



**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)**

Case No: A185/2023

In the matter between:

BRADLEY SAMUELS

Appellant

and

THE STATE

Respondent

Coram: Thulare J, et Van Leeve, AJ

Heard on: 21 February 2025

Delivered on: 28 March 2025

JUDGMENT

VAN LEEVE, AJ

[1] This is an Appeal in respect of a sentence handed down by the learned Magistrate of Somerset West on 7 April 2019.

FACTS

[2] On 7 April 2019, the Appellant was convicted on two counts of murder in terms of section 77 of the Child Justice Act 75 of 2008.

[3] The Appellant was sentenced to 10 years direct imprisonment in relation to each count. It was further ordered by the learned Magistrate that 5 years of the sentence in count 1 will run concurrently with the ten year sentence in count 2.

[4] At the time of the commission of the offences, the accused was a juvenile to wit 15 years old and as a result the minimum sentences Act did not apply.

[5] Section 77(3) of the Child Justice Act 75 of 2008 provides:

“A child who is 14 years as older at the time of being sentenced for the offence, and in relation to which subsection 2 does not apply, may only be sentenced to imprisonment if the child is convicted of an offence referred to in (a) Schedule 3.”

[6] Section 77 (4) stipulates:

“That a child referred to in subsection (3) may only be sentenced to a period of imprisonment not exceeding 25 years.”

[7] The Appellant was sentenced to an effective 15 years imprisonment.

- [8] Counsel for the Appellant argued that the 15 years sentence imposed by the learned Magistrate is grossly disproportionate to the offence committed.

CIRCUMSTANCES UNDER WHICH THE MURDERS TOOK PLACE

- [9] On 1 October 2017, in Sir Lowry's Pass, the accused approached the deceased pursuing an argument. The accused was armed with a knife. The deceased did not want to get involved in any altercation with the accused. The accused then launched an unprovoked attack on the deceased, stabbing him in the chest and he died as a consequence of the stab wound.
- [10] The deceased was unarmed at the time.
- [11] The accused was arrested and released into the care of his family in Macassar. Three months later, the accused called the deceased in count two, Franco Arendse who was standing with friends at the corner shop. When Franco Arendse approached the accused, the accused armed with a knife, stabbed Franco Arendse who died as a result of the stab wound.
- [12] Counsel for the applicant argued that the applicant is a youthful offender and whilst in Bonnytown, awaiting finalisation of the matter, he attended various programmes that indicates that the accused can rehabilitate. Whilst the State argued that the

only consideration is whether the learned Magistrate had erred in imposing the sentence that she did.

[12] It is apparent from the arguments presented by the applicant's counsel that the Magistrate cannot be faulted procedurally with the manner in which she dealt with the sentence, save for the fact that counsel for the Appellant believes the sentence to be excessive.

[13] The accused's personal circumstances are as follows:

- (a) The accused is the middle child of five children
- (b) His home life was unstable
- (c) He was exposed to domestic violence

[14] As a result of the ongoing domestic violence, the accused's mother stabbed his father to death when the accused was two years old. Since the age of fifteen, the accused abused substances such as alcohol and dagga. The accused resides in an area which is poverty stricken and crime is rife. Crime and poverty goes hand in hand and flourishes in such an environment.

[15] The question is whether the sentence imposed by the learned Magistrate is shockingly disproportionate to the offences.

[16] Both these young men were in the prime of their lives and lost their lives for no apparent reason. Disproportionality must be determined by the unique circumstances of every case.

[17] The circumstances of this matter are that 2 people lost their lives as a result of the accused actions and it can hardly be said that the sentence of 15 years is disproportionate.

[18] It is trite that sentence is a discretionary function of the trial court and a court of appeal will only interfere with this discretion if there is an irregularity that results in an infringement of rights of the Appellant.

[19] Since there was no irregularity that occurred, the court finds that the sentence is not disproportionate to the crime.

[20] I would order that the Appeal is dismissed.

THULARE, J

[21] I have read the judgment of Van Leeve AJ and agree with her order dismissing the appeal. There are just a few comments both on the facts and on the law that I deem necessary for consideration of the matter. Firstly, the appellant pleaded guilty to both counts. The matter went to trial after the magistrate noted a plea of

not guilty on his behalf because the State did not agree with the facts set out upon which the appellant based his pleas on both counts. The appellant was convicted on 7 March 2019 after 5 State witnesses and 3 witnesses in defence inclusive of the appellant, testified. When the appellant was sentenced on 19 March 2019, the sentence was antedated to 22 January 2018.

