



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

JUDGMENT

Case No: **GSH (463/23)**

Petition No: **P20/2025**

In the matter between:

DANIEL DEKKER

Appellant

and

THE STATE

Respondent

Coram: Nziweni J and Golden AJ.

Heard: 10 October 2025

Delivered: 10 October 2025

ORDER

The appeal on sentence is upheld. The sentence is amended follows:

1. In relation to Count 1, the sentence of 6 years is upheld.
2. In relation to Count 2, the sentence of 6 years is upheld, save that 4 years shall run concurrently with the sentence in Count 1.
3. In relation to Count 3, the sentence is upheld, save that it shall run concurrently with the sentence imposed for Counts 1 and 2.
4. The sentence for direct imprisonment shall be backdated to 6 June 2024 when the appellant was sentenced in the Regional Court, Parow.

JUDGMENT

GOLDEN, AJ:

Introduction

1. This is an appeal against the sentence that was imposed by the Regional Court Magistrate, Parow. The appellant was found guilty on 6 June 2024 of two counts of theft of a motor vehicle and one count of theft out of a motor vehicle; committed against multiple victims over a thirteen-month period.
2. On counts one and two, the appellant was sentenced to six years imprisonment for each count and for count three the appellant was sentenced to three years imprisonment. The Regional Court Magistrate imposed consecutive sentences on all counts, resulting to an effective

sentence of 15 years imprisonment.

3. The appellant does not appeal the conviction. Leave to appeal against the sentence was granted by this Court on 17 April 2025.
4. In his petition for leave to appeal against the sentence in terms of Section 309C of the Criminal Procedure Act, 51 of 1977 (*“the CPA”*), the appellant relies on the following grounds in his appeal:
 - 4.1 The sentence imposed induces a sense of shock and is disproportionate in the circumstances.
 - 4.2 The learned Regional Magistrate overemphasised the seriousness of the offence and undermined the personal circumstances of the accused.
 - 4.3 The appellant is a first offender for these types of offences.
 - 4.4 The appellant still has his whole life ahead as he is still young.
 - 4.5 The learned Regional Magistrate did not exercise mercy on the appellant.
 - 4.6 The Court should have due regard to the totality of the appellant’s personal circumstances.
 - 4.7 The learned Regional Magistrate failed to take into account that the appellant was incarcerated, awaiting trial.

- 4.8 The learned Regional Magistrate failed to have due regard to the rehabilitation of the appellant and imposed a sentence that does not address this factor in the sentencing process.
5. As previously mentioned, the court a quo did not sentence the appellant in terms of Section 280 of the CPA that the sentences imposed for the three convictions should run concurrently but instead exercised its discretion and ordered that the sentences imposed for each individual conviction should run consecutively. The record does not show that the court a quo considered the cumulative impact of the sentence. The effect of this is that the sentences imposed individually for all three convictions results in 15 years direct imprisonment.
6. I set out a brief summary of the facts upon which the appellant was convicted before I turn to deal with the sentence. The facts appear from the

record.

Summary of the facts surrounding the commission of the offences

7. The first count involves the theft of a Nissan Navara motor vehicle, owned by a Mr Abdullah Arnold (“Arnold”). The second count of theft related to a Volkswagen Jetta 3 VR6 owned by Mr Sanoxolo Vandala (“Vandala”). The third count, theft out of a motor vehicle, related to a SsangYong Rexton owned by Mr Gregory Peters (“Peters”). All three complainants

responded to the appellant's advertisement on Facebook, where he falsely advertised himself as a mechanic.

8. In relation to Arnold, the theft of his vehicle occurred on or about 27 November 2018. The theft relating to Vandala's vehicle occurred on or about 2 May 2019 and in relation to Peters, the theft out of his motor vehicle occurred on or about 10 December 2021.
9. In all three instances, the appellant had wanted upfront cash payments from the complainants who paid him. In each case, the appellant's modus operandi involved him informing the complainants that additional repairs were required to their cars with an additional cost. Trusting him, the complainants made these additional payments. In relation to Arnold, the appellant had also at some stage informed Arnold that his (the appellant's) daughter had been burnt and that he needed money for hospital bills. Arnold was sympathetic and made an additional payment to the appellant. However, the appellant continued to add more problems to the motor vehicle and required Arnold to pay more money as time went on. When Arnold requested the return of the car in frustration, which the appellant had promised, it never materialised. The same modus operandi was followed in the case of Vandala in relation to his VW Jetta. Vandala paid the appellant a deposit of R4 000.00 whereafter the appellant collected the motor vehicle from a place called Mike's Place for the repairs. When Vandala went to the appellant's home to collect the car, he was informed

that the accused had gone on the road to test drive the car. While Vandala was waiting for the accused at his (the accused's) home, he then received a telephone call from the accused who claimed that he (the appellant) had been hijacked along the N1 in Kraaifontein. The appellant told Vandala to go to Kraaifontein Police Station with the documents of the Jetta. When Vandala attended the Kraaifontein Police Station, he found that the appellant had not opened a case of hijacking. This is when he became suspicious of the accused. Vandala then attended the Elsie's River Police Station where he laid a charge of theft of a motor vehicle against the appellant. He has up to today not recovered his motor vehicle. This pattern continued with Peters who had contacted the appellant to repair his vehicle. Peters too was required to make an upfront payment to the appellant in an amount of R10 000.00, which he made on 17 December 2021. On the very next day, 18 December 2021, the appellant called Peters to say that he needed more money for the repairs. Peters then proceeded to pay the appellant another R7 000.00 the next day. Thereafter, the appellant requested another payment of R1 000.00 from Peters for his (the appellant's) son's birthday. This is when Peters became suspicious and decided not to send the appellant the money which he had asked for his (the appellant's) son's birthday. However, Peters paid a further amount to the appellant, purportedly for certain parts that he required for the repairs. In early January 2022, the appellant then informed Peters that his car had been impounded by the City of Cape

Town law enforcement officers which occurred on 8 January 2022. Peters found his car at the City's impound yard in Pinelands. The car was found without an engine, gearbox and headrests. He had to pay an amount of R1 000.00 for the release and removal of what was left of the car.

10. The Regional Magistrate correctly described the appellant as a thief, that he had "*scammed*" the complainants and had milked the complainants of their money. The appellant has unashamedly preyed on these unsuspecting complainants, two of whom are elderly persons who trusted the appellant with their vehicles and their money. The appellant did not show empathy for his victims. The facts of this matter also strongly suggest that offences were premeditated. I agree with the magistrate that it was disturbing that the appellant had not shown any sign of remorse for his conduct.
11. The appellant is not a first offender; he has a previous conviction that also involved an element of dishonesty. For the previous conviction, the appellant was partly sentenced to a prison term. Clearly, at that time, the court gave him time to reflect on his conduct. He was also given the opportunity to rehabilitate. Evidently, the sentence that was imposed for his previous conviction did not deter him from committing crimes involving dishonesty. Instead, he committed a spree of offences.
12. Whilst the Regional Magistrate considered both mitigating and aggravating factors including the accused's previous conviction for fraud and that he had abused the trust of the complainants, the sentence must not

be excessive and must fit the crimes.

13. It is trite that sentencing falls within the discretion of the trial court. In addressing sentence, this Court must be guided by the principles set out in *S v Rabie* 1975 (4) SA 855 (A) and *S v Zinn* 1969 (2) SA 537 (A). In *Zinn*, the Appellate Division (as it then was) held that the approach to sentence should consider the nature of the crime, the offender and the interests of society, known as the triad principle.
14. A court of appeal is entitled to interfere with the sentence if the sentence is disturbingly inappropriate, and so totally disproportionate with the offence or vitiated by misdirection showing that the trial court had exercised its discretion unreasonably (see *S v Pillay* 1977 (4) SA 531 (A) and *S v Salzwedel & Others* 1999 (2) SACR 586 (SCA)).
15. In *Bogaards v S* 2013 (1) SACR 1 (CC), the Constitutional Court held that:

“An appellate court’s powers to interfere with sentence imposed by courts below is circumscribed. It can only do so where there has been an irregularity that results in the 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 it imposed.”

16. The question is whether the cumulative sentences imposed resulted in excessive direct imprisonment for the appellant.
17. It is not in dispute that the court a quo did not consider section 280 of the CPA and whether it was not appropriate for the sentences to run concurrently. The effect of this misdirection is that the Regional Magistrate imposed a cumulative sentence which was excessive, and which resulted in direct imprisonment of 15 years.
18. It is this Court's view that the cumulative effect of the consecutive sentences is unduly harsh and excessive. As such, this Court can order that the sentences or a portion thereof to run concurrently.
19. The appellant has a pattern of defrauding people which conduct, in my view, warrants direct imprisonment. He must serve a meaningful period of direct imprisonment given his previous conviction for fraud. Undeterred by this previous conviction, the appellant continued to defraud and steal from the three complainants.
20. Thus, whilst the appellant must serve a period of direct imprisonment, a 15- year period of direct imprisonment is excessive.
21. In the result, the following order is made:
 - (a) The appeal against sentence is upheld. The sentence imposed by the Regional Magistrate is hereby set aside and replaced with the

following sentence:

- (b) Count 1: 6 years imprisonment.
- (c) Count 2: 6 years imprisonment. It is further ordered that 4 years of this sentence shall run concurrently with the sentence imposed in Count 1.
- (d) Count 3: 3 years imprisonment and it is further ordered that this sentence shall run concurrently with the sentences imposed for Counts 1 and 2.
- (e) Effectively, the appellant is sentence to 8 years imprisonment.
- (f) The sentence is backdated to 6 June 2024 [when the appellant was sentenced in the Regional Court, Parow].

TJ GOLDEN, AJ
Acting Judge of the High Court of South Africa
Western Cape Division, Cape Town

I agree and it is so ordered
NZIWENI J
Judge of the High Court of South Africa
Western Cape Division, Pretoria

APPEARANCES:

For the Appellant: Adv N Kunju
 Legal Aid of South Africa

For the Respondent: Adv MJ September
 Director of Public Prosecution