



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CRIMINAL APPEAL CASE NO: A82/2024

(1) REPORTABLE: ~~YES~~/NO
(2) OF INTEREST TO OTHER JUDGES: ~~YES~~/NO
(3) REVISED.

08 SEPTEMBER 2025

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SIGNATURE

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DATE

In the appeal of:

THABANG DLAMINI

First Appellant

JOSHUA MAFESA

Second Appellant

PETRUS LEKAPO SEIMANE

Third Appellant

KABELO NOKWANE

Fourth Appellant

and

THE STATE

Respondent

JUDGMENT

LABUSCHAGNE J

- [1] The appellants were convicted by the Oberholzer Regional Court on a count of tampering with infrastructure in contravention of section 3(1)¹ of the Criminal Matters Amendment Act 18 of 2015, read with Part (ii) of Schedule 2 and section 51(2) of the Criminal Law Amendment Act 105 of 1997. In particular, they were caught in the process of breaking up railway tracks in the region of Khutsong.
- [2] The appellants' application for leave to appeal against conviction and sentence was refused by the trial court but leave to appeal was granted on petition, against sentence only. This is their appeal against sentence.
- [3] Security guards of the mine where the railway tracks are located came across a group of men on the railway tracks. They were alerted by the flash of sparks of a welding torch on the tracks and the presence of a vehicle next to the tracks which could not have reached that location by road. The vehicle had to cross through veld to reach the railway tracks. In the process of trying to apprehend the group, certain of those present ran away. Shots were fired at the security guards and the vehicle in which the appellants were apprehended was

¹ The section provides that: "Any person who unlawfully and intentionally —

(a) tampers with, damages or destroys essential infrastructure

(b) colludes with or assists another person in the commission, performance or carrying out of an activity referred to in paragraph (a), and who knows or ought reasonably to have known or suspected that it is essential infrastructure, is guilty of an offence and liable on conviction to a period of imprisonment not exceeding 30 years or, in the case of a corporate body as contemplated in section 332(2) of the Criminal Procedure Act, 1977, a fine not exceeding R100 million.

stopped by pulling spikes across the road. One of the shots that was fired hit the fourth appellant in the leg, as a result of which his leg had to be amputated.

[4] The personal circumstances of the accused which were placed before the court *a quo* are the following:

4.1 First appellant is a 38-year-old married man with two children, aged 12 and 2 years at that time. He was a general worker at the Mpumalanga West Cape Mining Company. His wife was unemployed. He had to attend court from Mpumalanga while on bail and did so without skipping any court hearings.

4.2 Second appellant is a 48-year-old with five children, between the ages of 4 and 20. He is the sole breadwinner in his family.

4.3 Third appellant is a 32-year-old married man with two children, respectively 4 years old and 6 months old. He is self-employed.

4.4 Fourth appellant is a 32-year-old with a child aged 4 years old. He was involved in the informal recycling business. As mentioned, he lost a leg as a result of a gunshot wound that he sustained in the process of arrest. It is not known whether he was shot by the security guards or by one of those in the group who were being accosted.

[5] The first appellant had no previous convictions.

[6] The second appellant had previous convictions for assault and domestic violence.

- [7] The third appellant had a previous conviction for theft.
- [8] The fourth appellant has no previous convictions.
- [9] The arguments raised in favour of the appellants included the aforesaid personal circumstances, together with the fact that nothing had in fact been removed from the site. The magistrate *a quo* noted this submission but commented that the charge in question was one of tampering with infrastructure. This cannot be criticised.
- [10] Also, there were considerations which aggravated the circumstances under which the offence was committed. Those included the fact that shots were fired at the security officers, and that the tampering in question related to infrastructure which is central to the economic success of the Republic. The fact that it was not in regular use at the time, does not detract from the fact that it is available State infrastructure. This contention was merely argued from the bar and was not raised as a ground of appeal. It nevertheless has no merit.
- [11] The court *a quo* merely listed the personal circumstances of the appellants. However, it can be gleaned from the judgment that the court took into account the triad of considerations in **Zinn**.
- [12] The trite considerations when sentencing is imposed are to consider the seriousness of the case, the personal circumstances of the appellant and the interests of society (see **S v Zinn** 1969 (2) SA 537 (A)).

[13] The court *a quo* found that the appropriate sentence was the application of the minimum sentence of 15 years. The question on appeal is whether this court should interfere with the aforesaid sentence.

[14] It is trite that sentencing remains pre-eminently within the discretion of the sentencing court. The appeal court is therefore only entitled to interfere with a sentence imposed where such a sentence is disturbingly inappropriate or vitiated by misdirection of a nature which shows that the trial court did not exercise its discretion reasonably². The principle was expressed by the SCA in **S v Malgas**³ as follows:

“A court exercising appellate jurisdiction cannot, in the absence of material misdirection by the trial court, approach the question of sentence 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”.

[15] The principle was reaffirmed by the SCA in **Mokela v The State**⁴ where the court stated that: “This salutary principle implies that the appeal court does not enjoy carte blanche to interfere with sentence which have been properly imposed by a sentencing court”.

[16] In **S v Bogaards 2013 (1) SACR 1 (CC)** at par 41 the Constitutional Court, stated:

“Ordinarily, 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

² S v Salzwedel 1999 (2) SACR 586 (SCA) at 591F-G; See also: S v Kgosimore 1999 (2) SACR 238 (SCA).

³ 2001 SACR 496 at para 12 (SCA).

⁴ 2012 (1) SACR 431 (SCA) para 9.

disproportionate or shocking that no reasonable court could have imposed it. A court of appeal can also impose a different sentence when it sets aside a conviction in relation to one charge and convicts the accused of another.”

- [17] The issue of prescribed minimum sentences has attracted the attention of the courts on a number of occasions. The minimum sentences are not to be departed from for flimsy reasons and must be respected at all times (see Mokose J in **S v Mosikare** 2019 (JDR) 1735 at paragraph [15]).
- [18] When it comes to determining whether a deviation is justified or not, it bears noting that it is fact specific and that there is no definition of what constitutes substantial and compelling circumstances that justify a deviation.
- [19] The argument presented by the appellants to justify a deviation from the minimum sentence is flimsy. The personal circumstances of the appellants have already been set out *supra* and were expressly listed by the court *a quo*.
- [20] The SCA in **S v Vilakazi**⁵ stated the following regarding the personal circumstances of an accused person:

*“In cases of serious crime, the personal circumstance of the offender, by themselves, will necessarily recede into the background. Once it becomes clear that the crime is deserving of a substantial period of imprisonment the questions whether the accused is married or single, whether he has two children or three, whether or not he is in employment, are in themselves largely immaterial to what that period should be, and those seem to me to be the kind of ‘flimsy’ grounds that **Malgas** said should be avoided”.*

⁵ 2009 (1) SACR 552 (SCA) at para 58.

- [21] Having considered the cumulative circumstances of this case, and the submissions made on behalf of the appellants, I am of the view that the personal circumstances of the appellants are not *per se* exceptional and do not constitute a cogent basis for deviating from the minimum sentences imposed.
- [22] In this instance the personal circumstances of only the fourth appellant are worthy of specific mention. He lost a leg. The injury he sustained formed part of an aggravating consideration, namely the utilisation of firearms in shooting at the security guards who were trying to accost the offenders. The offence of tampering had already been committed by the time the fourth appellant was shot. Viewed in its context, the amputation is not a consideration on its own warranting a deviation.
- [23] As far as the seriousness of the crime and the interests of society is concerned, the damage to infrastructure is a serious offence. It is for this reason that the court should always be mindful of the judicial purposes of punishment which are deterrence; prevention; retribution and rehabilitation as stated by the Appellate Division in **S v Rabie**⁶. It is indisputable that the economy and the public pay the price for tampering and destruction of infrastructure. Repeated attacks on infrastructure result in continuous breakdowns in services and repeated capital expenditure at the cost of the taxpayer. This type of conduct is particularly heinous in circumstances where the available infrastructure, although not in use, is necessary for future development of the economy once the need to recapitalise such infrastructure

⁶ 1975 (4) SA 855 (A).

has been given effect to. As noted above, the notion that infrastructure not currently in use may be pillaged must be resisted by imposing minimum sentences even in such circumstances. Such sentences are intentionally deterrent in effect.

[24] Mr Kgagara appearing for the appellants correctly submitted that the appellants have been convicted of very serious offence. In this instance there are no further specific considerations that are triggered by the available evidence. Accordingly, I concur with the respondent's submission that the court *a quo* had a duty to impose a sentence that would reflect the community's indignation and repugnance felt towards the crime, and which accordingly would both satisfy the need for retribution and operate as a deterrent not only to the appellants, but also to the would-be offenders.

[25] Having said that, it is important to note that the sentence imposed on the appellants is prescribed by the legislature. In light of the above circumstances, I am of the view that the court *a quo* correctly applied its mind when determining whether the prescribed sentence of fifteen (15) years imprisonment is a just one. This court finds that the court *a quo* did not misdirect itself and cannot be faulted.

[26] Having considered all relevant considerations, there is no justification for interfering with the order of the court *a quo* in imposing the minimum sentence on the appellants. It follows that the appeal against sentence must fail.

[27] The following order is made:

1. The appeal of each appellant against sentence is dismissed.



LABUSCHAGNE J
JUDGE OF THE HIGH COURT

I concur



PHAHLANE J
JUDGE OF THE HIGH COURT