the time of the post-mortem examination, that certain photo albums correctly reflect the particulars purported to be demonstrated on the photos and some other admissions, which I do not consider necessary to detail, in view of the plea of guilty.

- [14] As part of his plea of guilty, the appellant, through his counsel, handed in a written statement in terms of the provisions of section 112(2) of the Criminal Procedure Act, Act 51 of 1977 ("the CPA").

It is convenient, for illustrative purposes, to quote the contents of this statement:

"Ek, die ondergetekende, Willem Hendrik Jacobus Castelyn, die beskuldigde, pleit skuldig op die klagtes teen my soos volg:

Ad klagte 1 – Moord

1. Ek erken dat ek op of omtrent 20 Februarie 2002 en te of naby die Silwerjare Ouetehuis in die distrik van Schweizer-Reneke, gegaan het, en vantevore daar was.
2. Ek erken dat ek wederregtelik en opsetlik vir Anna Margaretha Nieuwoudt, 'n volwasse vrou, gedood het deur onder andere onder die voorwendsel dat ek skoonheidsprodukte aan die oorledene wou verkoop, toegang tot die oorledene se woning by die ouetehuis verkry het.
3. Ek erken dat ek binne die woning die oorledene aangeval het met 'n skêr deur haar in die bors verskeie kere te steek.
4. Ek erken dat ek die opset gehad het om die oorledene te dood deur bogenoemde Aksie.

Ad aanklag 2 – Roof met verswarende omstandighede soos bedoel in artikel 51 van 1977

1. Ek erken dat ek op of omtrent 20 Februarie 2002 en te of naby die Silwerjare Ouetehuis in die distrik van Schweizer-Reneke, gegaan het.
2. Ek erken dat ek wederregtelik en opsetlik vir Anna Margaretha Nieuwoudt, 'n volwasse vrou, aangerand het.

3. Ek erken dat ek toe daar en deur middel van direkte geweld die volgende artikels, die eiendom of in besit van die oorledene geneem en haar aldus daarvan beroof het (I am not quoting all the items. It is common cause that the appellant took all the items I have already referred to.)
4. Ek erken dat ek die opset gehad het om die regmatige eienaar/besitter permanent van haar eienaarskap te ontnem.

Ad aanklag 3 – Diefstal (met inagneming van die bepalings van artikel 94 van die Strafproseswet)

1. Ek erken dat ek gedurende die tydperk 20 Februarie 2002 tot 21 Februarie 2002 te Wolmaransstad en Gezina (Pretoria) wederregtelik en opsetlik die totale bedrag van R1 880,00 (eenduisend agt honderd en tagtig rand) uit oorledene se bankrekening onttrek het.
2. Ek erken dat ek sonder die toestemming van die gemelde oorledene bogenoemde bedrag onttrek het om regmatige eienaar/besitter van haar eienaarskap te ontnem.

Ad al die bogemelde klagtes:

1. Ek erken te alle tye dat my optrede verkeerd was en strafbaar is.
2. Ek maak hierdie verklaring vrywillig en is geensins daartoe beïnvloed op enige wyse nie.
3. Geen dwang is op my toegepas om skuldig te pleit en hierdie verklaring te maak nie."

[15] I now turn to the convictions in respect of the various counts.

(i) The murder conviction

[16] As I have pointed out, the appellant pleaded guilty to the charge of murder.

[17] It appears from his statement that he admits having stabbed the deceased repeatedly with the scissors and that he had the intention to kill her.

[18] The appellant offered no defence to this charge, neither am I able to find such a defence.

[19] In the circumstances, the appellant was correctly convicted of murder so that the appeal against this conviction falls to be dismissed.

(ii) The robbery conviction

[20] I have already briefly referred to this conviction.

[21] As appears from his section 112 statement, the appellant pleaded guilty to the charge of robbery. Details of his plea have been quoted.