- [22] The matter went on what is normally called an automatic review before a single judge. The proceedings appeared to the Judge to be in accordance with justice in May 2019. In the meantime, the appellant had instructed his legal representatives at Legal Aid South Africa (LASA) of his intention to use his automatic right of appeal to appeal against both conviction and sentence and the papers were accordingly filed on 1 April 2019 for the enrolment of his application. Although the notice and request for enrolment referred to an appeal against conviction and sentence, the application for leave to appeal filed only referred to leave to appeal the sentence of 10 years imprisonment on each of the two counts of murder only. Covid 19 restrictions as well as the transfer of the appellant to a different juvenile prison caused a delay, with the result that the application for leave to appeal was only heard in April 2022. It was accompanied by an application for condonation for the late filing. From my reading of the judgment, the fact that the matter had already been before a Judge of the High Court which had considered the facts and sentence imposed, and the outcome of that review, weighed very heavy in the mind of the magistrate, in holding that the appellant had no prospects of success

on appeal. The application was dismissed. Although there was no reference at all thereto, one accepts that the application for condonation was granted.

{23] The appellant enjoyed a right of appeal without first having obtained leave as envisaged in section 309(1)(a) of the Criminal Procedure Act, 1977 (Act No. 51 of 1977) (the CPA) read with section 84 of the Child Justice Act, 2008 (Act No. 75 of 2008) (the CPA). The judgment of the magistrate on the application for leave to appeal did not at all refer to these provisions. As indicated appellant applied for leave and in his application specifically drew the attention of the State and the magistrate that he was exercising his automatic right of appeal. It can't be said that the attention of the magistrate was not drawn by the appellant to the provisions of the law on this question. The failure of the magistrate to accord the appellant his automatic right, and instead refusing it, caused the appellant to approach the Judge President of the Division on petition. On 2 June 2023 two Judges of the Division reviewed and set aside the decision of the magistrate to refuse the appellant leave to appeal against the sentence. The further delays in the hearing of the appeal related more to the provision of a full record of proceedings which were before the magistrate. Condonation for the late filing of the appeal was granted at the hearing of the matter before us.

[24] The appellant was a first offender. He was arrested on 22 January 2018 and had been in custody since. He was 15 years old at the time of the commission of the offences. He lived with his parents in Sir Lowry's Park in a two-bedroom wendy-

house. The area was characterised by poverty and crime. The appellant's father passed away. He was stabbed to death by the mother during an episode of domestic violence which characterised their 7-year marriage. This happened when the appellant was only 2 years old. His mother was employed. The mother was in a relationship with another person. The appellant had three sisters two of whom were still minors and dependent whilst the elder sister and brother were independent. The appellant completed primary education. At the time of his arrest and detention he was in grade 8 in a Secondary school. He continued with his education at the Child and Youth Care Centre where he was detained. He was reported to be disciplined and completed the tasks given.

[25] The CJA sets out the objectives to sentencing a child, which are different to that of an adult.¹ See also *S v KD* 2021 (1) SACR 675 (WCC) at para 10 and 11. When considering imprisonment, there are further factors that a court should take into account.² It is against the background of the objectives and factors to be

¹ **69 Objectives of sentencing and factors to be considered**

(1) In addition to any other considerations relating to sentencing, the objectives of sentencing in terms of this Act are to-

- (a) encourage the child to understand the implications of and be accountable for the harm caused;
- (b) promote an individualised response which strikes a balance between the circumstances of the child, the nature of the offence and the interests of society;
- (c) promote the reintegration of the child into the family and community;
- (d) ensure that any necessary supervision, guidance, treatment or services which form part of the sentence assist the child in the process of reintegration; and
- (e) use imprisonment only as a measure of last resort and only for the shortest appropriate period of time.

² Section 69 (4) When considering the imposition of a sentence involving imprisonment in terms of section 77, the child justice court must take the following factors into account:

- (a) The seriousness of the offence, with due regard to-
 - (i) the amount of harm done or risked through the offence; and
 - (ii) the culpability of the child in causing or risking the harm;
- (b) the protection of the community;

considered that a child justice court must approach a sentence of imprisonment for a child.³ To meet the objectives as set out in section 69(1) of the CJA, amongst other pre-sentence reports, the court should know the vulnerabilities of the child including the educational vulnerability of the child before and at the time that the offence was committed. The individualised response required for the sentencing of a child means that a child with academic learning barriers cannot be approached the same way as a child with advanced cognitive abilities. The ability of a child to stay focused on tasks, to recall information, to think through problems and to resolve them and to process information relate to mental processes and skills.

