

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: SS79/2019

DATE: 2024-06-21

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: ~~YES~~ NO.

(2) OF INTEREST TO OTHER JUDGES: ~~YES~~ NO.

(3) REVISED.

DATE 25/07/2024

SIGNATURE [REDACTED]

10 In the matter between

THE STATE

and

CHARLES CHRISTOPHER JONES

Accused

S E N T E N C E

MAHALELO, J:

20 Mr Christopher is found guilty on one count of murder read with section 51(1) of the Criminal Law Amendment Act 105 of 1997, two counts of attempted murder, one count of unlawful possession of a firearm and one count of unlawful possession of ammunition.

What is left now is for the Court to impose a suitable

sentence on him.

In determining a suitable sentence the Court must take into consideration the personal circumstances of the accused, the nature and seriousness of the offences committed and the interest of society.

Some of the basic principles that are relevant in sentencing were stated in *Rabie v the State* 1975 (4) SA 855 (A) 862G as follows:

10 “A judicial officer should not approach
punishment in a spirit of anger because
being a human being, that will make it
difficult for him to achieve that delicate
balance between the crime, the criminal
and the interest of society, which his task
and the objects of punishment demands
from him nor should he strive for or after
severity or on the other hand, surrender to
misplaced pity, while not flinching from
firmness where firmness is called for, he
20 should approach the task with a humane
and compassionate understanding of
human frailties and the pressure of society,
which contributes to criminality.
Punishment should therefore fit the
criminal as well as the crime, be fair to

society and be blended with a measure of
mercy according to circumstances.”

These elements were also set out in *State v Zinn* 1969 (2) SA 537 (A): They require me to strike a balance between the accused’s personal circumstances, the crimes’ severity and the interest of society when determining a suitable punishment. All the while, I do so being aware of the purposes of punishment being retribution, deterrence, rehabilitation, and reformation.

In charging the accused the State invoked the provisions of
10 section 51(1) of the Criminal Law Amendment Act in respect of the murder. That section prescribes a minimum sentence of life imprisonment when the death of the victim was premeditated or planned or when the death of the victim was caused during the furtherance of a common purpose.

The Court must impose the prescribed minimum sentence unless there are substantial and compelling circumstances justifying a departure from it. See section 51(3)(a) of the Criminal Law Amendment Act. The legal position is set out in the well-known case of *State v Malgas* 2001 (3) ALL SA
20 220 (A) where the Court made it clear that the Court must impose the prescribed minimum sentence unless the cumulative effect of all the mitigating factors that the Court can take into account would justify the Court in departing from the prescribed minimum sentence in a particular case. In *State v Dodo* 2001 (1) SACR 594 (C) the proportionality

between the offence and the period of imprisonment was emphasised by the Court stating that:

10 "[38] To attempt to justify any period of
penal incarceration, let alone imprisonment
for life, as in the present case, without
inquiring into the proportionality between
the offence and the period of imprisonment,
is to ignore, if not to deny that which lies at
the very heart of human dignity. Human
beings are not commodities to which a
price can be attached, they are creatures
with inherent and infinite worth, they ought
to be treated as ends in themselves, never
merely as means to an end. Where the
length of a sentence which has been
imposed because of its general deterrent
effect on others bears no relation to the
gravity of the offence (in the sense defined
in paragraph 37 above) the offender is
20 being used essentially as a means to
another end and the offender's dignity
assailed. So too where the reformatory
effect of the punishment is predominant
and the offender is sentenced to lengthy
imprisonment, principally because he

cannot be reformed in a shorter period, but the length of imprisonment bears no relationship to what the, the committed offence merits. Even in the absence of such features, mere disproportionality between the offence and the period imprisonment would also tend to treat the offender as a means to an end, thereby denying the offender's humanity."

- 10 With this background the Court will now evaluate the personal circumstances of the accused, the crimes, and the interest of society in determining whether there are reasons to depart from the minimum sentence provisions and to determine the punishment for the other offences.

The accused in this matter is 58 years old, he is married with six children. His first two children were born before he got married to his wife and they were born from two different mothers. They are 16 and 14 years old respectively
20 and still attending school and live with their mothers.