[22] However, counsel for the appellant, Mr Van As, argued that when the appellant later gave evidence on the question of sentence, and when he was examined on the circumstances under which he murdered the deceased, he gave an explanation, with regard to the alleged robbery, which ought to have persuaded the learned Judge to

amend the plea to one of not guilty, because there was an indication that the appellant had not committed robbery, but, rather, theft.

[23] It is clear that a court can amend a plea of guilty to one of not guilty, in terms of section 113 of the CPA, at any stage before sentence. This section reads as follows:

"Correction of plea of guilty.

113(1) If the Court at any stage of the proceedings under section 112(1)(a) or (b) or 112(2) and before sentence is passed is in doubt whether the accused is in law guilty of the offence to which he or she has pleaded guilty or if it is alleged or appears to the Court that the accused does not admit an allegation in the charge or that the accused has incorrectly admitted any such allegation or that the accused has a valid defence to the charge or if the Court is of the opinion for any other reason that the accused's plea of guilty should not stand, the Court shall record a plea of not guilty and require the prosecutor to proceed with the prosecution: Provided that any allegation, other than an allegation referred to above, admitted by the accused up to the stage at which the Court records a plea of not guilty, shall stand as proof in any Court of such allegation." (Emphasis added.)

[24] Counsel also referred us to what was said in *S v Nixon* 2000(2) SACR 79 (W) at 87i-j:

"At the trial the appellant did not seek to withdraw any admission made by him or change his plea. However, the obligation to substitute a plea of guilty in

terms of section 113(1) of the Act exists even without any action on the part of an accused, as long as the Court is in doubt whether the accused is guilty."

[25] When the appellant was cross-examined while giving evidence in mitigation, and explaining how the incident took place, the following exchange occurred between him and the prosecutor:

"Maar het u haar gesteeek nadat sy reeds op die bed gelê het of was dit nog voordat sy op die bed gaan val het? --- Nee, sy het nog regop gestaan.

Nou wat het u nou gedink toe u nou sien die oorledene is gesteeek, daar is bloed en sy lê op die bed, wat het u gedink? --- Nee, ek het geskrik, ek wou weggekom het.

Hoekom het u geskrik? --- Want ek meen dit was die eerste keer in my lewe wat ek betrokke is met so-iets en ek het 'n persoon se lewe gevat, dit is basies die rede hoekom ek geskrik het.

Het u nie geskrik ook omdat u gesien het die oorledene is nou baie erg beseer en sy is moontlik dood nie meneer? --- Ja, dit is die rede wat ek geskrik het.

En toe, wat doen u toe? --- Soos ek gesê het ek wil weggekom het, toe het ek die handsak en die karsleutels gevat, dit was op die kombuistafel gewees.

Hoekom vat u die handsak van die oorledene en die voertuig se sleutels?

Hoekom hardloop jy nie net doodeenvoudig weg nie? --- Want kyk ek het geweet dit is sekuriteitshekke buitekant.

HOF: Wat het u geweet? --- Dit is 'n sekuriteitshek buitekant. En met die wat ek die karsleutels gevat het was dit op die ingewing van die oomblik gewees wat ek die handsak saam met die sleutels gevat het."

And later:

"Hoekom vat u die oorledene se handsak? --- Dit was op die ingewing van die oomblik gewees, hy was saam met die karsleutels daar gewees."

[26] Counsel, correctly, argued that it is clear from this evidence, which is uncontested, that there was no question of the appellant having subdued the deceased through violence in order to deprive her of her possessions. After having stabbed the deceased, and in the process of making a get-away, the appellant, on the spur of the moment, saw the car keys and the handbag and took it with him. This is a clear case of theft and not robbery.

[27] I add that counsel for the state, Mr Maritz, correctly conceded that this was the position.

[28] In the result, the appeal against the robbery charge falls to be upheld, and the conviction set aside and replaced with a conviction of theft.

(iii) The two theft charges flowing from the withdrawal of money from the automatic teller machines

[29] As I have pointed out, leave to appeal was not sought, and obviously not granted, in respect of this conviction.

[30] It is clear, from the appellant's own evidence, that he committed the theft of the monies.

The appeal against the sentences imposed (leave to appeal against the sentences having been granted by the Supreme Court of Appeal)

[31] I will, again, deal with the three sentences imposed in the same order.

(i) The sentence of life imprisonment in respect of the murder conviction

[32] In very broad terms, the uncontested evidence of the appellant, as to how the murder was committed, amounts to the following: he was visiting the deceased, in the process of selling beauty products to her. He had been there before and had befriended her. He sold these products in order to earn an income. Before the visit, he had also smoked dagga mixed with "poppers" which is a drug containing Mandrax. While he was talking to the deceased, the discussion at one stage centered around family matters. The appellant had a very unfortunate childhood. He was abused by a succession of stepfathers after his father passed away at an early age. The appellant's mother also testified in mitigation, to confirm this. At one stage the discussion was about family matters. When the deceased started questioning him about family details, including the relationship between his mother and stepfathers, the appellant lost control over his emotions, started pushing the deceased around and then picked up a pair of scissors which was lying on the table and started stabbing her. Two stab-wounds to the chest caused the death of the deceased. The stab-wounds were inflicted with such violence that they caused rib fractures. There were two other stab-wounds on the shoulder and the arm of the deceased. It is common cause that the stab-wounds to the chest caused the death. This appears from the post-mortem report, which is common cause between the parties.

The appellant was cross-examined and it was suggested to him that he did not mention, in his confession to the magistrate, that he lost control over his conduct ("my kop het uitgehaak") but what he says in the confession, in my view, closely resembles that version:

"Toe het die tannie opgestaan en radio aangesit. Ek dink sy wou lotto nommers luister. Terwyl sy by die radio staan het sy oor familie begin praat haar skoonma of oorlede ma. Toe sy praat van haar ma toe moes dit my ontstel het of iets ek onthou nie mooi nie, toe stamp ek die tannie. Ons was in die gang toe ek haar stamp, toe skrik ek want ek weet nie wat het in my ingevaar nie. Toe het die tannie op my geskreeu toe sien ek op die tafel het 'n skêr gelê, ek onthou nie of ek haar in bo-arm of bors gestek het nie, maar toe steek ek haar twee keer met die skêr."

[33] For sentence purposes, the learned Judge also accepted that the appellant had taken dagga mixed with Mandrax before the visit to the deceased, and he accepted a submission by the appellant's counsel that the dagga and Mandrax may evoke violent conduct from the user.

[34] The learned Judge also accepted, for sentence purposes, that the appellant had a most unfortunate childhood, and that he was violently treated by a succession of stepfathers. The mother testified that the appellant's father died when the appellant was two years old. She then married one Mr Dreyer who was in the habit of assaulting the appellant with his fists. She was married to Dreyer for thirteen years. When the appellant was fifteen years old, Dreyer kicked him out of the house. At school, the appellant did not make good progress. He did not pass Standard 7.

The next stepfather, Oosthuizen, also physically abused and assaulted the appellant and chased him out of the house.

[35] For sentence purposes, the learned Judge also accepted, and found, that the murder was not pre-meditated. The learned Judge also accepted that the appellant showed remorse by pleading guilty and took into account his personal circumstances, namely that he was 22 years old at the time and a first offender.

[36] When the learned Judge was also well underway with his summing up for sentence purposes, he, for the first time, mentioned the existence and provisions of the Criminal Law Amendment Act, Act 105 of 1997 ("the Act"). The Act was not mentioned at all in the indictment, neither was it mentioned at any stage at the commencement of the proceedings, or during the proceedings for that matter, until, as I have pointed out, well into the judgment on sentence.

[37] The learned Judge found that there were no substantial and compelling circumstances which would allow him to deviate from the prescribed minimum sentence of life imprisonment, as provided for in section 51(1) of the Act, read with Part I of Schedule 2 thereof. The learned Judge did not mention these provisions by name, but it must be assumed that this is what he had in mind. The learned Judge also said:

"Die wetgewer sê dat waar u skuldig bevind is aan moord terwyl u roof met verswarende omstandighede pleeg dan moet ek die minimum vonnis ten aansien van die moord opleë."

