

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO: A42/2016

DATE: 2017-02-27

(1) **REPORTABLE:** ~~YES~~ / NO.

(2) **OF INTEREST TO OTHER JUDGES:** ~~YES~~ / NO.

(3) **REVISED.**

DATE 30/9/2025

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SIGNATURE

In the matter between

ADRIAAN ISAK GELDENHUYS

Appellant

and

THE STATE

Respondent

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J U D G M E N T

MAKHOB A, J:

RANCHOD, J:

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1. The appellant was charged with seven counts of culpable homicide and he pleaded guilty to all seven counts. He was convicted as charged to all seven counts and the learned magistrate took all counts as one for the purpose of sentence and he sentenced him to six years' imprisonment. We have been told this morning, that he has since been released on bail pending appeal and he served approximately six months' imprisonment. The appeal is therefore solidly on the sentence.

2. The charge relates to a very serious motor vehicle collision (head-on collision) between the two motor vehicles and the appellant was one of the drivers of the two motor vehicles. In this collision, which took place on the 14th of May 2005, seven people lost their lives.

3. According to counsel for the appellant, the trial court did not consider the following factors properly:

3.1 The age of the appellant at the time of the commission of the offence and his age at the time he was sentenced.

3.2 Appellant had no previous convictions and a first offender at the time of his sentence.

3.3 The tragic death of all the deceased resulted from a single motor vehicle collision.

3.4 Appellant pleaded guilty and showed remorse.

3.5 He was also injured and in a coma for eight weeks.

3.6 Appellant suffered serious brain damage as a result and cannot manage his own affairs and a curator *bonis* as well as curator persona had been appointed for him.

3.7 The roadworks at the place of the collision created a very dangerous situation that confused motorists using the stretch of road.

3.8 The learned magistrate and the prosecutor did not understand the meaning of curator *bonis* and curator persona, as a result of which the matter did not consider the fact that the appellant was unable to properly understand and manage his own affairs.

4. Counsel for the appellant submitted to us that the appear sentence, the learned magistrate should have considered is that of house arrest in terms of section 276(1)(h) Act 51 of 1977.

10 5. In response thereto, the respondent counsel implored us not to interfere with the sentence but dismiss the appeal. According to counsel for the State, the trial court considered the seriousness of the crime in that the appellant's negligence caused the death of seven people. Counsel for the appellant, again this morning, implored us to take into account that the death of the deceased is as a result of the appellant's blameworthiness. The appellant' moral blameworthiness is high, he even pleaded guilty before the Court *a quo*.

20 6. In response thereto, the issue before us is whether the trial court erred in imposing a custodial sentence rather than correctional supervision or any other non-custodial sentence given the physical condition of the appellant.

7. Counsel for the appellant asked us to consider the fact that the Court *a quo* did not consider section 276(1)(h) Act 51 of 1977. However, in the record itself, it is clear that the magistrate did mention section 276(1)(h) Act 51 of 1977 and we do then accept that he did take that into account.

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8. In *State v Anderson* 1964 (3) 494 (A), the appellant, the appellate division held that:

“A sentence can be altered on appeal only
if the Court finds that no reasonable man

ought to have imposed such a sentence or is grossly inappropriate or that there was an improper exercise of his discretion by the trial judge.”

See also *Director of Public Prosecution KZN v P* 2006 (1) SACR 243 (SCA) 10.

9. In *Salzwede and Others* 1999 (2) SACR 580 (A) 541(9) the Court said the following:

10 “An appeal Court is entitled to interfere with sentence imposed by a trial Court in a case where sentence is disturbingly inappropriate or totally out of proportion to the granting or magnitude of the offences sufficiently [indistinct – 13:51] or vitiated by misdirection of nature which shows that the trial Court did not exercise its discretion reasonably.”

- 20 10. The learned magistrate, in justifying the sentence he imposed in his judgment, he referred us to the decision in *State v Humphries* 2013 (2) 1 SACR (SCA). In this decision ten children died due to the driver’s negligence and the accused was sentenced to eight years’ imprisonment. In this case argument was put before us on behalf of the appellant about the signage in the road but that evidence was not before Court, it was an assertion by the legal representative of the appellant in court. The investigating officer or
30 whoever commented in the docket about the nature of the signage and the way road was structured. That person never testified before us. We also take into account the following:

That there is no evidence before us about the medical

condition of the appellant, why the appellant should be disqualified for any custodial sentence.

In my view there are a number of similarities between this matter before us and the case referred to by the magistrate, namely *State v Humphries supra*.

10 11. In this matter before us, we have to take into account that seven people lost their life as a result of the appellant's negligence. What makes it even more painful for the members of the family of these seven people, is that the deceased, all of them, all seven, were interrelated to each other.

20 12. It is indeed so that the appellant also sustained injuries, however, it is common cause that he is the cause of the whole accident. The fact that the curator *bonis* has been appointed for the appellant, it does not, unfortunately, disqualify him from a custodial sentence. Of utmost importance in this case is the gravity of the offence.

13. I cannot therefor, under the circumstances, say that the learned magistrate misdirected himself and that the sentence is grossly inappropriate.

14. In the premise[?] the appeal stands to be dismissed.

JUSTICE RANCHOD J: I agree and it is so ordered.

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JUDGE OF THE HIGH COURT

DATE:

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RANCHOD, J

JUDGE OF THE HIGH COURT

DATE: