



OFFICE OF THE CHIEF JUSTICE
REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA
MPUMALANGA DIVISION MIDDELBURG (LOCAL SEAT)

Case Number: A44/2022

BEFORE THE HONOURABLE JUSTICES: LANGA J et PHAHLAMOHHLAKA J

DATE: 27 JANUARY 2026

In the matter between

LOEL THULANI MAHLANGU

1ST APPELLANT

LUCAS DEE BUTI MTSWENI

2ND APPELLANT

BANENGI MGIDI

3RD APPELLANT

And

THE STATE

RESPONDENT



The Judge heard the matter on 07 NOVEMBER 2025 and electronically circulated the judgment on 27 JANUARY 2026 and gave an order as follows:

[23] In the result, I propose the following order:

- (a) The appeal succeeds to the extent of the order in paragraph (b) below;
- (b) The order of the court *a quo* is set aside and replaced with the following:

"Each of the accused is sentenced to 3 (three) years imprisonment."

- (c) The sentence is antedated to 16 February 2023.

NP MAGAGULA
[Signature]
REGISTRAR



IN THE HIGH COURT OF SOUTH AFRICA
MPUMALANGA DIVISION, MIDDELBURG

CASE NO: A44/2022

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED:
	
SIGNATURE	27/01/2026 DATE

In the matter between:

LOEL THULANI MAHLANGU
LUCAS DEE BUTI MTSWENI
BANENGI MGIDI

FIRST APPELLANT
SECOND APPELLANT
THIRD APPELLANT

and

THE STATE

RESPONDENT

Delivered: This judgment was handed down electronically by circulation to the parties' legal representatives by email. The date and time for hand-down is deemed to be 10:00 on 27 January 2026.

JUDGMENT

Coram : Phahlamohlaka J et Langa J

Phahlamohlaka J

Introduction

[1] This is an appeal only against the sentence imposed by the regional court sitting at Kwaggafontein ("the court *a quo*").

[2] On 16 February 2023, the appellants were each sentenced to 7 (seven) years imprisonment after they were convicted of corruption in contravention of section 4(1)(a) of the Prevention and Combating of Corrupt Activities Act, 12 of 2004, ("PRECCA").

[3] Although the appellants sought to appeal both the conviction and sentence, the court *a quo* only granted them leave to appeal against the sentence. The appellants petitioned the Judge President of this Division seeking leave to appeal the conviction, but their petition was dismissed, effectively confirming the convictions by the court *a quo*.

Background Facts

[4] The appellants were police officers at the time of the commission of the offence. The evidence is that on 6 December 2013 the second appellant called the complainant and made an appointment for a haircut as the complainant was a hairdresser. After five minutes or so the second appellant called again informing the complainant that he was outside the complainant's parental home. The complainant approached the motor vehicle in which the second appellant was an occupant. Another occupant at the left back seat of the vehicle, who was later identified as the third appellant, requested the complainant to come closer to him. The complainant obliged and as he approached, whereupon the third appellant requested him to get inside the vehicle, which he did.

[5] Inside the vehicle the complainant found the three appellants. The first appellant was the driver of the vehicle, the second appellant was seated on the front passenger seat and the third appellant at the back seat. The third appellant then solicited a bribe from the complainant in order to make a case against the complainant "disappear".

The complainant was suspected of having stolen airtime vouchers, but charges had not yet been laid against him. The proposal of the bribe was initiated by the second appellant. The complainant ultimately handed an amount of R2 500.00 to the third appellant.

[6] After a lengthy trial the court *a quo* was satisfied that the state had succeeded in proving the guilt of all the appellants beyond reasonable doubt, hence the conviction and sentence.

Grounds of Appeal

[7] The appellant raised the following grounds of appeal some of which are repetitive:

“7.1 The court did not strike a balance between the personal circumstances of the appellant, the crime and the interests of the society.

7.2 The court overemphasized the seriousness of the offence and wanted to punish the appellants so heavily. The court wanted to make an example out of the appellants and did not consider the totality of the facts when punishing the appellants.

