



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

JUDGMENT

Reportable

Case No: A276/2025

In the matter between:

MARCELINO HAMMOND

Appellant

And

THE STATE

Respondent

Coram: DA SILVA SALIE, J et WELGEMOED, AJ

Heard on: 13 March 2026

Delivered on: 13 March 2026

Summary:

Criminal law – appeal against sentence – appellant convicted in regional court on plea of guilt - culpable homicide and unlawful possession of a firearm and ammunition – deceased fatally shot – appellant 18 years old at time of offence – firearm belonged to a friend and discharged while appellant handled it out of curiosity – sentencing court

accepted that incident occurred spontaneously and that the State proceeded on a charge of culpable homicide rather than murder – sentencing court nevertheless proceeded on the premise that appellant was “carrying” the firearm – factual premise not supported by plea explanation accepted by the State – material misdirection – youthfulness and rehabilitative prospects significant – sentence substituted with imprisonment in terms of section 276(1)(i) of the Criminal Procedure Act 51 of 1977 – sentences ordered to run concurrently – effective sentence five years’ imprisonment in terms of s 276(1)(i).

ORDER

1. The appeal against sentence is upheld.
2. The sentences imposed by the regional court are set aside in their entirety and substituted with the following sentence:

“(i) In respect of count 1 (culpable homicide) the accused is sentenced to five (5) years’ imprisonment in terms of section 276(1)(i) of the Criminal Procedure Act 51 of 1977.

(ii) In respect of count 2 (unlawful possession of a firearm) the accused is sentenced to five (5) years’ imprisonment in terms of section 276(1)(i) of the Criminal Procedure Act 51 of 1977.

- (iii) *In respect of count 3 (unlawful possession of ammunition) the accused is sentenced to three (3) years' imprisonment in terms of section 276(1)(i) of the Criminal Procedure Act 51 of 1977.*
- (iv) *The sentences imposed on counts 2 and 3 shall run concurrently with the sentence imposed on count 1, the result being an effective sentence of five (5) years' imprisonment in terms of section 276(1)(i).*
- (v) *The sentence is antedated to 28 May 2025."*

3. The Chief Registrar of this Court is directed to bring a copy of this judgment within 3 days of date hereof to the attention of the Head of Brandvlei Correctional Centre and the relevant Case Management Committee of the Department of Correctional Services.

JUDGMENT

DA SILVA SALIE J:

Introduction:

[1] This is an appeal against sentence imposed by the Regional Court sitting at Blue Downs. The appellant, Mr Marcelino Hammond, who was legally represented, pleaded guilty on 28 May 2025 to culpable homicide arising from the accidental and fatal shooting of the deceased, his friend, on 17 October 2016, as well as unlawful possession of a firearm and unlawful possession of ammunition.

[2] The regional court sentenced the appellant to five years' imprisonment on the culpable homicide count, five years' imprisonment for unlawful possession of a firearm, and three years' imprisonment for unlawful possession of ammunition.

[3] The court ordered that the sentences imposed on the firearm and ammunition counts run concurrently with the sentence on the culpable homicide count, resulting in an effective sentence of five years' imprisonment.

[4] Leave to appeal against sentence was granted on 27 June 2025.

Issues on appeal

[5] This appeal concerns sentence only.

[6] The appellant contends that the sentencing court misdirected itself in its evaluation of the facts and failed to give proper weight to his youth and prospects of rehabilitation. In the result, it was argued, that interference by this court on appeal is warranted and that it ought to impose a non-custodial sentence or a shorter period of imprisonment.

[7] In opposing the appeal, the respondent submits that due regard was given to the personal circumstances of the appellant in the imposition of the sentence. It further argues that rehabilitation is not the only objective of sentence and that the sentence imposed of an effective 5 years' direct imprisonment is proportional in relation to all the triad of factors. During argument, counsel for the respondent, emphasised that the sentencing court was mindful of the cumulative effect of the sentences and ordered that counts 2 and 3 run concurrently with count 1. For these reasons it submitted that the

appeal against sentence should be dismissed. However, further during argument counsel for the State conceded, that on the totality of the facts and circumstances of this matter a shorter period of imprisonment would be appropriate.

Statement in terms of Section 112 of the Criminal Procedure Act 51 of 1977 ("the Act")

– plea of guilt:

[8] In the statement tendered in support of his plea of guilt, the appellant stated that on the day in question, 17 October 2016, he was sitting with friends at one of their homes. One of the friends in the group produced a firearm which he had recently acquired. The appellant further explained that he was intrigued as he never previously handled a real firearm and asked to see it.

[9] He stated that he was warned by his friends to handle the firearm carefully. While holding the firearm and playing with it, a shot discharged. The bullet struck the deceased who had been seated next to him. He realised that he had shot his friend when he saw blood and the deceased told him that he had been shot. The appellant went into a state of shock and disbelief.

Personal circumstances:

[10] The appellant was 18 years old at the time of the offence and is a first offender. The record further reflects that he had spent approximately two years in custody awaiting trial. At the time of sentencing, some 9 years later, he is 26 years old with three minor children.

[11] The appellant took responsibility for his actions and spared the family of the deceased the ordeal of testifying during a trial by pleading guilty to the charges.

Sentencing by the court a quo:

[12] The court a quo acknowledged that the incident occurred in the spur of the moment for which the prosecution proceeded on a charge of culpable homicide rather than murder.

[13] However it emphasised the prevalence of firearm offences and that the circumstances of the matter warranted a custodial sentence to satisfy the interests of society and the demands of retribution.

Legal principles governing interference with sentence

[14] Sentencing falls primarily within the discretion of the trial court and an appellate court will not lightly interfere with that discretion.

[15] In ***S v Rabie 1975 (4) SA 855 (A)*** the Appellate Division emphasised that punishment is pre-eminently a matter for the discretion of the trial court and that a court of appeal may interfere only where that discretion was not exercised judicially and properly.

[16] In ***S v Pieters 1987 (3) SA 717 (A)*** it was held that interference on appeal is justified where the sentencing court committed a material misdirection or where the sentence imposed is disturbingly inappropriate.

[17] In determining sentence a court must have regard to the well-known triad identified in ***S v Zinn 1969 (2) SA 537 (A)***, namely the crime, the offender and the interests of society.

Misdirection of fact and over/under emphasis of relevant circumstances.

[18] Firstly, a difficulty arises from the factual premise upon which the sentencing court proceeded. In its reasoning the court a quo stated that the appellant knew the unlawfulness of his conduct “*at the time when he was carrying this firearm*”. (own emphasis)

[19] Equally problematic is the sentencing court’s rhetorical question during sentencing:

“And the question that came into the mind of the court, as to where did these youngsters....these young men get this firearm? Why were they in possession of this firearm? And to me it is clear that the accused knew the unlawfulness at the time when he was carrying this firearm because....the make and model of the firearm is unknown, which shows that it was an unlawful firearm.” (page 25, line 9 of the judgement)

[20] That reasoning by the court a quo suggests that the appellant and his companions were in possession of the firearm for some contemplated criminal purpose. Such an inference is not supported by the facts emerging from the plea explanation, which was accepted by the State. The admitted facts reflect that the firearm belonged to a friend and that the appellant merely asked to see it out of curiosity while they were seated together. There was no evidence before the sentencing court that the appellant

intended to use the firearm for criminal activity. By introducing speculation as to the purpose for which the firearm might have been possessed, the sentencing court relied on a factual inference not grounded in the admitted facts, which further constitutes a misdirection in the assessment of sentence.

[21] That characterisation is not supported by the facts contained in the appellant's plea explanation which was accepted by the State. The explanation reflects that the firearm belonged to a friend in the group and that the appellant asked to see it at the point where they were seated together. Thus, from the admitted facts it is not the case that the appellant arrived at the premises or moved about whilst carrying the firearm. This reasoning introduced a factual premise that was not born out by the facts accepted before the sentencing court.

[22] Furthermore, the appellant had only just attained 18 years at the time of the offence. Youthfulness is a recognised mitigating factor because it may reduce moral blameworthiness and enhance prospects of rehabilitation.

[23] In ***Centre for Child Law v Minister of Justice and Constitutional Development 2009 (6) SA 632 (CC)*** the Constitutional Court emphasised the greater capacity for reform and rehabilitation of young persons and the importance of recognising this within the criminal justice system. Though the appellant was 18 (and 12 days) at the time of the incident, the principles relating to youthfulness nonetheless apply herein.

[24] The appellant was also a first offender, had pleaded guilty and had for some time held gainful employment. Whilst the consequences of his conduct were grave and resulted in the death of one of his friends who was also 18, sentencing must balance the interests of society with the rehabilitative prospects of the offender. Appropriate weight must be afforded to the objectives of sentencing taking into account the full matrix of the matter. It remains a foundational principle of sentencing that punishment

must fit both the crime and the offender, be fair to society, and be tempered with a measure of mercy according to the circumstances, as articulated in ***Rabie***. In the present matter, the appellant's youth at the time of the offence is a factor which strongly informs the weight to be given to the rehabilitative objectives of sentencing. Whilst youthfulness does not excuse criminal conduct, it may diminish the extent of moral blameworthiness and enhance the prospect that the offender is capable of reform. In circumstances where a youthful first offender demonstrates a realistic prospect of rehabilitation, a sentencing mechanism that retain a custodial component while facilitating structured reintegration into society may properly be considered.

[25] It is also not insignificant that during the pre-sentencing proceedings counsel for the defence indicated that two reports, prepared by correctional officials during April and October 2024 were available, albeit that they had been prepared the previous year and were not ultimately considered by the sentencing court. It is regrettable that the contents of those reports were not placed before the magistrate or considered in sentencing as it would most likely have afforded the court a quo further insight into the personal circumstances of the appellant and, more significantly, his prospects of rehabilitation given his youthfulness. It was furthermore not disputed by the prosecution that the mother of the deceased had conveyed that she had forgiven the appellant for his actions which caused the loss of her son. These considerations, while not diminishing the gravity of the loss suffered, are factors that would be appropriate to consider in the sentencing process.

Sentencing in terms of Section 276(1)(i):

[26] Section 276(1)(i) of the Act provides a sentencing regime that retains a custodial element while allowing the correctional authorities to place the offender under correctional supervision when appropriate. It involves the imposition of a sentence of imprisonment, but with the possibility that the offender may be placed under correctional supervision by the Commissioner of Correctional Services after the serving one sixth

(1/6) of the five-year period of imprisonment. The offender would thereby initially be committed to a correctional facility, but the correctional authorities may, upon consideration of the offender's conduct, risk profile and rehabilitative progress, authorise placement under community correctional supervision for the remainder of the sentence. The mechanism therefore retains the punitive and deterrent effect of imprisonment whilst at the same time allowing for structured reintegration into society under supervision where the circumstances justify such placement.

[27] The effective period of five (5) years means that the appellant would ordinarily become eligible for such consideration after serving approximately ten (10) months of the custodial portion of the sentence, subject to the assessment of the correctional authorities in accordance with the applicable provisions of the Correctional Services Act 111 of 1998.

[28] In the circumstance of this case, such a sentence would, in my view, appropriately recognise both the seriousness of the offence and the appellant's youth and rehabilitative prospects. It must be emphasised however that the substitution of the sentence does not diminish the gravity of the consequence of the appellant's conduct. A young life was lost and the suffering experienced by the family of the deceased is both profound and enduring. The effective sentence of five years' imprisonment remains a substantial custodial punishment, reflects the seriousness of the offence and on these facts, meet the objectives of sentencing. The imposition of a sentence serves multiple purposes. On the facts of this matter, I am of the view that it would not only punish the appellant for his criminal conduct but so too it would discourage both the appellant and others from similar conduct through deterrence, protect the community through prevention of repeated criminal conduct by the appellant, and promote his prospects of rehabilitation and reintegration into society.

[29] Lastly, in view of the findings made in this judgment and the substitution of the sentence to one imposed in terms of section 276(1)(i), it is appropriate that the relevant

correctional authorities be apprised of this order in their consideration accordingly. The appellant has, to date, served almost 10 months of the custodial portion of the sentence since 28 May 2025. Provision will therefore be made in the order directing the Chief Registrar of this Court to bring this judgment to the attention of the Head of the Correctional Centre where the appellant is presently detained as well as the Case Management Committee of the Department of Correctional Services so that appellant's sentence be endorsed and considered in terms of section 276(1)(i). During the hearing of this matter Counsel for the appellant indicated that her client is detained at Brandvlei Correctional Facility.

Conclusion:

[30] For the reasons set out above, I am satisfied that the sentencing court misdirected itself by its assessment of the facts and emphasis of the relevant circumstances.

Order

[31] The following order is made:

[31.1] The appeal against sentence is upheld.

[31.2] The sentences imposed by the regional court are set aside in its entirety and substituted with the following sentence:

“(i) In respect of count 1 (culpable homicide) the accused is sentenced to five (5) years’ imprisonment in terms of section 276(1)(i) of the Criminal Procedure Act 51 of 1977.

- (ii) *In respect of count 2 (unlawful possession of a firearm) the accused is sentenced to five (5) years' imprisonment in terms of section 276(1)(i) of the Criminal Procedure Act 51 of 1977.*
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- (iv) *The sentences imposed on counts 2 and 3 shall run concurrently with the sentence imposed on count 1, the result being an effective sentence of five (5) years' imprisonment in terms of section 276(1)(i).*
- (v) *The sentence is antedated to 28 May 2025."*

[31.3] The Chief Registrar of this Court is directed to bring a copy of this judgment within 3 days of date hereof to the attention of the Head of Brandvlei Correctional Centre and the relevant Case Management Committee of the Department of Correctional Services.

G. DA SILVA SALIE
JUDGE OF THE HIGH COURT
WESTERN CAPE DIVISION

I AGREE:

D. WELGEMOED
ACTING JUDGE OF THE HIGH
COURT
WESTERN CAPE DIVISION

Appearances

For Appellant: Adv. N Abdurahman

Instructed by: Legal Aid

For Respondent: Adv. A Hess

Instructed by: Director of Public Prosecutions