

IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN

Appeal No.: A138/2013

In the appeal of:

IVAN PRINCE

Appellant

and

THE STATE

Respondent

CORAM:

VAN ZYL, J *et* MOLOI, J

HEARD ON:

18 NOVEMBER 2013

DELIVERED ON:

28 NOVEMBER 2013

MOLOI, J

- [1] The appellant herein came before us appealing against the sentence of twenty (20) years imprisonment imposed by the Regional Court after conviction on a charge of rape. The trial court granted the appellant leave to appeal to this court.
- [2] At sentencing the appellant, the trial court had taken into consideration the triad of factors to be balanced viz the crime, the criminal and the interests of the society, sufficiently – **S v Banda and Others** 1991 (2) SA BGD at 355A. The offence of which the appellant was convicted warranted a sentence of life imprisonment in terms of the

provisions of Part 1(b) of Schedule 2 of The Criminal Law Amendment Act, 105 of 1997 the complainant having been only 15 years of age at the time of the rape. The trial court had, however, found that substantial and compelling circumstances were present which entitled it to deviate from the imposition of the life sentence.

[3] It is trite, and was so contended by both counsel that a court of appeal can only interfere with the sentencing discretion of the trial court in limited circumstances e.g. where the trial court misdirected itself in the exercise of that discretion: **S v Kibido** 1998 (2) SACR 207 (SCA) at 216g – h and **S v Anderson** 1964 (3) SA 494 (A). Both counsel submitted, and correctly so, that the trial court misdirected itself in the exercise of its sentencing discretion by ignoring the provisions of section 280 (2) of the Criminal Procedure Act No 51 of 1977, as amended.

[4] Section 280 (2) of the Criminal Procedure Act No 51 of 1977 provides:

- “(1) When a person is at any trial convicted of two offences or when a person under sentence or undergoing sentence is convicted of another offence, the court may sentence him to such several punishments for such offences or, as the case may be, to the punishment for such other offence, as the court is competent to impose.
- (2) Such punishments, when consisting of imprisonment, shall commence the one after the expiration, setting aside or remission of the other, in such order as the court may

direct, unless the court directs that such sentences of imprisonment shall run concurrently.”

At the time the sentence was imposed, the appellant was serving a sentence of 16 years imprisonment for murder unrelated to the present offence. The effect of the sentence imposed is that the appellant would serve first the 16 years imprisonment imposed for murder and only thereafter commence serving the 20 year imprisonment for the rape offence which means in total, a period of 36 years imprisonment. This would be so because the court overlooked the cumulative effect of the sentences and would constitute a misdirection by the trial court: **Mokheseng v S** (A247/2011) [2012] ZAFSHC 103 (31 May 2012):

“The effect of the sentences, if it runs consecutively, had to be considered as well.”

In **Zondo v S** (627/2012) 2012 SCA 51 (28 March 2013) at page 5 where the following was said:

“It is generally accepted that inordinately long terms of imprisonment do not contribute to the reform of an accused person. On the contrary they have the negative effect of denuding the accused of all hope of rehabilitation.”

and also **S v Sparky and Another** 1972 (3) SA 396 (A) at 410G where Holmes JA said:

“Wrongdoers must not be visited with punishments to the point of being broken.”

- [5] The failure of the trial court to order that the sentences run concurrently would constitute a 'misdirection and result in inducing a sense of shock – **Zondo's** case *supra*.
- [6] In the premises the appeal against the sentence must succeed.

ORDER:

- [7] The following order is made:
1. The appeal against the sentence is upheld.
 2. The sentence of 20 years imprisonment is set aside and substituted as follows:

Twenty (20) years imprisonment of which ten (10) years imprisonment is ordered to run concurrently with the sixteen (16) years imprisonment being currently served by the appellant.
 3. The sentence above is antedated to 20 April 2012.

K. J. MOLOI, J

I concur and it is so ordered.

C. VAN ZYL, J

On behalf of the appellant: Adv. S. Kruger
Instructed by:
Legal Aid
BLOEMFONTEIN

On behalf of respondent: Adv. D.W. Bontes
Instructed by:
The Director of Public Prosecution
BLOEMFONTEIN

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