

REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA
(LIMPOPO DIVISION, POLOKWANE)

CASE NO: A25/2024

- (1) REPORTABLE: YES/NO
 (2) OF INTEREST TO THE JUDGES: YES/NO
 (3) REVISED: YES/NO

VAN WYK ASL (AJ)



SIGNATURE

18 March 2026
DATE

In the matter between:

MPHAHLELE DERRICK BALOYI

APPELLANT

and

THE STATE

RESPONDENT

JUDGMENT

VAN WYK ASL (AJ):

INTRODUCTION

- [1] The Appellant was convicted on a charge of theft (out of a motor vehicle) after he tendered a plea of guilty in terms of Section 112(2) of the Criminal Procedure Act, 51 of 1977.
- [2] The Appellant, a 25-year-old male, was sentenced to three years (36 Months) imprisonment on the 17th of May 2024 by Magistrate Mabasa in the Polokwane Magistrates Court. The sentence of three years direct imprisonment was imposed after the *court a quo* found that the statement by the accused' legal representative, tendered from the bar, on the accused's behalf was aggravating in nature as regards the offence of theft committed, together with the accused's previous conviction dated 11 May 2016 as indicated in Exhibit B.
- [3] The Magistrate held that the accused appeared to have not been deterred from committing similar offences or further offences based on his previous convictions if consideration is given to the mitigation factors presented by his legal representative.
- [4] The Appellant was legally represented during the trial. The appeal is against sentence only.

- [5] The settled approach to be adopted by this court is that the sentencing task resorts primarily within the scope of the trial court's discretion, and the court on appeal shall not interfere with a sentence so imposed, save for if it is found that the sentence is ominously inappropriate and or disproportionate to the severity of the offence or that the trial court did not exercise its discretion judiciously. The Appeal court can only interfere with the court *a quo's* sentence if the presiding officer had committed a material misdirection and when the sentence was imposed can be considered shockingly inappropriate.
- [6] It was submitted on behalf of the Appellant that an effective sentence of 36 months is shockingly inappropriate, harsh and induces a sense of shock under the circumstances of this case. The Appellant submitted that the court *a quo* erred in failing to consider a suspended sentence as a suitable option under the prevailing circumstances.
- [7] The Appellant further submitted that the Magistrate misdirected himself by imposing a custodial sentence under the circumstances and wanted to send a message to offenders such as the Appellant. It was further submitted on behalf of the Appellant that he was sacrificed on the altar of deterrence and the Magistrate failed to consider the submitted mitigating and aggravating factors and as a result, misdirected himself.

- [8] It was further submitted that the Magistrate failed to consider that there were higher prospects for the Appellants' rehabilitation considering that he pleaded guilty and did not waste valuable court time and resources. It must be emphasised that the Appellant initially denied his previous conviction of theft, that he paid a fine as a result thereof, but later during the proceedings regained his memory in that regard and admitted his previous conviction.
- [9] It was furthermore submitted that the Magistrate misdirected himself by failing to distinguish between a previous conviction and an admission of guilt fine. It was submitted that the fine was paid at the police station, the Appellant was not convicted by a court and the consequences of such payment following the conviction was not explained to the Appellant. The SAPS69 document reflected that the Appellant was found guilty on 11 May 2016 as regards the offence of theft and paid a R 100-00 fine as a result thereof. The Appellant admitted the contents of the SAPS69 document, confirmed the correctness thereof, and it was accepted by the *court a quo* as evidence.
- [10] It was further submitted on behalf of the Appellant that the Magistrate misdirected himself in finding that the Appellants' failure to testify under oath insofar as mitigating factors for the sentence are concerned resulted in his failure to show remorse for the offence committed. It was submitted that an

appropriate sentence under the circumstances was a custodial sentence coupled with a fine.

[11] In conclusion it was submitted on behalf of the Appellant that the *court a quo* erred by not finding that the cumulative weight of the following mitigating factors warranted a sentence far less than 36 months effective imprisonment:

- 11.1 The Appellant pleaded guilty;
- 11.2 The Appellant apologized to the complainant;
- 11.3 The Appellant is remorseful and had high prospects of rehabilitation.
- 11.4 The Appellant remained in custody for more than six months awaiting trial. He was 25 years old when he was convicted.
- 11.5 The Appellant completed Grade 12 and obtained a Diploma in Civil Engineering at Capricorn Tvet College at Seshego. He was never employed from date of obtaining his Diploma. He cooperated with the South African Police Services from date of his arrest.
- 11.6 The Appellant is not married and has two minor children aged three and five, respectively. He used the proceeds from the sale of the stolen cellphone to purchase diapers, groceries, and clothes for the minor children. His mother is an unemployed elderly lady.

- [12] The State submitted that the trial court correctly found that direct imprisonment of three years (36 months) was appropriate under the prevailing circumstances specifically considering the Appellants previous conviction of theft.

THE LAW

- [13] In **S v RO and Another 2000 (2) SACR 248 (SCA)** at para 30, Hener JA stated as follows:

".. sentencing is about achieving the right balance or in more high flow terms, proportionality. The elements at play are the crime, the offender, the interest of society with different nuances, prevention, retribution, rehabilitation, reformation and deterrence. Invariably there are overlaps that render the process more unscientific, even a proper exercise of the judicial function allows reasonable people to arrive at different conclusions."

- [14] In evaluating the evidence tendered, to reach an appropriate sentence, one of the very important principles applicable is the Zinn triad as determined by **S v Zinn 1969 (2) SA 537 (A)** at para 57 which consists of 'the offender, the offence and interest of society'. In terms thereof the court must weigh the

personal circumstances of the offender against the nature of the offence and the interest of society. A court should, when determining sentence, strive to accomplish and arrive at a judicious counterbalance between these elements in order to ensure that one element is not unduly accentuated at the expense of and to the exclusion of the others. (see **S v Banda 1991 (2) SA 352 (BG) at 355A**).

- [15] In **Radebe and Another v S 2013 (2) SACR 165 (SCA)** at para 14 Lewis JA stated as follows:

“ A better approach, in my view, is that the period in detention pre-sentencing is but one of the factors that should be taken into account in determining whether the effective period of imprisonment to be imposed is justified: whether it is proportionate to the crime committed. Such an approach would take into account the conditions affecting the accused in detention and the reason for prolonged period of detention.”

- [16] In **S v Bogaards 2013 (1) SACR 1 (CC)** at para 41 Khampepe J had the following to say regarding the power of a court of appeal to interfere with sentences imposed by courts below:

"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. It can only do so where there has been an irregularity that results in failure of justice; the court below misdirected itself to such an extent that its discretion on sentence is vitiated, or the sentence is so disproportionate or shocking that no reasonable court could have imposed it. A court of appeal can also impose a different sentence when it sets aside a conviction in relation to one charge and convicts the accused of another"

[17] The Appellant does not rely on an irregularity. His case or challenge is that the court *a quo* overemphasised the following factors:

17.1 the seriousness of the offence;

17.2 the interest of society at the expense of the Appellant's personal circumstances;

17.3 the deterrent effect of the sentence;

17.4 the prevalence of the offence;

17.5 the retributive element of sentencing and

17.6 theft (from inside a motor vehicle) statistics in the district of Polokwane

17.7 the previous conviction of theft by the Appellant where he paid R 100-00 as an admission of guilt fine, more than 8 years before he pleaded guilty to a subsequent charge.

[18] Notwithstanding the Appellant's previous conviction of theft, the imposition of a sentence of 36 months imprisonment under the circumstances set out above, *prima facie* induces a sense of shock. In **S v Baartman 1997 (1) SACR 304 (E)**, the following comments made at 305d-e are apposite to this matter:

"In a case such as this it is necessary to be aware of three considerations:

- (a) *The accused should be sentenced for the offence charged and not for his previous record.*
- (b) *The public interest is harmed rather than served by sentences that are out of proportion to gravity of the offence; and*
- (c) *While it may be justifiable up to a point to impose escalating sentences on offenders who keep on repeating the same offence, there are boundaries to the extent to which sentences for petty crimes can be increased"*

DISCUSSION

- [19] It is this court's view that the court *a quo* undoubtedly overemphasised the factors listed in paragraph 17 above by failing to consciously and appropriately consider and give effect to the factors highlighted in paragraph 11.1 to 11.6 above. There is a striking imbalance between the Appellants previous conviction, his personal circumstances and the complainants' interests, the interest of society and the interest of justice.
- [20] Considering the facts and evidence of this matter holistically it is this court's view that the period of imprisonment that the *court a quo* imposed is not proportionate to the offence committed and accordingly inappropriate.
- [21] It follows that the *court a quo* was obliged to sentence the Appellant for the theft of the cellular phone (out of a motor vehicle) and not his previous conviction as regards the admission of guilt and subsequent fine.
- [22] The term of imprisonment that the *court a quo* imposed is so excessive that interference with that sentence is justified on appeal.

CONCLUSION

[23] This Court is of the view that justice will be served if the sentence to 36 months' imprisonment is set aside and replaced with a sentence of 36 months imprisonment of which 18 months is suspended for a period of three years on condition that the accused is not found guilty of theft or attempted theft during the period of suspension.

[24] As a result, I make the following order:

24.1 The appeal against sentence is upheld.

24.2 The sentence of the *court a quo* is set aside and substituted with the following sentence:

"The Accused is sentenced to 36 months imprisonment, of which 18 months is suspended for a period of three years, on condition the Accused is not found guilty of theft or attempted theft during the period of suspension"

24.3 The sentence is ante-dated to 17th of May 2024



ASL VAN WYK

Acting Judge of the High Court
Limpopo Division, Polokwane

I AGREE:



M. NAUDE-ODENDAAL

Judge of the High Court
Limpopo Division, Polokwane

APPEARANCES:

HEARD ON : 6 JUNE 2025

JUDGMENT DELIVERED ON : **18 MARCH 2026** . This judgment
was handed down electronically by
circulation to the parties' representatives

by email. The date and time for hand-down of the judgment is deemed to be at
10:00

FOR THE APPELLANT

:

MP LEGODI

POLOKWANE LOCAL OFFICE,
LEGAL AID SOUTH AFRICA

FOR THE STATE

MR MATHABATHA

DIRECTOR OF PUBLIC PROSECUTION
STATE ATTORNEY, POLOKWANE