

Reportable:	YES / NO
Circulate to Judges:	YES / NO
Circulate to Magistrates:	YES / NO
Circulate to Regional Magistrates:	YES / NO



**IN THE HIGH COURT OF SOUTH AFRICA
NORTH WEST DIVISION - MAHIKENG**

CASE NO: CA47/2024

RC5/77/2022

In the appeal of:

TEBOGO SEPATO

Appellant

and

THE STATE

Respondent

Coram: Titus AJ & Zwiegelaar AJ

Delivered; This judgment is handed down electronically by circulation to the parties through their legal representatives' email addresses. The date for the hand-down is deemed to be 27 January 2026.

ORDER

1. The appeal against sentence is dismissed.
2. The sentence is confirmed.
3. The consequential order in terms of section 103(1) of the Firearms Control Act 60 of 2000 is confirmed.

JUDGMENT

TITUS AJ

[1] The appellant noted an appeal to this Court against both conviction and the sentence imposed on him by the Regional Court. The parties agreed to the disposal of the appeal on the papers as provided for by section 19 (a) of the Superior Courts Act¹.

[2] The record reflects that the trial court granted leave to appeal only in respect of sentence. It is trite that where an applicant seeks leave to appeal against both conviction and sentence, and the trial court grants leave only in respect of sentence, the order constitutes a refusal of leave on the conviction.

¹ Act No. Act 10 of 2013.

[3] In terms of section 309C of the Criminal Procedure Act 51 of 1977, the applicant may petition the Judge President for leave to appeal the conviction. There is, however, no such petition apparent from the record.

[4] In the absence of such leave and petition, this Court lacks jurisdiction to entertain the appeal against conviction. The appeal therefore falls to be determined solely within the confines of the leave granted, namely the challenge to sentence. This then is the issue that this Court turns to deal with.

[5] On 28 February 2023, the appellant was convicted in the Regional Court for the Regional Division of North West, held at Klerksdorp, on a count of attempted murder. That same day, he was sentenced to a 7-year term of imprisonment and also declared automatically unfit to possess a firearm in terms of section 103 of Act 60 of 2000.

[6] The trial court had found that the appellant unlawfully and intentionally attempted to kill the complainant, a male person, on 5 January 2020, at Kanana, by shooting him multiple times with a firearm. As a result of the shooting, the complainant suffered gunshot wounds to his head and right forearm².

[7] On 23 June 2023, the appellant applied for leave to the trial court to appeal both his conviction and sentence. The trial court condoned the late application.

² Record, page 92, Exhibit A

GROUNDS FOR APPEAL

[8] The appellant contends:

"AD SENTENCE

The sentence imposed by the learned regional magistrate is excessive and induces a sense of shock to the reasonable man more particularly as the learned magistrate.

1. Erred in over-emphasizing the seriousness of the offence and the interests of society.
2. ...erred in not attaching sufficient weight to the Appellant's personal circumstances; and that Appellant is relatively young.
3. ...erred in not imposing their forms of punishment like imprisonment in terms of Section 276(1)(h) and/or Correctional Supervision or a fine.
4. ...erred in imposing a sentence of 7 years' imprisonment, which evoke a feeling of shock and outrage being had to the fact that it denies the Applicant a change for rehabilitation, also having regards to the amount involved and circumstances of the case.
5. Failing to attach sufficient weight to the fact that long term imprisonment will negatively affect the Applicant who is relatively young and first offender.
6. Failing to attach sufficient weight to the fact that direct imprisonment would not only affect the Appellant but his family as well more so he was at self-employed." (*sic*)

AD SENTENCE

[9] It is trite that sentencing lies within the discretion of the trial court and that a court of appeal will not lightly interfere with the sentence imposed. The powers of the court of appeal are relatively limited to those instances where the sentence is vitiated by irregularity or misdirection or where there is a striking disparity between the sentence passed and that which this court would have imposed³. It is only when the trial court has exercised its discretion in an improper manner or misdirected itself that interference will be warranted.⁴

[10] The Appellant argues that the trial court failed to emphasize mitigating factors set out in paragraph [8] above. The trial court did consider these factors but, respectfully, correctly found that they were outweighed by the seriousness of the offence, the interests of society, and the need for deterrence.

[11] The offence in question is undeniably grave. The appellant discharged a firearm twice into the complainant's body, causing him serious injury and placing the complainant's life in imminent danger. The use of a firearm in interpersonal violence remains a matter of acute public concern, as the State has argued. The trial court correctly emphasised the need for deterrence and the protection of the community from the scourge of firearm related violence. While the appellant's

³ Grobler v S 2015 (2) SACR 210 (SCA) at para 5.

⁴ S v Rabie 1975 (4) SA 855 (A)

personal circumstances were properly placed before the court, they cannot eclipse the seriousness of the conduct or the clear intent to kill. The fact that the Appellant is a first offender does not diminish the gravity of the offence which is, as the State argues, prevalent in that, and the broader, community. As it appears from the record, the Appellant also displayed no remorse for his actions. The trial court was entitled to impose a sentence that reflects society's condemnation of such conduct.

[12] The sentence imposed is neither shockingly inappropriate nor disproportionate. It reflects a balanced consideration of the *triad* of factors in *S v Zinn* and does not exhibit any misdirection. The appeal against sentence is therefore dismissed.

Order

[19] In the premises, the following order is made:

- [i] The appeal against sentence is dismissed.
- [ii] The sentence is confirmed.
- [iii] The consequential order in terms of section 103(1) of the Firearms Control Act 60 of 2000 is confirmed.



RR TITUS

ACTING JUDGE OF THE HIGH COURT
NORTH WEST DIVISION

I concur,



CJ ZWIEGELAAR
ACTING JUDGE OF THE HIGH COURT
NORTH WEST DIVISION

APPEARANCES:

For Appellant:

MR E SETUMU
Legal Aid South Africa
Mahikeng Local Office
Borekelong House
742 Dr James Moroka Drive
MMABATHO

For Respondent:

ADV KE MAMPO
Respondent's counsel
North West Province
2nd Floor, Megacity Shopping Complex
3139 Sekame Road
MMBATHO

Judgment Reserved: 06 June 2025

Judgment Handed Down: 27 January 2026