

FREE STATE HIGH COURT, BLOEMFONTEIN
REPUBLIC OF SOUTH AFRICA

Case No.: 264/2009

In the matter of:

THE STATE

and

WILLIAM KWAILA MPHORE

CORAM:

CIILIÉ, J et EBRAHIM, J

JUDGEMENT:

EBRAHIM, J

DELIVERED ON:

11 JUNE 2009

[1] The two accused were convicted of the crime of assault with intent to do grievous bodily harm and each sentenced to 5 years imprisonment.

[2] The matter was accordingly referred to this court on ordinary review in terms of section 302 of The Criminal Procedure Act, 51 of 1977. On receipt of the papers I addressed the following query to the learned trial magistrate:

- “1. The learned Magistrate is requested to furnish reasons for the conviction of accused number 1.
2. Is the sentence of 5 years imposed not shockingly inappropriate, given the relative youth and clean record of the accused? Would the minimum sentence of 2 years not have been adequate and appropriate in the circumstances in this case?”

[3] The response of the magistrate as to his reasons for the conviction of the 2 accused was persuasive and legally correct.

[4] The same however cannot be said for the reasons furnished for the sentence imposed. These are the following:

“Volgens die klaagstaat is die beskuldigdes onderskeidelik 26 en 21 jaar oud, hoewel beskuldigde 2 met eerste verskyning aangedui het dat hy 22 jaar oud is. Dit mag relatief jonk wees, maar beide beskuldigdes is reeds van ‘n ouderdom waar ‘n sekere mate van volwasse gedrag en selfbeheersing van hulle verwag kan word.

Daarteenoor is die klaer 'n kind, hy is 16 jaar oud en dit is op rekord geplaas dat hy klein van bou is. Die klaer het hoegenaamd niks aan die beskuldigdes gedoen nie. Die beskuldigdes het geen grond gehad om te dink dat dat die klaer en sy vriende by 'n vroeëre aanval op hulle betrokke was nie. Hulle beweer ook nie dat die klaer betrokke was op dat hulle dit gedink het nie. Die klaer was net aangeval omdat hulle lus gehad het om hulle woede op iemand uit te haal. Die klaer is op dierlike moorddadige wyse deur 5 persone aangeval, almal uitgerus met een of ander gevaarlike wapen wat hulle nie geskroom het om teen die klaer te gebruik nie. Die klaer het geen verweer teen die aanval gehad nie. Hy was op die grond en het geen weerstand gebied nie.

Ek is van oordeel dat die omstandighede rondom die aanval sodanig weersinswekkend is dat die feit dat die beskuldigdes eerste oortreders is en in hulle twintigerjare is, nie genoegsaam opweeg om die vonnisse skokkend onvanpas te maak nie.”

- [5] I am in respectful disagreement with these reasons as a basis for imposing a sentence in excess of 2 years imprisonment. In my judgment, the circumstances under which the present offence was committed is not rare or exceptional and the injuries sustained by the complainant

were not mortal. One has only to look at case authority in relation to the crime of assault with intent to do grievous bodily harm and a multitude of instances are revealed in which this specific offence is committed under similar circumstances to the present case. The legal doctrine of common purpose is also helpful in this regard. Useful guidelines in sentencing are provided in these cases and it is only in exceptional cases where medical testimony is called which establishes uncontroverted evidence of serious, life threatening injury to a complainant who has been assaulted with for example, as in this case, a golf club, a kerie and knife and where serious head and other bodily injuries have been sustained by the victim, that the perpetrator of such an assault has been found to be deserving of a sentence in excess of 2 years imprisonment.

- [6] No medical evidence was led to establish the precise nature, extent and seriousness of the injuries sustained by the complainant in this case. The evidence merely revealed that the complainant received stitches and was discharged from the hospital on the same day. Accordingly no yardstick exists upon which to base a conclusion that:

“Die klaer is op ‘n moorddadige wyse aangeval. Die hof is dan verplig om ‘n minimum vonnis op te lê van minstens 2 jaar gevangenisstraf maar die hof kan tot 8 jaar gevangenisstraf oplê vandag.”

(See sentence record, p. 65).

[7] In these circumstances, I am of the view that the learned magistrate was not entitled to impose a sentence in excess of 3 years imprisonment. A sentence of 3 years imprisonment will be appropriate and just and will give effect to the demands of society that violence in communities be visited with severe punitive measures, so as to act as a deterrent to other would be offenders. Such a sentence, in my judgment, will also satisfy the victim's demand for retribution.

[8] In the result the following order is made:

1. The conviction of assault with intent to do grievous bodily harm in respect of both accused is confirmed.
2. The sentence of 5 years imprisonment imposed on each of the two accused is hereby set aside and

replaced with a sentence of 3 years imprisonment on each accused.

3. The sentence of 3 years imprisonment is ante-dated to 8 April 2009.

S. EBRAHIM, J

I concur.

C. B. CILLIé, J

/em