The remaining four children were born from the marriage between the accused and his wife. They are aged 12, 8, 7, and 1 year 9 months old respectively. These children live with their mother, the accused's wife who is unemployed. The accused was self-employed prior to his arrest. He was

running a shisanyama (braai spot) and a carwash. He employed 11 workers, and he made an income of plus-minus R10 000 per month. He said that since his arrest the business was barely running.

The accused has previous convictions which dates back to 2013. Although some of them are relevant to the offences the accused stand convicted of in this matter, because of the length of period which lapse between then and now the
10 Court will not attach too much weight to them. But fact of the matter is that the accused is not a first offender.

The State argued that there is nothing special about the accused's personal circumstances, in other words, nothing that is substantial and compelling to deviate from the minimum sentence. On the other hand, the accused implored the Court to take into account his age, the background he mentioned that he grew up from i.e., he grew up in a poor coloured community, he was raised by a single
20 parent, his mother. He got involved in crime when he was still very young because he was disadvantaged and he was trying to support his mother. He urged the Court to consider these circumstances cumulatively and deviate from the prescribed minimum sentence.

The crimes of murder and attempted murder are serious offences, including utilising a firearm in perpetrating the offences. The deceased and the complainants in the attempted murder counts were shot at whilst they were standing on the stairs of Agatha flats and not posing any danger to the accused. All these crimes were made possible by the unlawful possession of a firearm and ammunition which seems to be easily accessible. The complainants in the attempted murder convictions sustained
10 serious injuries. However, the Court will consider that at the time they both testified all their injuries had healed.

Even though the State did not lead any evidence to show the impact which the death of the deceased had on his family, there is no doubt that his family and friends were indeed affected by his death. Our Constitution emphasises the right to life and the right to human dignity. It also binds the accused before this Court and requires him to respect the life of others and their human dignity. Killing someone
20 is the most extreme form of disregarding the humanity of others. The disregard for respect for life of others is not something which the Court will tolerate. The prevalence of extreme violent crimes in our society is concerning and the Court should send a clear message to the offenders that the law will deal firmly with them if they commit these offences.

The interest of society demands that offenders such as the accused be adequately punished lest the administration of justice falls into disrepute and people take the law in their own hands and this is what the Court must guard against.

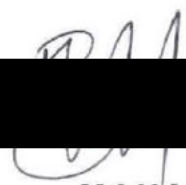
This Court has taken into consideration all the circumstances under which the offences were committed. This Court has also considered the need for the society around Sophiatown to be safe, including areas of Newclare,
10 Westbury and Bosmont. The accused asked this Court to be merciful when imposing punishment on him. It would have been much easier for this Court to show mercy if there was some sort of taking of responsibility for one's actions or indication that rehabilitation is possible. That does not however mean that I have abandoned the idea of mercy, it merely means that it has less influence on my decision.

I have considered the accused's personal circumstances, his age and his background. I have also considered the
20 circumstances of the two complainants and the deceased. I have also considered that the accused is not the one who fired the fatal shot on the deceased. These circumstances, in my view cumulatively taken, renders imposition of the minimum sentence disproportional which then allows me to deviate from the prescribed minimum sentence of life

imprisonment.

In the result the following sentence is imposed:

1. On count 1, murder, eighteen (18) years' imprisonment;
2. Count 2, attempted murder, six (6) years' imprisonment;
- 10 3. Count 3, attempted murder, six (6) years' imprisonment;
4. Count 4, unlawful possession of a firearm, five (5) years' imprisonment.
5. Count 5, unlawful possession of ammunition, three (3) years' imprisonment.
6. The sentences in respect of count 2 to 5 will run concurrently with the sentence in count 1 in terms of the provisions of section 280(2) of the Criminal Procedure Act.
- 20 7. The accused is declared unfit to possess a firearm.




MAHALELO, J

**JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG**

Appearances:

10 On behalf of accused no. 1 : Mr JC Kruger
Instructed by: BDK Attorneys

On behalf of the State: Adv. P. Ranchhod
Instructed by National Prosecuting Authority

Date of sentence: 21/06/2024

Revised on: 25/07/2024