



**IN THE HIGH COURT OF SOUTH AFRICA
(EASTERN CAPE DIVISION, GQEBERHA)**

NOT REPORTABLE

Case no: 10/2025

In the matter between:

THE STATE

and

STEPHANUS SAMSON

Accused

SENTENCE

Govindjee J

[1] Mr Samson was convicted on counts of kidnapping, attempted murder and defeating the ends of justice. On or about 2 September 2023, he unlawfully and intentionally deprived Mr Blaauw of his freedom of movement by forcefully loading him into a vehicle and driving him to a gravel road in the Kouga area. He then unlawfully and intentionally attempted to kill him by shooting at him with a firearm. While he was acquitted of the murder of Mr Bruintjies (the deceased), he was convicted of dumping the body in the bushes and covering Mr Blaauw with branches, in the Kouga area with intent to defeat or obstruct the course of justice.

[2] Section 276 of the Criminal Procedure Act, 1977¹ (the Act) provides for the sentences which courts can impose. A sentencing court's discretion must be exercised judicially and properly, and courts are enjoined to temper the punishment with a measure of mercy.² The sentencing court must attempt to achieve a balance in its sentence and not approach its task in a spirit of anger, but in one of equity. Hastiness, the striving after severity and misplaced pity are out of place, as are so-called exemplary sentences designed to use the crime to set an example for others in society.³ Still, more serious cases clearly require severity, with a certain moderation of generosity where appropriate, for the appropriate balance to be struck. The object of sentencing is not to satisfy public opinion, but to serve the public interest.⁴ The well-known triad of factors to be considered consists of 'the crime, the offender and the interests of society',⁵ and these factors must also be applied, in accordance with *S v Malgas*,⁶ to consider whether substantial and compelling circumstances exist to deviate from any prescribed minimum sentence.⁷

Nature of the crime and surrounding circumstances

[3] Mr Samson has been convicted of serious offences. At some point on the night of the incident, he decided not to report that he had shot and killed the deceased and proceeded to dump his body. He had kidnapped Mr Blaauw and proceeded to drop Mr him off in an isolated area. He then drove away with Mr Mouwers, his erstwhile co-accused, before returning. He fired three shots in Mr Blaauw's direction from approximately ten metres away. Thinking he was dead, he and Mr Mouwers then dragged Mr Blaauw towards a hole and placed branches on top of his body.

[4] It is relevant that Mr Samson was found to be the senior figure in his relationship with Mr Mouwers. During the trial, he attempted to blame Mr Mouwers

¹ Act 51 of 1977 (the Act).

² *S v Rabie* 1975 (4) SA 855 (A) at 862G–H.

³ See *S v Khulu* 1975 (2) SA 518 (N) 521–522.

⁴ *S v Mhlakhaza and Another* [1997] 2 All SA 185 (A) at 189. Also see *S v M* (Centre for Child Law as *amicus curiae*) 2007 (2) SACR 539 (CC).

⁵ *S v Zinn* [1969] 3 All SA 57 (A) at 540G–H.

⁶ *S v Malgas* 2001 (1) SACR 469 (SCA).

⁷ See *Radebe v The State* [2019] ZAGPPHC 406 para 12.

and offered various implausible explanations for what had occurred, also adapting his evidence to suit his narrative. He did not accept responsibility for his actions and showed no sign of genuine remorse during his evidence. Mr Samson kidnapped and shot at Mr Blaauw thrice before leaving his body in a desolated spot far away from his home. The impact of these events on Mr Blaauw was apparent during parts of his testimony, including the resentment he feels towards Mr Samson. It may be accepted, in Mr Samson's favour, that his actions were not premeditated. The court is also alive to the fact that the offences followed Mr Samson's killing of the deceased, who was armed with a panga and knife and intoxicated, in his home late at night. These events would have had some effect on his state of mind at the time. The evidence also supports the conclusion that the general criminality in the area, the failure of law enforcement to stem rampant crime and his fear of imprisonment impacted upon his mindset.