7.3 The court overemphasized the prevalence of the offence and wanted the appellants to serve as an example to the community and punish him so heavily.

7.4 The court erred in finding that there is not any other suitable punishment other than the sentence of direct imprisonment and overlooked other forms of punishment.

7.5 The court overlooked the recommendations by the probation officers and social workers’ reports and sentenced the appellants to direct imprisonment.

7.6 The court did not take into account the number of years that have passed since the incident and could have realized that the appellants have moved on with their lives and their personal circumstances have changed completely.

7.7 *The court overlooked the fact that the appellants are breadwinners in their respective families and sentenced the appellants to such a heavy punishment (direct imprisonment).*

7.8 *The court did not take into account the fact that they have been punished more than enough in respect of this in that they have already lost their jobs and all the benefits that goes with their employment.*

7.9 *The amount of money involved is so little that the appellants do not deserve such kind of punishment.*

7.9 *The court punished the appellants heavily merely because the appellants were police officers at the time of the commission of the offence rather than taking factors of sentencing into account when sentencing the appellants. The appellant's profession was detrimental to their sentence in this case.*

7.10 *Even though the court said it blended their sentence with mercy, there was no mercy shown by the court in sentencing the appellants.*

7.11 *The effective sentence of seven (7) years imprisonment is harsh and inappropriate under the circumstances and induces a sense of shock.*

7.12 *The court erred in finding that aggravating circumstances far more outweigh the mitigating factors."*

[8] I am not intending to deal with each and every ground in my judgment because of the prolix and repetitive nature thereof. The issues on appeal are very crisp, and I will therefore confine myself to the question whether the court *a quo* has misdirected itself when sentencing the appellants.

The Legal Position

[9] It is trite that sentencing is pre-eminently a matter that falls within the discretion of the trial court. The court of appeal therefore does not enjoy unfettered powers to

interfere with the sentencing discretion of the trial court. As a result, the powers of the appeal court to interfere with that discretion are very limited. *R v Dhlumayo and Another*¹1948 (2) SA 677 (A) at 705-7061991 (1) SACR 198 (A) at 204E).

[10] In *S v Malgas*,² where the Supreme Court of Appeal held that:

"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."

[11] Therefore, a court of appeal will only interfere with the sentence by the trial court if the discretion was exercised wrongly, or the sentence is vitiated with an irregularity, or misdirection, or when the sentence is shockingly severe or totally disproportionate to the offence committed.³

Evaluation

[12] In *casu* the court *a quo* was guided by the penal provisions as contained in section 26(1) of PRECCA, which provides as follows:

"Any person who is convicted of the offence referred to in...

(a) Part 1,2,3 or 4 or section 18 of Chapter 2 is liable...

(i)

(ii) In the case of a sentence to be imposed by a regional court, to a fine or to imprisonment for a period not exceeding 18 years.'

[13] It becomes clear from the penalty provision that the Legislature intended to afford the offenders convicted of the offences mentioned in PRECCA an option of a

¹ *R v Dhlumayo and Another*¹1948 (2) SA 677 (A) at 705-7061991 (1) SACR 198 (A) at 204E).

² *S v Malgas* 2001 (1) SACR 469 (SCA) para 12.

³ See *Bogaards v S* (CCT120/11) (2012) ZASCA 23; 2012912) BCLR 1261 (CC); 2013(1) SACR 1 (CC) at para 41. "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. (*S v Anderson* 1964(3) SA 494 (AD) at 495 C-H. See also *S v Salzwedel and Others* 1999 (2) SACR 586 (SCA) at para 10.

fine. It was therefore imperative for the trial court to consider all the facts placed before it before imposing the sentence.

[14] The principles regarding sentencing proceedings are well established in the well-known 'triad of Zinn'⁴ which requires the sentencing court to strike a balance between the gravity of the offence, the personal circumstances of the offender as well as the interests of the society. In *S v Chipape*⁵ the court emphasised that all these factors have to be considered on an equal basis without overemphasising or underemphasising the one against the other.

