THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

JUDGMENT

Reportable

Case no: 881/2024

In the matter between:

TREASURE MOREMI **APPELLANT**

and

THE STATE **RESPONDENT**

Neutral citation: *Moremi Treasure v The State* (881/2024) [2025] ZASCA 137 (25 September 2025)

Coram: HUGHES, GOOSEN and KOEN JJA

Heard: 9 September 2025

Delivered: 25 September 2025

Summary: Criminal Law – Sentence – whether the high court erred in refusing a petition for leave to appeal against a sentence of ten years' imprisonment imposed by a Regional Court on a first offender for fraud of R10 619 677.85 – whether reasonable prospects of success that the sentence will be altered if leave to appeal was granted established.

ORDER

On appeal from: Gauteng Division of the High Court, Pretoria (Van der Westhuizen J and Botsi-Thulare AJ, sitting as a court of appeal on appeal from the Regional Court):

The appeal is dismissed.

JUDGMENT

Koen JA (Hughes and Goosen JJA concurring):

Introduction

[1] The appellant, Treasure Moremi and her co-accused, Denmag Trading (Pty) Ltd (Denmag), were convicted by the Specialised Commercial Crimes Court, Regional Division of Gauteng, Pretoria (the trial court) of fraud involving an amount of R10 619 677.85. She was sentenced to a period of ten years' imprisonment.[1] After an unsuccessful application to the trial court for leave to appeal against her sentence, the appellant petitioned the Gauteng Division of the High Court, Pretoria (the high court) in terms of s 309C of the Criminal Procedure Act 51 of 1977 (the CPA) for leave to appeal. The high court refused such leave.

[2] The appellant now appeals against the order of the high court. The appeal is with the special leave of this Court.[2] The issue to be determined is whether leave to appeal should have been granted by the high court. This involves determining whether there is a reasonable prospect of success in the envisaged appeal against

[1] The appellant is a shareholder and director of Denmag. Denmag was represented before the trial court by Levy Moroko Moremi, her husband, and also a director of Daneng. It was sentenced to a fine of R600 000.

[2] The special leave to appeal was granted by Mocumie JA and Mjali AJA.

sentence.[3] Whether the sentence imposed was appropriate,[4] or falls to be set aside, is ultimately left for the full bench of the high court to decide, should this appeal succeed and leave to appeal be granted. If no reasonable prospects are established, then the appeal against the dismissal of the petition for leave to appeal should be dismissed. It is trite law that a sound, rational basis needs to be established for the conclusion that there are prospects of success on appeal.[5] This judgment addresses that enquiry.

The background

[3] The appellant and her husband, Mr Levy Moroko Moremi (Mr Moremi), were at all times relevant to this appeal, directors and shareholders of Denmag. She was responsible for the finances and general management. Mr Moremi was responsible for contracts and advertisements. They functioned individually in their respective positions and roles.

[4] In common with most businesses, Denmag's operations were temporarily suspended for a period of some four months as a result of the lockdown restrictions imposed during the Covid 19 pandemic in 2020. At the time Denmag had 22 employees.

[5] To alleviate the financial hardship of the lockdown, the South African government introduced a Temporary Employee/Employer Relief fund (TERS) to assist businesses and their employees who were impacted by the lockdown. TERS was administered by the Department of Labour (the department).

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[3] *S v Khoasasa* [2002] ZASCA 113; 2003 (1) SACR 123 (SCA); [2002] 4 All SA 635 (SCA); *De Almeida v S* [2019] ZASCA 84; 2019 JDR 0987 (SCA).
[4] In her heads of argument, the appellant wrongly contended that the issue in the appeal is whether this Court should interfere with the trial court's sentencing discretion based on three broad grounds summarised in the notice and grounds of appeal. She asks that a sentence of correctional supervision be imposed.
[5] *Smith v S* 2012 (1) SACR 567 (SCA) para 7.

[6] From April to June 2020, the appellant submitted 32 claims, as if Denmag had 533 employees in its employ, to the department, claiming a total amount of R10 619 677.89 under TERS. She did so by submitting, over and above the particulars of Denmag's lawful 22 employees, personal particulars of former employees of Denmag and of people who had previously submitted curricula vitae to Denmag with the aim to obtain employment with it, but who were never appointed.

[7] The claims were met by the department making payment of the amount claimed in respect of these 'ghost' employees to Denmag. The appellant used the funds to purchase machinery, vehicles, containers, and building materials for Denmag. Some funds were passed to the appellant and to Mr Moremi to buy immovable property for themselves personally.

[8] The appellant and Mr Moremi subsequently approached the department and admitted to having been overpaid. The appellant claimed that this was as a result of 'a mistake or error'. An agreement was entered into for the repayment of the money. An amount of R3 545 474.71 was repaid to the department pursuant to this agreement.

[9] On 7 October 2021, the appellant was arrested for fraud. In the bail application which followed, she filed an affidavit stating that she would plead not guilty at the trial. At the criminal trial, the appellant and Denmag pleaded guilty to the fraud. They admitted that they knew that the representations made to the department resulting in the pay-outs in respect of the 'ghost' employees, constituted a criminal offence. They were duly convicted. They were sentenced on 24 February 2023.

[10] The provisions of s 51(2)*(a)* read with Part II of Schedule 2 of the Criminal Law Amendment Act 105 of 1997 (the Act) found application because the amount involved in the fraud exceeded R500 000. Absent substantial and compelling circumstances, a prescribed minimum sentence of 15 years' imprisonment would apply.[6]

The judgment of the trial court

[11] The trial court was presented with a Psycho-Social Pre-Sentence report by a Ms Wolmarans, a Correctional Supervision report, and two affidavits in terms of s 236 of the CPA in respect of relevant bank statements. Only Ms Wolmarans testified. The appellant did not testify.

[12] In determining an appropriate sentence the trial court had regard to the triad of factors in *Zinn*[7] namely: the nature of the offence; the personal circumstances of the appellant; and the interests of society. It also considered whether there were substantial and compelling circumstances present which would justify a deviation from the prescribed minimum sentence. Specifically, it took into account that:

(a) The appellant was 35 years old and married in community of property to Mr Moremi.

(b) She has three boys aged 12, 6 and 4 years old, all attending school and pre-school (the firstborn is not the biological child of Mr Moremi, but Mr Moremi accepts him as his own).

(c) They all reside together in Polokwane in one of two properties which she and Mr Moremi own, and which are not bonded.

(d) Upon completing grade 12 she had furthered her studies and obtained a National Diploma in Advanced Office Administration in 2009.

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[6] Section 51(2)*(a)* read with Part II of Schedule 2 of the Criminal Law Amendment Act 105 of 1997, which applies, provides that in the case of a first offender imprisonment for a period not less than 15 years applies in respect of any offence relating to fraud involving amounts of more than R500 000.

[7] *S v Zinn* 1969 (2) SA 537 (A).

(e) As a director of Denmag she earned a nett salary of R77 800 per month.

(f) Her parents, aged 59 and 57 years respectively, live in Polokwane. She gets along very well with her parents and with her mother-in-law. Their relationship is described as open, transparent, and healthy.

(g) She is in general responsible for the wellbeing of the children, including driving them to and from school, preparing their food, *etcetera*.

(h) She is in good health, although the criminal trial had caused her some sleeplessness and anxiety.

(i) She is a first offender.

(j) She pleaded guilty, and whether that might be indicative of remorse.

(k) Whether her conduct had been out of character.

(l) Whether she is the primary caregiver of the three children, this having been the view expressed by Ms Wolmarans.

(m) The interests of the children.

(n) Whether she should be placed under correctional supervision, the author of the Correctional Supervision Report having concluded that she was considered to be suitable to be placed under correctional supervision.

(o) That an arrangement had been put in place for the appellant to repay the monies and that she had repaid an amount of R3 545 474.71.[8]

(p) That she had been convicted of a very serious offence in respect of which a minimum sentence is prescribed.

(q) The moral and ethical nature of the specific crime.

[13] The trial court concluded that a sentence of incarceration was the only appropriate form of sentence. It found that there were substantial and compelling circumstances justifying a deviation from the prescribed minimum and imposed the sentence of ten years' imprisonment.

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[8] That leaves a balance of R7 074 203.14.

The appellant's contentions

[14] The appellant contends that she has reasonable prospects of success in having the sentence of ten years' imprisonment varied on appeal. She bases this submission on the following: that the sentence induces a sense of shock; that the trial court had not given due regard to the Pre-Sentence report of Ms Wolmarans and the Correctional Supervision Investigation report; and that the trial court had not given due regard to her mitigatory circumstances which, according to the submission in her heads of argument, 'loudly screamed for a non-custodial sentence'. The issue is whether any of these grounds might have a reasonable prospect of resulting in a different sentence being imposed.

The test

[15] It is trite law that an appeal court does not lightly interfere with the discretion exercised by a trial court when determining that a particular sentence is appropriate. It would generally only interfere if the trial court committed a material misdirection, or if the sentence imposed is so startling inappropriate that it induces a sense of shock.[9]

[16] The trial court is steeped in the atmosphere of the trial, is familiar with the prevalence of the offence, and other facts and circumstances peculiar to the crime. These are advantages which an appeal court might not have. The benefit thereof should not be underestimated. It does not mean that the exercise of a trial court's discretion on sentence cannot in appropriate circumstances be revisited. But sound legal grounds will need to be shown to exist for such interference to be justified.

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[9] *S v Rabie* 1975 (4) SA 855 (A).

Discussion

[17] The trial court did not commit any material mis-directions. It erred in one minor respect, as the State pointed out, when it regarded the confiscation order, subsequently granted against the appellant, as a substantial and compelling circumstance. This Court held in *Gardener* that it is plain that confiscation and sentence are to be treated separately for good reason.[10] The error is immaterial to the appellant's appeal as it operated to the appellant's benefit and did not prejudice her.

[18] The trial court correctly acknowledged the objective and purpose of criminal punishment as deterrent, preventive, reformative and retributive. With these objectives in mind, it properly considered and weighed the seriousness of the crime, the personal circumstances and the interest of the appellant, and the interest of society.

The Pre-Sentence and Correctional Services reports

[19] The criticism that the trial court had not had due regard to the two reports, is without substance. The trial court conducted a detailed examination thereof, especially the Pre-Sentence report in respect of which Ms Wolmarans testified, and which allowed her recommendations to be interrogated.

[20] Her report was in many respects of little value. She expressed opinions such as that the appellant: went into a panic mode when Denmag stopped generating money during April 2020; responded in a manner out of character; was the primary caregiver of the children; and had shown remorse, this being said to be evident from her having pleaded guilty. These opinions, however, simply did not withstand closer scrutiny, as will appear below.

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[10] *National Director of Public Prosecutions v Gardener and Another* 2011 (1) SACR 612 (SCA); 2011 (4) SA 102 para 19.

[21] Ms Wolmarans was referred to the bank statement of Denmag recording transactions immediately prior to and during the commission of the offence. She had to concede that at 31 March 2020, immediately prior to the fraud being perpetrated, Denmag had received a payment into its account in the sum of R1 012 094.54. Denmag also received further payments of R605 398 on 22 April 2020 and R1 469 936 on 11 August 2020. It thus continued to have an in-flow of cash notwithstanding the lockdown. There was no occasion for panic.

[22] As regards the appellant's conduct being allegedly out of character, that might at best possibly have been the case if the fraud was a once off occurrence. It was not. She made and persisted with repeated fraudulent claims, following a meticulous *modus operandi* (manner of operating) of submitting false claims with contrived detail, time after time, for personal gain, whether directly, or indirectly via her shareholding in Denmag. Hers was not a once off error of judgment, out of character. She was motivated by greed and deviously used the personal details of real persons to avoid detection.

[23] Ms Wolmarans testified that it was not the appellant that benefitted from the crime but rather Denmag. That is not entirely correct either. Denmag did benefit but the appellant is a shareholder in Denmag and would benefit indirectly. During cross-examination Ms Wolmarans had to concede that an immovable property bought with some of the stolen money, was acquired by the appellant and Mr Moremi. Funds received into the account of Denmag, thus did not only unlawfully enrich Denmag, but also benefitted the appellant and her husband personally. Some amounts were also paid to another company of which Mr Moremi is a director.

[24] The appellant and Mr Moremi represented to the department that the claims had arisen because they had been submitted erroneously and by mistake. That was

untrue. This indicates an unwillingness on the part of the appellant to come clean, when she could have done so, if she was genuinely remorseful.

[25] The Correctional Supervision report was not of significance other than to confirm that the appellant was a suitable candidate for correctional supervision, if that sentence was to be considered as appropriate. Whether correctional supervision would be suitable was for the trial court to determine.

[26] Regarding her children, the incarceration of the appellant would obviously result in them having to grow up without their mother for part of their lives. Any lacuna in the Pre-Sentence report as to Mr Moremi's ability to take care of the children, was cured by Ms Wolmarans' testimony. She testified that he assists with the children on a daily basis and would be able to assist and look after their needs while the appellant is incarcerated. He is involved in their lives. If he is at any stage unavailable due to work commitments, then an au pair could be appointed to assist, or the appellant's parents and her mother-in-law, with whom the appellant shares a close relationship, could also assist. As pointed out in *EB*:

'One has the greatest sympathy for the children but their emotional needs cannot trump the duty on the State properly to punish criminal misconduct where the appropriate sentence is one of imprisonment.'[11]

[27] The appellant's three minor children are in a more favourable position, than the children in *S v M*,[12] where the accused was a single mother who was totally responsible for the care and upbringing of her sons. The appellant is not the children's sole caregiver. There is nothing to indicate that Mr Moremi will not be able to engage the childcare combined with the close family support available to assist him, if required, to ensure that the children are well looked after.

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[11] *S v EB* 2010 (2) SACR 524 (SCA) para 14.
[12] *S v M* [2007] ZACC 18; 2008 (3) SA 232 (CC); 2007 (12) BCLR 1312 (CC); 2007 (2) SACR 539 (CC).

Imprisonment will not inappropriately compromise the children's interest, even if it has some negative impact and might occasion some hardship to them and the appellant's greater family.

Whether a non-custodial sentence would be appropriate

[28] The trial court was enjoined by legislation to impose a minimum sentence of 15 years' imprisonment unless there were substantial and compelling circumstances present. To that extent, the approach to an appeal on sentence provided for in terms of the General Law Amendment Act 105 of 1997 is different to other sentences imposed under the ordinary sentence regime. The prescribed minimum sentence of 15 years is the starting point. A court has limited scope to temper the prescribed minimum to arrive at a lesser sentence. To conclude otherwise would be to negate the standardised effect which the minimum sentence legislation seeks to achieve.

[29] In determining whether substantial and compelling circumstances exist, all the factors traditionally taken into account in assessing an appropriate sentence, are relevant. But it has to be borne in mind that it is no longer business as usual. The emphasis has shifted to the objective gravity of the crime. The need for effective sanctions is relevant.

[30] This Court has emphasised that a trial court should not base its finding of substantial and compelling circumstances on flimsy or speculative grounds or hypothesis.[13] *Malgas*[14] is authority that in the absence of weighty justification, the prescribed sentence should be imposed unless there are truly convincing reasons for a different response.

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[13] *S v PB* 2013 (2) SACR 533 (SCA) at 539F-G.
[14] *S v Malgas* 2001(1) SACR 469 (SCA).

[31] Whether there were substantial and compelling circumstances present[15] which might justify a deviation from the prescribed minimum sentence and if so, the determination of an appropriate sentence, was viewed holistically by the trial court in the exercise of its discretion as to what would be an appropriate sentence. It was alive to the fact that the legislation has limited, but not eliminated, a trial court's discretion in imposing sentence.

[32] The trial court concluded that the prescribed period of 15 years was disproportionate when considering the interests of the appellant and the legitimate needs of society. It accordingly found that there were substantial and compelling circumstances present which justified a shorter period of 10 years' imprisonment.

[33] The appellant submits that she should have been given a wholly suspended sentence, or alternatively, correctional supervision, but not a custodial sentence. The trial court, however, considered whether a non-custodial sentence would be sufficient punishment. Imprisonment is obviously only appropriate if the offender's blameworthiness requires the imposition of such a sentence. Generally, in answering that question, there are two important factors: the seriousness of the crime; and whether the offender is a first offender or not. Other factors are of secondary importance.

[34] Being a first offender is a mitigating factor. Although convicted of only one count of fraud, the components of the count of which the appellant was convicted encompassed 32[16] false claims. Each of these claims repeatedly required careful detailed preparation and execution, over some four months. In preparing each claim, the appellant would have had time for reflection. She persisted with her

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[15] *S v PB* 2013 (2) SACR 533 (SCA) at 539F-G.
[16] Ms Wolmarans referred to 31 claims.

dishonest conduct. This diminishes the mitigating weight to be attached to the fact that she was a first offender.[17] She is a first offender in the sense that she had never been convicted of an offence before, but it does not signify that she made a once off mistake or simply an isolated error in judgement.

[35] In her heads of argument the appellant emphasized the sophistication of sentencing where there are alternative methods of punishment, the rigours of a prison term, that a sentence of a prison term should be the last resort which our courts should be slow in arriving at, and that where a court prefers to impose a prison term it should proffer reasons for doing so. She asked that we give serious consideration to correctional supervision in terms of s 276(1)*(h)* for a period as long as we find to be appropriate; coupled with an order, as a suspensive condition in terms of s 297, to reimburse the department in the sum of R1 403 643.84 per annum over a period of 5 years; coupled with a period of direct imprisonment, wholly suspended on appropriate conditions.

[36] That request is, of course, misdirected as it is not for this Court to decide on what might be an appropriate sentence. This Court simply considers whether the appellant has established reasonable prospects that a full bench, if the order of the high court was successfully appealed against in this appeal, would consider a sentence other than direct imprisonment and for a period of less than ten years.

[37] Extensive reliance was placed by the appellant on a number of Zimbabwean cases and also *Scheepers*,[18] to emphasize that the rigorous effect of imprisonment should be resorted to as a last resort. We were also referred to *Ngwenya*[19] in which, referring to *Scheepers,* it was said that:

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[17] *S v Van Niekerk* 1993 (1) SACR 482 (NC) 490 C-G.
[18] *S v Scheepers* 1977 (2) SA 154 (A) at 159.
[19] *S v Ngwenya* 2008 JDR 1149 (T) para 7.

'In *S v Scheepers* 1977 (2) SA (2) 154 (A) it was stated that imprisonment is not the only punishment which is appropriate for retributive and deterrent purposes. Imprisonment should not be rightly imposed if the objective of punishment can be met by another form of punishment. The imposition of a fine is a particularly appropriate punishment in a case where the accused's unlawful conduct was directed towards monetary gain.'

[38] The Zimbabwean cases referred to were of little assistance, not applying to instances of white-collar crime. They were in support of general principles such as that the prevalence of an offence does not justify the imposition of progressively heavier sentences, that it should not be regarded as a warrant to impose unduly harsh sentences in an attempt to stem the tide of lawlessness, and that imprisonment should be resorted to only if absolutely essential in the circumstances of the case and only if no other available form of punishment would be preferable and appropriate.[20]

[39] The appellant emphasized that punishment now is forward looking, to achieve future social benefits (the Utilitarian approach to punishment) and that the ultimate punishment is based on the notion that the offender should be reformed and reintegrated into society.[21] We were also referred to the decision in *Shepard*,[22] which is not in point, but where a conviction of culpable homicide was replaced with assault with intent to do grievous bodily harm and on that basis a sentence of correctional supervision in terms of s 276(1)*(h)* of the Criminal Procedure Act was imposed, on the stated basis that:

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[20] See generally *S v Gorogodo* 1988(2) ZLR 378; *S v Ngombe* HH 504/87 and *S v Teburo* HH 517/87.
[21] It was argued that the appellant is a rational being who will henceforth choose her ways. We were referred to a study/discussion on whether the threat of punishment has a deterrent effect, Prof Andreas J 1972, 'Does Punishment Deter Crime' pp 342, 357 in Philosophical Perspectives on Punishment, edited by Gertrude Ezarsky, Albany: State University of New York Press having written:
'Man is a rational being who chooses between courses of action having first calculated the risk of pain and pleasure. If therefore, we regard the risk of punishment as sufficient to outweigh a likely gain, a potential criminal applying a rational approach will choose not to break the law.'
[22] *Shepard v S* [2018] ZAKZPHC 70.

'. . . no purpose will be served by the incarceration of the appellant. . .However, the appellant's actions require a measure of censure which will ensure that he is sufficiently deterred from committing similar acts in future. Given especially his age, it strikes me that the positive intervention which correctional supervision offers is preferable . . ..'

[40] Finally, the appellant stressed the dicta in *Manyaka*[23] that sentencing courts must differentiate between those offenders who ought to be removed from society and those who, although deserving of punishment, should not be removed. It was submitted, on the appellant's behalf, that with appropriate conditions, correctional supervision can be made a suitably severe punishment, even for persons convicted of serious offences and that consideration should be given to the imposition of a sentence under s 276(1)*(h)*.

[41] Although, as an issue of principle, imprisonment of a first offender should, where appropriate, be avoided, it does not mean that imprisonment may not be imposed on a first offender, or that she is entitled to a suspended sentence, or, if she is suitable for a sentence of correctional supervision, that correctional supervision should be imposed. The fraud of which the appellant was convicted was serious and called for a custodial sentence for the various reasons stated by the trial court. No two cases are ever the same, each must be determined on its own merits and facts. But that direct imprisonment was indicated is consistent with the jurisprudence of this Court. As recently as 12 June 2025, this Court in *Nel*[24] sentenced an accused, who admittedly had previous convictions, but convicted of 12 counts of theft of money to the value of about R3.9 million, to an effective 15 years' imprisonment.

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[23] *Manyaka v S* [2022] ZASCA 21; 2022 (1) SACR 447 (SCA) para 23.
[24] *Nel v State* [2023] ZASCA 89.

[42] The trial court exercised its discretion carefully and concluded that other forms of sentence, such as, for example, a fine, a suspended or partially suspended sentence, correctional supervision, or a combination of some of these forms of punishment, were not appropriate and that a custodial sentence was required. Its approach cannot be faulted. It gave a thorough, balanced and carefully reasoned judgment.

[43] The appellant had misappropriated substantial funds set aside to alleviate the plight of South Africans, to selfishly enrich herself and her company. This at a time when South Africa was in a dire state. Her conduct was not merely unlawful, but inconsiderate, violates every aspect of ubuntu and displays a lack of empathy with the plight of many others who were suffering considerably more than the appellant.

[44] It was said in *Sadler* that:

'So-called "white-collar" crime has, I regret to have to say, often been visited in South African Courts with penalties which are calculated to make the game seem worth the candle. Justifications often advanced for such inadequate penalties are the classification of "white-collar" crime as non-violent crime and its perpetrators (where they are first offenders) as not truly being "criminals" or "prison material" by reason of their often ostensibly respectable histories and backgrounds. Empty generalisations of that kind are of no help in assessing appropriate sentences for "white collar" crime. Their premise is that prison is only a place for those who commit crimes of violence and that it is not a place for people from "respectable" backgrounds even if their dishonesty has caused substantial loss, was resorted to for no other reason than self-enrichment, and entailed gross breaches of trust.

These are heresies. Nothing will be gained by lending credence to them. Quite the contrary. The impression that crime of that kind is not regarded by the courts as seriously beyond the pale and will probably not be visited by rigorous punishment will be fostered and more will be tempted to indulge in it.'[25]

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[25] *S v Sadler* 2000 (1) SACR 331 (SCA) at 335 G-I.

[45] Imprisonment was the appropriate punishment in view of the seriousness and prevalence of the crime committed. Corruption and fraud are destroying the fabric of our society and must be countered by effective deterrent punishment, obviously with due regard to appropriate mitigatory and other factors, which the trial court properly took into account. The trial court exercised a discretion in determining the sentence it imposed. I am not persuaded that the appellant has established that the high court erred in refusing the petition to it. There are no reasonable prospects that a court of appeal will interfere with the sentence imposed.

Conclusion

[46] The appeal is dismissed.

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P A KOEN

JUDGE OF APPEAL

Appearances

For the applicants:	I Mureriwa
Instructed by:	Motala Attorneys Inc., Pretoria
	Symington De Kok Attorneys, Bloemfontein
For the respondents:	W T van Zyl
Instructed by:	National Prosecutions Service, Pretoria
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