The accused's circumstances and interests

[5] Mr Samson is 58 years of age and a first offender. His highest level of education is grade 10. He is presently unemployed and financially dependent on family members. Ms Butoi, a social worker employed by the Department of Correctional Services, made a sworn statement in terms of s 212(4)(a) of the Act. This was accepted into evidence. Following investigation, the social worker concluded that Mr Samson was suitable for placement under the system of community corrections. This was primarily because he is a first offender and due to his family support system, fixed address, prospects of finding employment and expressed willingness to attend counselling or any other stipulated programmes. He has been a respected member of the community who has also assisted others. According to the social worker, the community would benefit from community service performed by Mr Samson, who would be monitored strictly as a person classified as 'high risk' because of the nature of his crimes. Various conditions were proposed in terms of s 52 of the Correctional Services Act, 1998.⁸

[6] It must also be noted that the social worker found support for her recommendation based on Mr Samson's 'sincere remorse', which is considered

⁸ Act 111 of 1998.

below, and because a sentence of correctional supervision would contribute to the reduction of overcrowding in a correctional centre and save on costs associated with incarceration. A probation officer's report accepted into evidence supports a sentence of correctional supervision in terms of s 276(1)(h) of the Act.

The interests of society

[7] The extent to which conviction of an attempted crime, rather than a completed crime, is mitigatory must also be considered in the light of the legislature's decision to amend the minimum sentencing legislation. With effect from 5 August 2022, a year before the current incident occurred, both Part I and II of Schedule 2 of the Criminal Law Amendment Act, 1997⁹ (the CLAA) were amended to include attempted murder. Of relevance for present purposes is that 'attempted murder in circumstances other than those referred to in Part I', is now listed in Part II of Schedule 2 and carries a prescribed minimum sentence of imprisonment for a period not less than 15 years in the case of a first offender,¹⁰ unless the court is satisfied that substantial and compelling circumstances exist which justify the imposition of a lesser sentence.¹¹ This is the same prescribed sentence applicable to cases of murder in circumstances other than those referred to in Part I of the CLAA, reflective of society's views of the severity of the crime of attempted murder. Society also balks at those who choose to take the law into their own hands. This includes acts of kidnapping in response to a home break-in and defeating the ends of justice by acting in a way that prevents the detection of criminal behaviour.

[8] The legislation also provides that a person convicted of such offences is deemed to be declared unfit to possess a firearm, unless the court determines otherwise.¹² This is indicative of the fact that the legislature views the use of firearms in the commission of offences of this nature in a serious light.

⁹ Act 105 of 1997 (the CLAA).

¹⁰ S 51(2)(a)(i), read with Part II of Schedule 2 of the CLAA.

¹¹ S 51(3)(a) of the CLAA.

¹² See *S v Maleka* 2001 (2) SACR 366 (SCA) (*Maleka*) para 8; S 103 of the Firearms Control Act, 2000 (Act 60 of 2000).

Analysis

The prescribed minimum sentence

[9] There is a dearth of jurisprudence pertaining to cases of attempted murder after the 2022 legislative amendment to the CLAA, notably in respect of cases that do not also involve a conviction for murder. Terblanche has noted, and I accept, that a person convicted of an attempted crime is generally not punished as severely as a person committing the completed crime.¹³ The rationale for this appears to be that such a perpetrator is considered less blameworthy because less harm has been occasioned.¹⁴

