



**IN THE HIGH COURT OF SOUTH AFRICA
KWAZULU-NATAL DIVISION
NORTH-EASTERN CIRCUIT**

Case No: CC24/2023

In the matter between:

PHILANI CARLOS MZIMELA

APPLICANT

and

THE STATE

RESPONDENT

Coram: Mossop J
Heard: 17 June 2025
Delivered: 17 June 2025

ORDER

The following order is granted:

1. The application for leave to appeal against sentence is refused.
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JUDGMENT

MOSSOP J:

[1] This is an ex tempore judgment.

[2] Mr Philani Carlos Mzimela (the applicant) seeks leave to appeal against the sentences imposed upon him consequent upon his conviction. He was one of four accused who stood trial before me in the North-eastern Circuit Court sitting at Mtubatuba. This application for leave to appeal does not challenge his conviction on multiple counts nor does it involve his three co-accused who stood trial with the applicant and who were also convicted and sentenced by me.

[3] On Monday, 12 June 2023 I convicted all four accused on multiple counts that essentially related to the botched robbery of a store in a Mtubatuba shopping mall. As far as the applicant is concerned, he was convicted of:

(a) Four counts of robbery with aggravating circumstances, for which he was sentenced to 18 years' imprisonment on each count, all of which sentences were ordered to run concurrently with each other;

(b) Three counts of attempted murder, in respect of which he was sentenced to 15 years' imprisonment on each count, which sentences were ordered to run concurrently with each other and with the effective period of imprisonment of 18 years mentioned in paragraph (a) above; and

(c) One count of unlawfully possessing a firearm, in respect of which I sentenced him to 15 years' imprisonment, seven years of which was ordered to run concurrently with the effective 18 years' imprisonment imposed for the offence mentioned in paragraph (a) above.

[4] The nett effect of this is that the appellant was sentenced to an effective period of imprisonment of 26 years.

[5] The appellant now believes that the sentences imposed upon him are too severe and seeks to appeal them to a higher court, in the belief that such court might come to a different conclusion on his punishment than the one to which I came.

[6] It is so that a court that sentences a convicted citizen has a discretion when it comes to the imposition of sentence. The court calculates the sentence to be

imposed based upon the facts that it has found to have been proven when viewed, inter alia, in the context of the accused's personal circumstances and the broader interests of the community. In *S v Bogaards*,¹ the Constitutional Court, observed as follows:

'... sentencing is within the discretion of the trial court. An appellate court's power to interfere with sentences imposed by courts below is circumscribed. It can only do so where there has been an irregularity that results in a failure of justice; the court below misdirected itself to such an extent that its decision on sentence is vitiated; or the sentence is so disproportionate or shocking that no reasonable court could have imposed it.' (Footnotes omitted.)

[7] A higher court therefore cannot interfere with a sentence simply because it may have imposed a different one to the sentence imposed by the lower court. Thus, the Supreme Court of Appeal remarked in *S v Malgas*² that an appeal court may not approach an appeal:

'... as if it were the trial court and then substitute the sentence arrived at by it simply because it prefers it. To do so would be to usurp the sentencing discretion of the trial court. Where material misdirection by the trial court vitiates its exercise of that discretion, an appellate Court is of course entitled to consider the question of sentence afresh ...'

[8] To demonstrate an improper exercise of a sentencing court's discretion, an appellant will have to show the existence of misdirection or misdirections on the part of that court. In the applicant's heads of argument, it is submitted that I misdirected myself in two respects:

- (a) I failed to consider the personal circumstances of the applicant; and
- (b) I over emphasised the seriousness of the offence and the interests of society without according any, or due, weight to the personal circumstances of the applicant.

[9] I deal with the first ground of appeal by simply referring to an extract from my judgment on sentence in which I discussed the personal circumstances of the applicant:

¹ *S v Bogaards* [2012] ZACC 23; 2013 (1) SACR 1 (CC) para 41.

² *S v Malgas* 2001 (1) SACR 469 (SCA) para 12.

'Accused three, Mr Mzimela: you are 41 years old and the father of four children, the eldest of which was born in 2001 and the youngest of which is 3 years old. At school you attained a grade 11 level of education. You have, as previously mentioned, a previous conviction for robbery. During your incarceration, you suffered the loss of your father. You were sentenced to imprisonment in 2009 and were released in 2014 and it appears that you have been in and out of employment since then. You worked at a Spar store in the bakery section and at the time of your arrest you were working as an Uber driver earning R2 100 per month;'

[10] I considered, and mentioned, every fact that was advanced to me by the applicant's counsel that related to the applicant. To suggest that I did not do so is simply incorrect and it is accordingly unlikely that a higher court will find that I did not consider the applicant's personal circumstances.

[11] As regards the second ground of appeal, the interests of society have long been recognised as being a vital consideration when addressing the issue of sentence. So much so is said in the religiously cited matter of *S v Zinn*,³ in which the Appellate Division laid down that a court, in performing its sentencing duties, was required to address three primary considerations, namely the crime, the offender and the interests of society.⁴

[12] The applicant was convicted of criminal offences involving the attempted murder of a number of people, the robbery of a store in a public mall, the use of a firearm and the brazen application of force both to members of the public and the South African Police Services. He had a previous conviction for robbery and had been sentenced to direct imprisonment as a consequence. In my opinion, the agglomeration of these factors called for a weighty sentence in the circumstances.

[13] When determining the appropriate sentence for the applicant, I considered all relevant factors and constructed the sentence to ensure that because of multiple convictions, the cumulative weight of the sentence to be imposed upon the applicant would not be unduly burdensome. That the applicant would be jailed for a considerable period of time brooked of no doubt. I do not think that there can be any

³ *S v Zinn* 1969 (2) SA 537 (A).

⁴ *Ibid* 540G.

realistic expectation that another court would conclude that a lesser sentence ought to have been imposed upon the applicant given the facts of this matter and the applicant's unsatisfactory criminal history.

[14] Society is entitled to look to the courts to impose appropriate sentences when rampant criminality rears its unattractive, and violent, head. While the applicant's personal circumstances were a valid consideration, their importance was overshadowed by the facts of this matter.

[15] I am satisfied that there are no reasonable prospects of another court coming to a different conclusion on the issue of sentence. The application for leave to appeal against sentence has no merit and is accordingly dismissed.

MOSSOP J

APPEARANCES

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