



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

Reportable/Not reportable

Appeal case no: **A157/2024**

Case no: **74/2015**

In the matter of:

SOLOMON MXOLISI POP

Appellant

versus

THE STATE

Respondent

Coram: Mbhele AJP, Van Rhyn J et Benade, AJ

Heard: 22 April 2025

Delivered: 12 May 2025

Summary: Appeal against sentence – whether appellant's personal circumstances justify deviation from the prescribed minimum sentence – no substantial and compelling circumstances found to exist – appeal dismissed.

ORDER

The appeal against the sentence imposed by the Trial Court is dismissed.

JUDGMENT

Benade AJ (Mbhele AJP et Van Rhyn J concurring)

Introduction

[1] This appeal, which is with the leave of the Supreme Court of Appeal, is against a sentence imposed by this Court on 19 January 2016. The appellant was convicted by Reinders J on 18 November 2015 on one count of assault with intent to do grievous bodily harm and one count of murder.

[2] He was, on 19 January 2016, sentenced by Musi JP to three years imprisonment for the count of assault with intent to do grievous bodily harm and life imprisonment for the count of murder. The appeal is directed at the sentence imposed on the count of murder.

[3] The facts on which the appellant was convicted are shortly the following: the incident happened on the night of 8 November 2014 in a house situated at Kutlwanong Township, Odendaalsrus, Free State Province. Early on that fateful evening, people were partying and dancing at the said house when the appellant arrived carrying a beer bottle and joined people who were celebrating. After a while the appellant got up and left, returning soon thereafter in company of four male persons (accused 2 to 5 in the main trial), carrying a beer bottle and a knife. The

appellant walked up to the deceased who was busy dancing and hit him over the head with the bottle and it broke. People tried to intervene, but the appellant and his companions continued with their attack on the deceased. The appellant stabbed him with a knife, whereafter they left the house. While outside, the appellant remarked to his companions that the deceased was not dead yet and instructed them to go kill him. They re-entered the shack and attacked the deceased further.

[4] The evidence was that the appellant and his co-accused were members of a rival gang and that there were several gangs operating in the township, which terrorized members of the community.

[5] Section 51(1) of the Criminal Law Amendment Act 105 of 1997 (CLAA) determines that, notwithstanding any other law, a High Court shall sentence a person it has convicted of an offence referred to in Part 1 of Schedule 2, to imprisonment for life. The charge of murder that the accused was convicted of falls within the purview of the aforementioned provisions of the CLAA.

[6] Section 51(3) empowers the Court to deviate from the life sentence should the court decide that there are substantial and compelling circumstances warranting the imposition of a lesser sentence than life imprisonment.

[7] Advocate J Potgieter, on behalf of the appellant, submitted that the appellant is a candidate for rehabilitation. He implored us to consider the appellant's youthful age of 22 years at the time of sentencing and the fact that he was a student of marketing prior to his arrest, which ought to serve as substantial and compelling circumstances warranting deviation from the prescribed minimum sentence. He had a two-year-old child and was in custody for 14 months awaiting trial. However, it must be borne in mind that the appellant is not a first offender. On 4 September 2014 he was found guilty of the crime of robbery committed on 2 July 2013 wherein he was sentenced to three years' imprisonment, suspended for five years on certain conditions.

[8] It is trite that sentencing should aim to strike a balance between the offence, the offender and the interest of the community while at the same time bearing in mind the four recognized objectives of sentencing, namely prevention, deterrence, retribution and rehabilitation. In arriving at an appropriate and just sentence, the court needs to strike a balance between the identified purposes of sentencing and to accord due weight to each of the circumstances.¹ The traditional factors known as the triad of *Zinn*² should be considered and the sentence be blended with an element of mercy.

[9] In *S v Nkunkuma*³ the court referred to *S v Malgas*⁴ wherein the court said that the circumstances used to justify a refusal to impose the specified minimum sentence had to be substantial and compelling. The court quoted with approval the following paragraph from *S v Malgas*:

'The specified sentences were not to be departed from lightly and for flimsy reasons which could not withstand scrutiny. Speculative hypothesis favourable to the offender, maudlin sympathy, aversion to imprisoning first offenders, personal doubts as to the efficacy of the policy implicit in the amending legislation, and like considerations were equally obviously not intended to qualify as substantial and compelling circumstances.'⁵

[10] The legislature used the words 'substantial and compelling circumstances' in the aforementioned s 51(3) for a specific reason. The circumstances at hand thus have to be extraordinary in order to qualify as 'substantial and compelling'. It is apparent that the appellant has a propensity to commit violent crimes and that he displays no respect for the law. He committed the murder just two months after he was sentenced for robbery and had a suspended sentence hanging over his head. His personal circumstances do not qualify as substantial and compelling circumstances. They are far outweighed by the aggravating factors.

¹ *S v Rabie* 1975 (4) SA 855 A at 862A-B.

² *S v Zinn* 1969 (2) SA 537 A.

³ *S v Nkunkuma* [2013] ZASCA 122; 2014 (2) SACR 168 (SCA) (*Nkunkuma*) para 9.

⁴ *S v Malgas* 2001 (1) SACR 469 SCA (*Malgas*) at 477C-E.

⁵ *Nkunkuma* para 9, citing from *Malgas* at 470I.

[11] When considering the totality of the facts and circumstances, as well as the applicable principles in relation to sentencing, I completely agree with the court *quo*'s finding that there are no substantial and compelling circumstances which justify the imposition of a lesser sentence than the prescribed minimum sentence of life imprisonment. To regard the appellant's personal circumstance as substantial and compelling would be to thwart the intention of the legislature. Accordingly, the appeal stands to be dismissed.

Order:

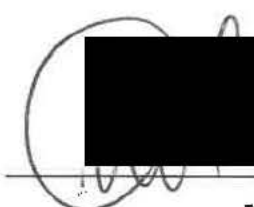
[12] In the result the following order is issued:

The appeal is dismissed.

I concur:


Benade AJ

I concur:


Mbhele, AJP


Van Rhyn, J

Appearances

For the appellant:

Instructed by:

Adv J Potgieter

B Jacobs

Jacobs Fourie Attorneys

Bloemfontein

For the respondent:

Adv D Pretorius

Office of the Director of

Public Prosecutions,

Bloemfontein