[10] To ensure a fair trial, it is advisable and desirable that the charge sheet refer to enhanced sanctions, contained in minimum sentence legislation, that may possibly be imposed if the accused is convicted of a crime attracting a minimum sentence. The state erred by not noting the potential applicability of the prescribed minimum sentence for attempted murder in the indictment. That, however, is not on its own and without more a basis for concluding that the prescribed minimum sentence has not been triggered. This is not an instance where the facts necessary to make the minimum sentence compulsory were not established during the trial. Mr Samson was also legally represented and the court received confirmation from his counsel, at the time of the entry of a plea, that he had been informed of any applicable minimum sentences related to the alleged offences. As Cameron JA held in *S v Legoa*,¹⁵ the matter is one of substance and not form and there is no general rule to support the conclusion that the state's omission will necessarily carry such a drastic effect. I am satisfied that the accused's substantive fair trial right, including his ability to answer the charges against him, was unimpaired in the circumstances of the present matter and that, in terms of the applicable legislation, a minimum sentence was triggered.¹⁶

[11] It is unnecessary to canvas all the authorities pertaining to those instances in which a court might impose a prescribed minimum sentence despite the accused not

¹³ See SS Terblanche *A Guide to Sentencing in South Africa* (3rd Ed) (2016). Cf *S v M* 1997 (1) SACR 276 (WLD).

¹⁴ Terblanche above n 13 at 218–219, fn 91.

¹⁵ *S v Legoa* 2003 (1) SACR 13 para 21.

¹⁶ *Ibid* paras 21, 22.

being informed of that possibility. I am persuaded that the circumstances are such that there are substantial and compelling circumstances to deviate from a 15-year prescribed minimum period for a first offender guilty of attempted murder in circumstances other than those referred to in Part I of Schedule 2 of the CLAA.¹⁷ There are various reasons for this conclusion, including the unusual circumstances preceding the offences and Mr Samson's personal circumstances and genuine prospects of rehabilitation.¹⁸ I am convinced that it would be so disproportionate that it would constitute an injustice to impose the prescribed minimum sentence.¹⁹ These factors are entered onto the record and will also be considered as part of determining an appropriate sentence. It may be added that counsel were in agreement that the prescribed minimum sentence was applicable and that departure from the prescribed minimum was appropriate considering all the circumstances.

Remorse

[12] Before proceeding further with the analysis, there is one dimension of both the social worker's and probation officer's reports that requires proper contextualisation. This pertains to the suggestion that Mr Samson now expresses genuine remorse for the crimes he has committed. The definitive test in this regard been explained as follows:²⁰

'There is, moreover, a chasm between regret and remorse. Many accused persons might well regret their conduct, but that does not without more translate to genuine remorse. Remorse is a gnawing pain of conscience for the plight of another. Thus genuine contrition can only come from an appreciation and acknowledgment of the extent of one's error. Whether the offender is sincerely remorseful, and not simply feeling sorry for himself or herself at having been caught, is a factual question. It is to the surrounding actions of the accused, rather than what he says in court, that one should rather look. In order for the remorse to be a valid consideration, the penitence must be sincere and the accused must take the court fully into his or her confidence. Until and unless that happens, the genuineness of the contrition alleged to exist cannot be determined. After all, before a court

¹⁷ S 51 read with Schedule 2, Part II.

¹⁸ On the night of the incident, Blaauw and Bruintjies, who were armed, broke into Mr Samson's home with the intention to commit theft. Mr Samson, who was armed, aided by an associate named Mouwers, apprehended Blaauw. The deceased, likely under the influence of alcohol and armed with a knife and panga, was shot dead when he moved towards Mr Samson while holding the panga pointing upwards with his arm raised. The crimes perpetrated followed these dramatic events.

¹⁹ See *Dyantyi v S* [2010] ZAECHC 120; 2011 (1) SACR 540 (ECG) para 14.

²⁰ *S v Matyityi* 2011 (1) SACR 40 (SCA) para 13.

can find that an accused person is genuinely remorseful, it needs to have a proper appreciation of, inter alia: what motivated the accused to commit the deed; what has since provoked his or her change of heart; whether he or she does indeed have a true appreciation of the consequences of those actions.'