[15] It is concerning that the court *a quo* disregarded the triad principles regarding sentencing by even declaring that "this whole Appellate Division rule that the court must impose a balanced sentence in which no factor or aim is overemphasised at the cost of another is a lot of words."

[16] By overemphasising one factor above the others, as it happened in *casu*, the sentencing court ran the risk of imposing a sentence based on emotions. This would likely lead to the imposition of a sentence that is disproportionate, either to the offence or to the offender.

[17] It cannot be underemphasised that the offence of corruption is a very serious one, especially when committed by a law enforcement official who is tasked with a duty to maintain law and order. The appellants took money from a vulnerable indigent person who evidently struggles to make ends meet.

[18] All the three appellants were members of the South African Police services, and therefore they were law enforcement officers. By virtue of them being law enforcement officers they ought to have known better about the consequences of the crime they committed. I therefore agree with the court *a quo* that the offence of which the appellants have been convicted is a very serious one.

⁴ *S v Zinn* 1969 (2) SA 537 (A) at 540G

⁵ 2010(1) SACR 245 GNP at para 8

[19] However, the seriousness of the offence alone does not justify a harsher sentence. It is not the only consideration. A balance ought to be struck between the seriousness of the offence, the personal circumstances of the appellants as well as the demands of the society. Once a balance is struck the trial court is enjoined to impose an appropriate sentence, and not necessarily a harsher sentence. The sentence imposed must not be disproportionate to the offence and the offender.

[20] In *S v Dodo*⁶ Ackermann J made the following remarks:

“The concept of proportionality goes to the heart of the inquiry as to whether punishment is cruel, inhumane or degrading, particularly where, as here, it is almost exclusively the length of time for which an offender is sentenced that is in issue. This was recognized in *S v Makwanyane*. Section 12(1)(a) [of the Constitution] guarantees, amongst others, the right not to be deprived of freedom without just cause. The cause’ justifying penal incarceration and thus the deprivation of the offender’s freedom is the offence committed. ‘Offence’, as used throughout in the present context, consists of all factors relevant to the nature and seriousness of the criminal act itself, as well as all the relevant personnel and other circumstances relating to the offender which could have a bearing on the seriousness of the offense and the culpability of the offender. In order to justify the deprivation of an offender’s freedom it must be shown that it is reasonably necessary to curb the offence and punish the offender. Thus, the length of punishment must be appropriate proportionate to the offence.”

[21] *In casu* the court *a quo* gave no reasons for the sentence it imposed. In my view the court *a quo* imposed a sentence which is disproportionate to the offence and the offender. While I agree with the court *a quo* that a term of direct imprisonment is an appropriate sentence in the circumstances of this case, I am, however, of the view that the sentence imposed by the court *a quo* is shockingly inappropriate and justifies interference by this court.

Conclusion

[22] From the reasoning of the court *a quo* it is blatant that the sentence imposed by the learned magistrate is dispassionate as she emphasised the fact that the

⁶ [2001] ZASCA 16: 2001 (5) BCLR 423 (CC)

accused are law enforcement officers above other factors. This, in my view constitutes a misdirection which justifies interference with the discretion of the court *a quo*.

Order

[23] In the result, I propose the following order:

- (a) The appeal succeeds to the extent of the order in paragraph (b) below;
- (b) The order of the court *a quo* is set aside and replaced with the following:

"Each of the accused is sentenced to 3 (three) years imprisonment."
- (c) The sentence is antedated to 16 February 2023.



KF PHAHLAMOHLAKA
JUDGE OF THE HIGH COURT
MPUMALANGA DIVISION, MIDDELBURG

I agree, and it is so ordered.



M B G LANGA
JUDGE OF THE HIGH COURT
MPUMALANGA DIVISION, MIDDELBURG

Appearances

For the Applicants: Adv N J Du Plessis
Instructed by: Coert Jordaan Inc. Attorneys
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For the Respondent: Adv Moake
Instructed by: Office of the DPP, Middelburg.
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Judgment delivered on: 27 January 2026
Judgment Reserved on: 07 November 2025