It is, consequently, clear that the learned Judge based his decision to impose the minimum sentence on the provision in Part I of Schedule 2 of the Act to the effect that the minimum sentence is applicable for murder when -

"The death of the victim was caused by the accused in committing or attempting to commit or having committed or attempted to commit one of the following offences:

...

(ii) robbery with aggravating circumstances as defined in section 1 of the Criminal Procedure Act ..."

Absent a finding of guilty of robbery, or, for that matter, a finding that the murder was premeditated (there are other reasons to be found in Part I which are not applicable to the present case) the statutory imperative to impose the minimum sentence is not applicable.

[38] In view of the foregoing, the learned Judge erred in imposing the minimum sentence of life imprisonment:

1. The existence of the Act was not mentioned in the indictment or at any other stage until the learned Judge was giving judgment on sentence.

In *S v Ndlovu* 2003(1) SACR 331 (SCA) the appellant had been sentenced by the trial court to the prescribed minimum sentence of fifteen years for the possession of a semi-automatic weapon. The provisions of the Act were not mentioned in the charge-sheet, neither were they raised at any stage during the proceedings. The learned trial magistrate, in the course of his judgment and

while summarising the facts, just mentioned that "die wapen is 'n semi-outomatiese vuurwapen" but does not appear to have advised the appellant at any stage of the consequences of this finding, if made – at 335b-c.

At 337g-i the following is said,

"In the circumstances of this case it cannot be said that the appellant suffered no prejudice from the magistrate's failure to warn him of the consequences of his finding, should he make such a finding, that the weapon found on him was a semi-automatic firearm. By invoking the provisions of the Act without it having been brought pertinently to the appellant's attention that this would be done rendered the trial in that respect substantially unfair. That, in my view, constituted a substantial and compelling reason why the prescribed sentence ought not to have been imposed." (Emphasis added.)

The Supreme Court of Appeal set aside the sentence imposed and replaced it with a sentence of three years imprisonment. I add that, in the trial court, the appellant was legally represented.

In *S v Makatu* 2014(2) SACR 539 (SCA) the appellant had been sentenced in the Limpopo High Court to life imprisonment on a charge of murder.

At 545d-g the following is said by the learned Judge of Appeal:

"[23] The trial judge was guilty of a number of misdirections which to my mind are so gross that they vitiate the sentences imposed. First, in sentencing the appellant to imprisonment for life for

murder, he states that the murder was committed under circumstances where the offence justified the sentence prescribed under Part I of Schedule 2 of the Criminal Law Amendment Act. A major problem here is that the indictment never made mention of this section or the Act. It does not even give any details to indicate if there are any aggravating features which would bring it within the ambit of the minimum sentencing regime.

[24] Secondly, no evidence was led to bring this murder within the purview of the section. Throughout the trial no mention was made of the section, except in a cursory manner during the sentencing stage. Suffice to state that this is in conflict with the long line of cases from this court starting with ... Based on the above, it follows ineluctably that the sentence of life imprisonment was wrongly imposed." (Emphasis added.)

One of the cases referred to by the learned Judge of Appeal is *Ndlovu*. I add that, in the trial court, the appellant was also legally represented.

In *Makatu*, the Supreme Court of Appeal replaced the sentence of life imprisonment for the murder conviction with one of fifteen years imprisonment.

2. The conviction of robbery was not in accordance with justice for the reasons I have mentioned. This means that the motivation of the learned Judge, for

imposing the minimum sentence of life imprisonment falls away. I have quoted the relevant provisions of Part I.

3. Given the circumstances of this particular case, and the personal circumstances of the appellant, as outlined, it may even be arguable that there were substantial and compelling circumstances which justified a deviation from the imposition of the minimum sentence in any event. I do not find it necessary to express a view on this point.

[39] In all the circumstances, and given the approach adopted by the Supreme Court of Appeal, it is clear that the sentence of life imprisonment ought to be set aside and replaced with a lesser sentence. This was a particularly cruel and senseless murder. A defenceless old lady was murdered in the sanctity of her own home. Throughout the country concern has been expressed, for many years, about the unacceptable level of violence against women and children.

[40] The Educational Psychologist, Ms Van den Heever, whose report I have referred to, and who consulted the appellant almost twelve years after sentence was imposed, came to the following conclusion:

"Mr Castelyn has committed himself to various activities in order to better his life while incarcerated in order to rehabilitate. The intervention opportunities in prison however are limited and as intensive long-term psychotherapy did not take place rehabilitation is thus questionable. His evasiveness to talk about the incident and unemotional manner relating to it is concerning but also understandable considering the harsh environment he lives in. He perceives

his imprisonment as a severe punishment. Undersigned is not convinced that spending more time in prison would be of further value to society and monitoring by Correctional Supervision is probably more applicable."

Coming, as it does, so long after the sentence was imposed, and relying on events that took place post-sentencing, the report is probably not of much value to this court having to decide whether, and to what extent, to interfere with the sentence as it was imposed at the time.

[41] Given the seriousness of the offence, and all the other circumstances mentioned, I am of the view that it would have been more appropriate for the learned Judge to impose a sentence of twenty years imprisonment.

(ii) **The sentence of eight years imprisonment in respect of the robbery conviction**

[42] Where the robbery conviction is to be replaced with a conviction of theft, and where the theft was committed on the spur of the moment, as illustrated, it seems to me that an appropriate sentence would be one of three years imprisonment.

(iii) **The sentence of two years imprisonment in respect of the theft conviction (count three)**

[43] As indicated, there was no appeal against the conviction. Leave to appeal against the sentence was granted by the Supreme Court of Appeal.

[44] The sentence, with respect, does not appear to be shockingly inappropriate. I find no basis for this Court of Appeal, with its limited powers to interfere with a sentence imposed by a trial court, to interfere with this sentence of two years imprisonment.

The sentences in respect of counts two and three to run concurrently with the sentence in respect of count one

[45] I am alive to the fact that an order for the smaller sentences to be served concurrently with the sentence on the murder charge may be open to criticism, because the commission of the theft, in each instance, was not directly connected with the actual perpetration of the murder. For this reason, particularly as far as the sentence on count three is concerned, it may have been more appropriate to order that the theft sentences, or at least part thereof, should not run concurrently with the sentence on count one.

[46] Nevertheless, given the cumulative effect of the sentences, and, in particular, the personal circumstances of the appellant, I have come to the conclusion that it would be appropriate to order that the theft sentences are to be served concurrently with the murder sentence.

The order

[47] I make the following order:

1. The appeal against the conviction of murder (count one) is dismissed.
2. The appeal against the conviction of robbery (count two) is upheld. The conviction is set aside and replaced with a conviction of theft.

3. The appeal against the sentence in respect of count one (the murder) is upheld.
The sentence imposed is set aside and replaced with a sentence of twenty years imprisonment.
4. The appeal against the sentence on count two is upheld and the sentence imposed is set aside and replaced with a sentence of three years imprisonment.
5. The appeal against the sentence on count three is dismissed.
6. It is ordered that the sentences imposed in respect of counts two and three are to be served concurrently with the sentence in respect of count one.
7. In terms of section 282 of the Criminal Procedure Act, no 51 of 1977, the sentences imposed are antedated to 16 October 2002.

A273/2012

W R C PRINSLOO
JUDGE OF THE GAUTENG DIVISION, PRETORIA

I agree

M F LEGODI
JUDGE OF THE GAUTENG DIVISION, PRETORIA

I agree

M W MSIMEKI
JUDGE OF THE GAUTENG DIVISION, PRETORIA

HEARD ON: 22 JUNE 2015
 FOR THE APPELLANT: F VAN AS
 INSTRUCTED BY: PRETORIA JUSTICE CENTRE
 FOR THE RESPONDENT: G J C MARITZ
 INSTRUCTED BY: NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS