

**IN THE NOTH GAUTENG HIGH COURT, PRETORIA
(REPUBLIC OF SOUTH AFRICA)**

25/7/2013

In the matter between:

CASE NO: A908/2012

MDUDUZI MCDONALD SIGASA

APPELLANT

And

THE STATE

RESPONDENT

JUDGMENT

PHATUDI AJ

1. BACKGROUND INFORMATION:

- 1.1 This is an appeal on sentence noted by the Appellant, following his conviction on a count of house breaking by the Standerton District Court on 23 August 2011. He was subsequently brought before the Regional Court Magistrate Standerton for sentencing, the matter having been remitted to that Court for the imposition of sentence, which was meted out on 16 November 2011. The Appellant was as a result, imprisoned to an effective term of 8 years for the crime with which he has been convicted.

1.2 The Appellant was through out the trial represented by his Attorney, Mr. Isak.

1.3 On the 14 December 2011, the Appellant, through his Attorney, applied to the Regional Court Magistrate before whom he appeared for leave to appeal the sentence of effective 8 years imprisonment imposed against him, on grounds that it was too harsh, and that his personal circumstances were not taken into account for the purpose of sentence. The State opposed leave to appeal the sentence, contending merely that "the accused has been stealing a long time ago, during the time of corporal punishment". The result was that leave to appeal the sentence alone, was declined by the Court below.

1.4 Aggrieved by the Court a quo's refusal, as it were, the Appellant subsequently petitioned this Court on 21 November 2011, and leave to appeal against the sentence only, was granted on 14 November 2012.

1.5 These briefly, were the facts giving rise to this matter.

2. THE ISSUE TO BE DECIDED ON APPEAL AGAINST THE SENTENCE:

The question that now arises for consideration by this Court, is whether the 8 years imprisonment term the Court below imposed against the Appellant, finds reflection to the well-known general principles of our law

when selecting a fair, just, and equitable sentence, particularly, given the facts of the case presently before us, on sentence.

3.

- 3.1 We must immediately remark that it is trite practice of our law, that a Court of appellate jurisdiction may not, and ought not lightly disturb a carefully selected imprisonment term imposed by the Court below, except where it is satisfied that the sentence discretion has been improperly or unreasonably exercised, in circumstances where the sentence so imposed induces a sense of shock, or startlingly inappropriate.

See: S v Pieters 1987(3) SA 717 (AD)

S v Lewis 1997(1) SACR 235(T) at 240-_____.

- 3.2 In performing a balancing act when imposing a sentence against an offender, the sentencing court ought to bear in mind the well-defined general principles for sentencing offenders, which were carefully crafted and crystallized over the years by our Courts. What Holmes JA, stated in S v Sparke 1972(3) SA 396 (A) that:-

“On the other hand, the offences were, without doubt, very grave, and in addition to the matter of punishment, the deterrent aspect calls for a measure of emphasis, lest others think the game is worth the candle. Nevertheless, the Appellants must not be visited with punishment to the point of being broken. Punishment must fit the criminal as well as the crime, be fair to the State and the accused, and be blended with a measure of mercy” mercy is, but an

element of justice and equity and the sentiments remains true even in this day and age.

- 3.3 In our view, therefore, having had regard to the approach adopted by the Court below, it appears that the personal circumstances of appellant were not taken into account when punishment against him was inflicted, which our law required that it should have been considered.

[P18 – 19, Lines 5 – 15, Record].

Furthermore, the nature of the crime committed is similarly, an obvious factor, but even if the crime can be described an ugly offence, striking cancerously at the roots of justice and integrity, this denunciatively emotive description, should not be allowed to transcend all other considerations in arriving at a just and balanced sentence.

See: S v Naker 1975 (1) SA 583 (A) at 586.

- 3.4 For the purposes of this appeal matter, it is clear that Learned Magistrate did not properly consider, if he did, that the previous conviction which related to house breaking had occurred some nine (9) years before Appellant was arraigned and charged after he committed the offence during or on 01 March 2011.

[See: P.17, Line 5, Record]

There was no sufficient evidence from the record of the sentencing proceedings to suggest that Appellant committed a similar offence,

within that lengthy period referred to, save for the alleged conviction for escaping from lawful custody during 2009.

[See: P.15, Line 25, Record]

- 3.5 One may even be tempted to remark, although orbiter (in passing) that even the submission the State made in which it was alleged that “from 1992 you have been stealing; and assaulted with corporal punishment” were allegations in respect of which no evidence was led in aggravation of sentence, left much to be desired.
- 3.6 It is of course, also worthy to mention that even the value of the goods or items stolen, which were said to be worth R748.00, should not have attracted 8 years effective term of imprisonment particularly that the stolen items were all recovered on the spot.
- 3.7 In the circumstances, the Appellant should have also been treated as a first offender when he was visited with the sanction appealed against. We hold, therefore, that due to the harshness of the sentence, which is invariably hair-raising, this Court is perfectly entitled to interfere and disturb the 8 years term of imprisonment imposed against the Appellant. The appeal on sentence accordingly ought to succeed, and the sentence as imposed be substituted as follows:-

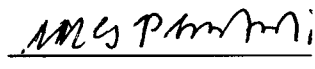
COURT ORDER

1. The appeal on sentence is upheld.
2. The sentence of 8 years imprisonment imposed is hereby set aside, and is substituted for the following sentence:-

“The Appellant is sentenced to a term of imprisonment of (3) three years, which is wholly suspended for a period of (5) five years on condition that he is not convicted of a similar offence during the operation of the suspension period”.

3. The sentence is predated to 16 November 2011.

Date delivered: 25 July 2013


PHATUDI AJ


KHUMALO J
I CONCUR AND IT IS SO ORDERED