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- (c) the severity of the impact of the offence on the victim;
 - (d) the previous failure of the child to respond to non-residential alternatives, if applicable; and
 - (e) the desirability of keeping the child out of prison.

³ 77 Sentence of imprisonment

(1) A child justice court-

- (a) may not impose a sentence of imprisonment on a child who is under the age of 14 years at the time of being sentenced for the offence; and
- (b) when sentencing a child who is 14 years or older at the time of being sentenced for the offence, must only do so as a measure of last resort and for the shortest appropriate period of time.

(2)

[Sub-s. (2) deleted by s. 4 (a) of [Act 14 of 2014](#) (wef 19 May 2014).]

(3) A child who is 14 years or older at the time of being sentenced for the offence may only be sentenced to imprisonment, if the child is convicted of an offence referred to in-

- (a) Schedule 3;
- (b) Schedule 2, if substantial and compelling reasons exist for imposing a sentence of imprisonment;
- (c) Schedule 1, if the child has a record of relevant previous convictions and substantial and compelling reasons exist for imposing a sentence of imprisonment.

[Sub-s. (3) substituted by s. 4 (b) of [Act 14 of 2014](#) (wef 19 May 2014).]

(4) A child referred to in subsection (3) may be sentenced to a sentence of imprisonment-

- (a) for a period not exceeding 25 years; or
- (b) envisaged in section 276 (1) (i) of the Criminal Procedure Act.

[Sub-s. (4) substituted by s. 4 (c) of [Act 14 of 2014](#) (wef 19 May 2014).]

(5) A child justice court imposing a sentence of imprisonment must take into account the number of days that the child has spent in prison or a child and youth care centre prior to the sentence being imposed.

[Sub-s. (5) substituted by s. 4 (d) of [Act 14 of 2014](#) (wef 19 May 2014).]

(6) In compliance with the Republic's international obligations, no law, or sentence of imprisonment imposed on a child, including a sentence of imprisonment for life, may, directly or indirectly, deny, restrict or limit the possibility of earlier release of a child sentenced to any term of imprisonment.

[26] The court that sentenced the appellant did not have the benefit of such information, some of which may be readily available in his learner profile at the schools which he attended. It is unknown whether the appellant presented problems identified earlier by educators, including an education psychologist's or other expert report on him. On a simple age scale the appellant is about a class or two behind. It remains unknown whether he started school after the age of 7 or whether he struggled in one or more classes. To hold the child to account as envisaged in section 69(1)(a), it must be established that the child has the inherent and necessary faculties to account. The understanding and accountability of the child calls for some reports on the cognitive skills of the child. Section 69(1)(a) and (b) means that resources like the school profile of a learner was a necessary source of information to assist the court in its assessment. Section 69(1)(a) and (b) calls for more than a psycho-social report. Subsections (a) and (b) reports must establish that the child was able to understand and to account, in the context of being able to process receipt and giving of systemic instructions, such that one is able to weigh his conduct in relation to enlightened experiences. A psycho-social report, generally provided by social workers or probation officers, is required by section 69(1) (c) and (d) of the CJA and does not meet the demands of section 69(1)(a) and (b). All the factors mentioned in section 69(4) points to a period of imprisonment being the appropriate sentence. The appellant accepted this fate. He only took issue with the period.

[27] The sentencing court already pronounced that the appellant's sentence started running from the day of his arrest, 22 January 2018. In other words, as at the date of his sentence, one year and two months of the sentence were already considered served. The trial court had applied section 77(5) of the CJA to the sentence. The appellant was a member of a criminal gang, known as the JCY. On 01 October 2017 the appellant approached the deceased who was standing at a tuckshop with friends in Lowry's Pass. The appellant confronted the deceased, accusing the deceased that with others, the deceased had thrown objects at the appellant's uncle's house and broken windows. The deceased was near a tuckshop. The appellant drew out a knife from his pocket, pointed it at the deceased and stabbed the deceased, Ronaldo, once on his left chest, and fled. It was one fatal stab that penetrated the heart. After the incident the appellant was arrested. Amongst the other interventions pending the trial, the appellant was moved from Sir Lowry's Pass to Macassar. In a space of three months, on 22 January 2018 at Macassar, the appellant approached a mobile shop and called Franco, the deceased in the second murder charge. Franco went to the appellant, and the appellant, without saying anything, stabbed Franco once on his chest with a knife. The appellant had the knife hidden in his long sleeves. After the fatal stab which also penetrated the heart, the appellant ran, and was later that same day arrested, and detained until his sentencing.

[28] Violent gang killings, by young men especially on other young men, are very prevalent in the Western Cape, especially in the townships and shack settlements

around the City of Cape Town. It is well-known that the prison gangs, or the number gangs as they are called locally, influenced the street, or name gangs, including in the ranking or 'magunya' as it is commonly referred to. In other words, the killing of another has the potential to earn one an advancement in the street gang or even prison gang ranking, like a promotion. It is the environment in which the appellant grew, and it is what one discerns from the probation officer's report when it is said that he grew up in an environment characterised by serious violent crime. It is amongst others this observation that makes it necessary for the courts to know the educational response of a child. Unless the courts intervened, it may be that instead of diverting children with learning barriers to vocational and skills based technical education to produce the artisans that this country so dearly needed especially to prop-up service delivery in local government, these children were simply frustrated in preference of academic matric, and the gang culture offered them confidence and a sense of belonging, and a feeling that their lives matter. It seems that unless there was serious intervention in the life of the appellant, the likelihood was that he would be lost to violent criminal gangs.

- [29] From the facts, the work of the Commissioner for Correctional Services was already carved out. The battle for the mind of the appellant was the priority. The appellant was a person who clearly needed to undergo a paradigm shift. A serious change of mindset. Very little is known about him as a person as regards what informed his response to systematic instruction, as I have indicated. School children learn and compete about human rights in academic programmes. It can't

be said that the appellant did not know about the sanctity of life, at grade 8. His age pales into insignificance if one had regard to what he was convicted of, and the circumstances under which the offence was committed. Other than to instil fear of his person and his gang, the JCY, in the communities of Sir Lowry's Pass and Macassar, it is difficult to understand how a 15-year-old could do what he was up to, not only once but twice within a short space of time. Except for the selfish sense of self-esteem and gang importance, the killings were senseless and foolish. They reflected a lack of common sense and were without a discernible meaning, except in the gang culture. The appellant needed a proper case management assessment for correction and sufficient time to put him through rehabilitative programmes within a correctional facility. In *Centre for Child Law v DPP (JHB) and Others* 2022 (2) SACR 629 (CC) it was said at para 45 to 47:

“[45] The UNCRC has also written that the best-interests-of-the-child principle is an adaptable and flexible concept, which shall be applied in all matters dealing with the child. Furthermore, the expression as worded in the CRC 'means the child's best interests may not be considered on the same level as all other considerations', but above all other considerations. In other words, viewing the best interests of the child as a primary consideration means that the (best) interests of the child are given priority in all circumstances. This strong position, the UNCRC writes, 'is justified by the special situation of the child: dependency, maturity, legal status and, often, voicelessness'.

[46] The UNCRC has said that 'the full application of the concept of the child's best interests requires the development of a rights-based approach . . . to secure . . .

[the child's] human dignity'. Furthermore, it has been said that this principle is a threefold concept — a substantive right, a fundamental, interpretive legal principle, and a rule of procedure. Regarding the first ambit, it means that the child's best interests must be considered and weighed against all other factors in all matters dealing with the child, whenever a decision is being made about the child. With respect to the second ambit, it means that, when interpreting legal provisions, we must do so in the light of what is in the best interests of the child. Finally, concerning the third ambit, it means that the decision-making processes must consider the impact of such decisions on the child and that the 'justification of a decision must show that the right has been explicitly taken into account'.

[47] The UNCRC has also said that the best interests of the child must be appropriately integrated and consistently applied in judicial proceedings that impact the child. Moreover, judicial decisions *must* show that a child's best interests have been a primary consideration. And, of relevance to the matter at hand, the UNCRC has also underlined that 'protecting the child's best interests means that the traditional objectives of criminal justice, such as repression or retribution, *must give way to rehabilitation* . . . when dealing with child offenders'.

I am unable to hold that the sentences were disproportionate to the offence.⁴ The sentences were not excessive.⁵ The trial court ordered that half of the sentence in count 1 should run concurrently with the sentence on count 2. The sentences were

⁴ *S v Dodo* 2001 (3) SA 382 (CC) para 38; *Maphala v S* [174/2017] [2018] ZASCA 08 (01 March 2018) para 26.

⁵ *S v Scott-Crossley* 2008 (1) SACR 223 (SCA)

appropriate and served a legitimate purpose. For these reasons I agree with Van Leeve AJ.

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A VAN LEEVE

ACTING JUDGE OF THE HIGH COURT

I agree, and it is so ordered.

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DM THULARE

JUDGE OF THE HIGH COURT

APPEARANCES

For the Appellant: Adv L Adams

Instructed by: Legal Aid South Africa

For the Respondent: Adv. E Cecil

Instructed by: National Director of Public Prosecution