[13] While Mr Samson chose not to testify in mitigation of sentence, it is apparent from the reports received that he now regrets his conduct. Yet he failed to take this court into his confidence and attempted to justify his conduct during the trial based on a fabricated version. Such attempts at distorting the truth are contrary to genuine acts of contrition and suggest a lack of appreciation of the extent of the wrongdoing. Other than the impending sentence, there is also no explanation as to what has provoked the change of heart. I am constrained to conclude that genuine remorse has not been demonstrated. Applying the test, Mr Samson's various attempts to justify his conduct and the lack of an explanation as to what has provoked his change of heart count against him and I am unconvinced that he has a true appreciation of the consequences of his actions. In these circumstances, and considering the judgment in *Matyityi*, it cannot be said that remorse is a valid consideration in Mr Samson's favour. This is because the court is unable to assess the alleged contrition as genuine. Both reports equated Mr Samson's expressions of regret as genuine remorse, seemingly without due appreciation of the test for remorse. The recommendations of correctional supervision emanating from the reports must be understood in this light.

Correctional supervision and imprisonment in terms of s 276(1)(i) of the Act

[14] Punishment must ultimately be proportional to the criminal and the crime and be fair to society. I have given serious consideration to the submissions that correctional supervision, or imprisonment from which a person may be placed under correctional supervision in the discretion of the Commissioner or a parole board, would be appropriate in the circumstances. While attempted murder is clearly a very serious crime it does not follow axiomatically that this should overshadow all other considerations relevant to sentence in a particular case. In considering whether a sentence of correctional supervision is an appropriate sentence for a first offender,

such as Mr Samson, the SCA has confirmed that the question to be answered is:²¹ 'Whether the particular offender should, having regard to his personal circumstances, the nature of his crime and the interests of society, be removed from the community.'

[15] The legislature has clearly distinguished between two types of offenders, namely those who ought to be removed from society by means of imprisonment, and those who, although deserving of punishment, should not be so removed. This is a fundamental issue to be decided.²² The SCA has held that the fact that a particular accused is a proper candidate for correctional supervision does not necessarily mean, if proper regard is had to other factors relevant to sentence, that a non-custodial sentence should be imposed.²³ In *Maleka*, for example, despite the presence of a number of mitigating factors, the SCA held that the seriousness of the offence made it necessary to send out a clear message to the community at large that resort to violence, particularly with a firearm, could not be tolerated. Even in cases where an accused has been subject to some measure of provocation beforehand, the imposition of a custodial sentence is, as the SCA explained, often appropriate.

[16] As was the case in *Maleka*, a sentence of correctional supervision in terms of s 276(1)(h) of the Act fails, in this case, to reflect the gravity of the crime and to take account of the prevalence of violent crimes committed with firearms in this country. To quote *S v Sinden*,²⁴ correctional supervision would cater for the criminal but not the crime nor the interests of society and 'would most certainly not have sufficient general deterrence'. I have also given serious consideration to the possibility of imprisonment in terms of s 276(1)(i) of the Act. While I accept, also on the strength of the reports received, that Mr Samson is not considered a danger to society, bearing in mind all the circumstances, the crime perpetrated (attempted murder) is so serious that imprisonment for a period more than five years is, in my view, warranted.

²¹ *Maleka* above n 12 para 5.

²² See, for example, *S v Mathe* [2014] ZAKZDHC 15; 2014 (2) SACR 298 (KZD) para 32.

²³ *S v Maleka* above n 12 para 6.

²⁴ *S v Sinden* 1995 (2) SACR 704 (A) at 707f, quoted with approval in *Lorenzi v S* [2025] ZASCA 58 para 20.

[17] This is the main basis for preferring a sentence of imprisonment in terms of s 276(1)(b) as opposed to correctional supervision in terms of s 276(1)(h), which is statutorily limited to a fixed period not exceeding three years, or imprisonment from which a person may be placed under correctional supervision in terms of s 276(1)(i), which is restricted to a maximum five-year period.²⁵ In addition, the proviso to s 276(3) must be noted:

‘... Provided that any punishment contemplated in this paragraph [i.e. imprisonment in terms of s 276(1)(h) or (i)] may not be imposed in any case where the court is obliged to impose a sentence contemplated in section 51(1) or (2) ... of the Criminal Law Amendment Act, 1997.’

According to Terblanche, the meaning of this section is that correctional supervision, and indeed imprisonment in terms of s 276(1)(i), may not be imposed for offences for which minimum sentences are prescribed in the CLAA. This interpretation accords with case authority²⁶ and supports the conclusion to which I have arrived based on the assessment of the triad of factors.

Conclusion

[18] I have considered and balanced the various relevant dimensions and taken due cognisance of Mr Samson’s personal circumstances, notably that he is almost 60 years of age and has a clean record. The events which transpired were unusual and, particularly given that Mr Samson will no longer be permitted to possess a firearm, unlikely to be repeated. Given the seriousness of the main offence and the prolonged lapse of judgment on the night of the incident, however, direct imprisonment is warranted. Applying a measure of mercy, and having decided not to invoke s 297 of the Act, I consider a sentence of six years imprisonment in terms of s 276(1)(b) to be appropriate for the attempted murder conviction. I intend to impose sentences of 2 years imprisonment in respect of each of the other counts that resulted in convictions. Given the stream of events that unfolded, including their continuous nature, each of these sentences is to run concurrently with the sentence for attempted murder.

²⁵ S 276A(1)(b) and s 276A(2) of the Act.

²⁶ Terblanche above n 13 at 324. See the judgment of Spilg J in *Nhlapo v S* [2012] ZAGPJHC 81; 2012 (2) SACR 358 (GSJ) para 22.1. Also see *S v Nel* [2011] ZAGPJHC 119; 2013 (1) SACR 155 (GSJ) para 9.

Discharge in terms of s 204

[19] The court postponed the determination of Mr Blaauw's discharge from prosecution in terms of s 204 of the Act. Once a person has been called as a witness for the prosecution and 'warned' in accordance with s 204(1)(a) of the Act, they acquire a right to an order discharging them from prosecution for the offences specified if, in the opinion of the court, they frankly and honestly answer all questions put to them.²⁷ Considering the assessment of the evidence, and the submissions of counsel, it is apparent that Mr Blaauw indeed answered the questions put to him frankly and honestly, to the best of his recollection. As the main judgment notes, he made various errors of the kind that might be expected given the passage of time and the rapidity of the events inside the house. On my assessment he qualifies for discharge from prosecution regarding the offences specified at the commencement of his testimony, and regarding any offence in respect of which a verdict of guilty would be competent upon a charge relating to the specified offences. The discharge is duly entered on the record of these proceedings.

Order

1. The accused is sentenced as follows:
 - a) 2 years imprisonment for kidnapping (count 2);
 - b) 6 years imprisonment for attempted murder (count 3);
 - c) 2 years imprisonment for defeating the ends of justice (count 4);
 - d) 2 years imprisonment for defeating the ends of justice (count 5).
2. The sentences for counts 2, 4 and 5 are ordered to run concurrently with the sentence imposed for count 3.
3. Mr Renaldo Blaauw, the s 204 witness, is discharged from prosecution in respect of the offences specified on the record by the prosecutor and for any offence in respect of which a verdict of guilty would be competent upon a charge relating to the offences so specified.

²⁷ S 204(2) of the Act, read with *Mahomed v Attorney-General of Natal and Others*, quoted with approval in *S v Thabethe and Others* 2025 (2) SACR 335 (SCA) para 82.

A. GOVINDJEE
JUDGE OF THE HIGH COURT

Heard: 4 November 2025

Delivered: 7 November 2025

Appearances:

For the State:	Adv Canary
Instructed by:	Deputy Director of Public Prosecutions Gqeberha

For Accused:	Adv Van der Spuy
Instructed by:	Legal Aid South Africa Easetern Cape

For the s 204 witness:	Adv J Coertzen
	Legal Aid South Africa Eastern Cape