IN THE HIGH COURT OF SOUTH AFRICA

(WESTERN CAPE DIVISION)

Case number: A256/2025

In the matter between:

GARY RULE	**Appellant**
And	
THE STATE	**Respondent**

Coram: Pangarker J et Mgengwana, AJ

Hearing date: 16 March 2026

Judgment delivered: 23 March 2026

Summary: ***Appeal against sentence*** – *Appellant convicted of five counts of fraud - Whether Court a quo erred in failing to consider cumulative effect of sentence where the accused was already serving a 15 year sentence at the time for theft – Concurrent sentences - Whether commission of offences to save ailing business during COVID-19 pandemic is a mitigating factor - Whether sentence imposed by Court a quo induces sense of outrage*

ORDER

The appeal is dismissed.

JUDGMENT

PANGARKER J (MGENGWANA AJ concurring)

Introduction

[1] This appeal against sentence is with leave granted on petition by Le Grange J and Mayosi AJ on 4 June 2025. On 21 August 2023, the Mossel Bay Regional Court sentenced the appellant on five counts of fraud as follows (as summarized) : 3 (three) years' direct imprisonment on each of the five counts and in terms of section 280(2) of the Criminal Procedure Act 51 of 1977 (CPA), 1 (one) year imprisonment of each count was ordered to run concurrently with the sentence which the appellant was serving at the time, to wit, 15 (fifteen) years' imprisonment for theft in a Van der Bijl Park Regional Court matter SH98/2021. The appellant was sentenced on 23 August 2022 in the Van der Bijl Park Regional Court theft matter.

[2] This meant that in respect of the fraud convictions, the appellant was sentenced to a total of 15 (fifteen) years' direct imprisonment of which 5 (five) years would run concurrently with his current sentence for theft, with the result that the appellant was required to serve 10 (ten) years' imprisonment which would commence after he concluded the 15 years theft sentence.

[3] The appellant was legally represented during the Regional Court matter and elected to plead guilty to all five counts of fraud, in terms of section 112(2) of the CPA. The Regional magistrate summarily convicted him after the plea of guilty. It is noted that the Criminal Law Amendment Act 105 of 1997 (CLA) did not apply to the fraud charges.

The charges

[4] The appellant was arrested on 3 November 2022. The five charges against him are summarized as follows:

> Count 1 - During September 2020, the appellant trading as Gary Rule Motors, a second-hand motor dealership in Mossel Bay, sold a Suzuki to the complainant, Andre Groenewald, and/or his daughter Buelah Dryer for R144,000. He also received another vehicle in lieu of payment valued at R38,000 from the complainant. The agreement was that the appellant would settle the outstanding balance with the banking institution and provide the Suzuki's registration papers to the complainants. In truth and in fact, the appellant failed to do so; instead, he used the money for his own personal or business use and so caused both complainants direct prejudice in the amount of R144,000.
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> Count 2 – The appellant was charged with fraud in that on 26 January 2021 and at his motor dealership, he unlawfully and with the intention to defraud Nicolaas Koen and/or Hendrik Schrader pretended that he would sell a Mercedes-Benz motor vehicle on behalf of the complainant for an amount of R285 000 and on receipt of the funds, would pay over the amount into the complainant's bank account. The appellant sold the vehicle to Mr Schrader and received payment of R290 000 from a banking institution on behalf of the former. The appellant failed to pay the R285 000 over to Mr Koen and handed the registration papers

over to the bank. The appellant had no intention of paying Mr Koen and used the money for his business.

Count 3 – The appellant represented to the complainants, namely Pieter Rudolph Strydom, BAJ Auto Investments (Pty) Ltd, Charl Young and/or Myron Bruinders that he was legally entitled to sell a VW Kombi motor vehicle to Mr. Young, which had previously belonged to Mr. Bruinders. In truth and fact, the VW Kombi was the property of BAJ Auto Investments and/or Mr Strydom, who had settled Mr Bruinders' MFC finance account of R168 294, 80. By acting in this fashion, the appellant caused Mr Strydom financial prejudice the tune of R168 924,80. The appellant used the money for his motor dealer business[1].

Count 4 - On 25 October 2021 at the appellant's motor dealership, he unlawfully and intentionally defrauded the complainant Nicolene Grobler by pretending that he would sell her VW Golf and then use the proceeds of the sale as a deposit for another vehicle that he would facilitate for her. In truth and fact, the appellant never intended to pay over the proceeds of the sale of her vehicle and instead used the money for his personal use and endeavours, causing her to suffer an actual loss of R40 000.

Count 5 - On 24 November 2021, the appellant unlawfully, and with the intention to defraud Marlene Roux, pretended that he would deliver a BMW X5 motor vehicle upon payment of the purchase price of R185 000. The complainant paid the amount into his bank account, and he unlawfully failed to source, purchase and deliver the vehicle to her, and failed to refund the amount to the complainant. The appellant used the money for his own endeavours and purposes.

[1] The plea sketches an elaborate scheme which also included another vehicle. For the sake of brevity, the further detail regarding count 3 is not included in this judgment.

Previous convictions

[5] The State proved the following previous convictions against the appellant:

17 August 2014 - assault - sentenced to R1000 or 60 days' imprisonment;

23 August 2022 – two counts of theft – sentenced to 15 years' imprisonment by the Van der Bijl Park Regional Court.[2]

Pre-sentencing report, appellant's apology and sentencing options

[6] A probation officer's report was obtained prior to sentencing and dealt in depth with the appellant's personal circumstances, his attitude towards the offences, the impact on the victims, sentencing options and a recommendation as to the most suitable sentence. In order not to unnecessarily burden this judgment, I summarize the salient aspects of the probation officer's report below.

[7] The appellant was born in 1980 and hails from Uitenhage in the Eastern Cape. He is one of four siblings and completed his primary schooling in Uitenhage and thereafter attended high school in Beaufort West. He moved to Mossel Bay during 2010 to start a second-hand car dealership business. He is married and has a son aged 15 years at the time of his conviction. The appellant's family is Afrikaans middle-class. His monthly expenses were estimated at R35 000, but his wife informed the probation officer that the family's monthly expenses totalled R25 000.

[8] The appellant was the sole breadwinner, the owner of Gary Rule Motors in Mossel Bay and regarded as a good provider prior to his incarceration. As a result of his imprisonment, the family suffered financially. It is noted that according to the record,

[2] Count 1 – 10 years' imprisonment; count 2 – 5 years' imprisonment

the appellant's wife was employed at the time of sentencing, but no details were provided regarding such employment. The appellant was healthy, psychologically sound and had no previous history of drug or alcohol abuse.

[9] As for his motor dealership, information provided to the probation officer indicates that the business closed due to the challenges experienced during the COVID-19 pandemic, which led to financial hardships, causing the appellant to commit fraud. The appellant confirmed to the probation officer that he was aware that the charges were serious, and that he was currently[3] serving a sentence on a similar offence.

[10] The appellant pleaded guilty because he knew that his actions were wrongful but emphasised that the offences were committed to rescue his failing business, which suffered financial losses during 2020-2021. The car dealership had to close for five months, and he decided to take a chance to make extra cash by selling vehicles on behalf of people who wanted their vehicles sold and used the proceeds of these sales to pay the business debts. In addition, he took deposits from customers who purchased vehicles and used the money to invest in his business.

[11] The probation officer's report indicates that the appellant expressed an apology to the victims and asked for forgiveness for his actions. He wished the Court to impose a sentence upon him which would run concurrently with the 15-year sentence for theft.

[12] As for the impact of the appellant's crimes on his victims, Mr Groenewald was a pensioner whose only source of income was his pension. He had difficulty explaining to his daughter how the R144 000 was "lost". He wished for the appellant to refund him and to spend a long period in prison. Mr Strydom was severely affected by the appellant's criminal conduct, to the extent that his family, business and employees

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[3] At the time of sentencing in the fraud matters

suffered. As a result of the appellant's actions, he lost over R1 million and his business, BAJ Auto Investments had not recovered from the impact of such financial loss at the time of his interview with the probation officer. He too called on a long period of imprisonment as a sentence option for the appellant.

[13] Ms Grobler, the complainant in count 4, expressed that she felt very emotional when she thought of the appellant's actions: because of his conduct, she was in possession of a car that did not work and had to spend more money on trying to fix the vehicle. She was single and unemployed and relied on her parents for financial assistance. Her view was that the appellant deserved a lengthy period of imprisonment.

[14] The probation officer's assessment indicates that the appellant was a good provider for his family and portrayed himself as a responsible person with financial responsibilities. The officer called on the Court *a quo* to be mindful that the appellant was serving a long period of imprisonment for theft and therefore could not support his family financially.

[15] According to the probation officer, the appellant appeared remorseful and took responsibility for the crimes in that he had pleaded guilty. This demonstrated that he was prepared to deal with the consequences of his actions. The officer's view was that the reasons or motive for the fraud would provide closure to victims in the matter. The Court was left to evaluate if the perceived remorse noted by the probation officer was genuine, or whether the apology to the victims was as a result of the State's overwhelming evidence against him that would have secured a conviction.

[16] The probation officer considered the principles of restorative justice and the various sentencing options. A community-based sentence was ruled out because of the seriousness of the crimes and because it would be inappropriate as the appellant was serving a sentence. Similarly, a restorative justice sentence in the form of a group

confidence was also not recommended because the Court could decide on the sentence and the victims had expressed views that they wished that the appellant refunds them and receives a direct imprisonment sentence.

[17] Furthermore, a fine, suspended sentence and correctional supervision were also not recommended because of the serious nature of the offences and the fact that the appellant was already serving a sentence. To this end, the appellant's wife stated that she was willing to co-operate with correctional services and be responsible for the appellant when he was out on correctional supervision. Ultimately, the probation officer's view was that direct imprisonment could be considered suitable as the appellant was convicted of five offences of fraud.se which had a prescribed minimum sentence, including direct imprisonment.[4]

Judgment of the Court *a quo*

[18] The Regional magistrate's judgment indicates that he paid due regard to the content of the probation officer's report, the aims of sentence, the *Zinn* triad and the need for sentencing to strike a balance in respect of the personal circumstances of the appellant, the interests of society and the seriousness of the offences. The judgment took account of the effect of the COVID-19 pandemic on the lives of citizens and the economic crisis which ensued as many businesses, including that of the appellant, suffered under the financial strain caused by the lockdown regulations.

[19] Furthermore, the Regional magistrate considered that the appellant was the sole breadwinner, that his monthly household expenses were between R25 000 to R35 000, that he was 42 years old, had pleaded guilty and had a minor son aged 15 years. Furthermore, the Court took note that the appellant was serving 15 years' imprisonment for theft imposed by the Van der Bijl Park Regional Court in 2022. Th Regional magistrate found that each complainant suffered actual financial loss

[4] There was a reference to the CLA and applicability of minimum sentences, but it was common cause between the parties that section 51(2) of the CLA was not applicable to the five fraud charges.

because of the appellant's fraudulent conduct. In total, the actual loss suffered by the five complainants was more than R800 000.

[20] The Court *a quo* emphasised the prevalence of fraud matters on its daily Court roll and recognised that the provisions of section 51(2) of the CLA and minimum sentences did not find application. Furthermore, the Court *a quo* was mindful that sentencing should not be approached in anger. As for the complainants, the Regional magistrate correctly held that while Mr Strydom informed the probation officer that his business suffered a loss of R1.3 million, the appellant was not charged with fraud to the extent of an actual loss of R1.3 million.

[21] In the process of striking a balance between the triad, the aggravating and mitigating factors and the purpose of punishment, the Regional magistrate recognised the appellant's role as breadwinner, but also that he was fully aware at the time of embarking upon each action to defraud the complainants, that they would suffer financial prejudice or loss were his plans to succeed. Accordingly, the Regional magistrate questioned whether the appellant was truly remorseful and whether the facts presented were clear enough as to his motive.

[22] The Court *a quo* found the appellant to be a first offender in respect of fraud and that these offences were committed prior to the theft offences. The Court was of the view that the fact that he pleaded guilty and showed remorse were considered as mitigating factors. In weighing up sentence options, the Regional magistrate found that in the circumstances, direct imprisonment was an appropriate sentence as the appellant was in a position of trust: he was required to conduct business with the complainants' money, honestly and the impact of the COVID-19 pandemic on the appellant's' business did not justify his unlawful actions.

Grounds of appeal

[23] The grounds of appeal are summarised as follows: (i) the Regional Court failed to have sufficient regard to the appellant's circumstances, especially that he was a first offender for fraud and that the crimes were committed during the COVID-19 pandemic in an attempt to save his business; (ii) the Regional Court over-emphasised the interests of the community and the negative effect/impact the crimes had on the complainants; (iii) the mitigating factors that the offences were not for personal gain and were committed to save the appellant's business were under-emphasised, and (iv) in ordering that only 1 year of the 3 years' imprisonment on each count was to run concurrently with the 15 years' currently being served by the appellant, it meant that the Court *a quo* failed to take the cumulative effect of the sentence into account, resulting in the 10 years imposed being shockingly severe and inducing a sense of outrage.

Discussion and findings

[24] Holmes JA in ***S v Rabie***[5] provided a guideline to appeal Courts as to when interference in the Court *a quo's* sentence is permissible:

> *"1. In every appeal against sentence, whether imposed by a magistrate or a Judge, the Court hearing the appeal-*
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> *(a) should be guided by the principle that punishment is "pre-eminently a matter for the discretion of the trial Court"; and*
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> *(b) should be careful not to erode such discretion: hence the further principle that the sentence should only be altered if the discretion has not been "judicially and properly exercised".*
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> *2. The test under (b) is whether the sentence is vitiated by irregularity or misdirection or is disturbingly inappropriate."*

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[5] 1975 (4) SA 855 (A) at 857D-F

[25] Further grounds justifying interference on appeal in the sentencing discretion of the Court *a quo* have been described as a sentence so out of proportion to the magnitude of the offence and a disparate sentence, meaning that no reasonable Court would have imposed it[6]. Thus, the extent to which this Court may interfere in the Regional Court's discretion in imposing sentence is circumscribed.

[26] While the appellant raised four grounds of appeal, at the hearing of the appeal, the appellant's counsel's submissions were restricted to the cumulative effect of the sentence. Notwithstanding this, none of the other grounds were formally abandoned, hence they are discussed below.

[27] It is evident that the Regional magistrate took account that the appellant was 42, self-employed, married, a sole breadwinner, the father of a teenage son and that his business, Gary Rule Motors, was in operation since 2010. In my view, the criticism directed at the Court *a quo* that it failed to have sufficient regard to the appellant's personal circumstances and that he was a first offender, is unwarranted and without merit. To clarify, the Regional magistrate recognized that the fraud offences were committed prior to the theft and treated the appellant as a first offender. It is evident from the judgment that the appellant obtained the benefit of such approach by the Court *a quo*.

[28] The appellant's further ground of appeal is that the commission of the fraud offences occurred because the appellant wanted to save his financially strapped business which suffered during the pandemic, and that this should have been viewed as a mitigating factor[7]. This ground of appeal is wholly unconvincing for the reasons which I set forth follow.

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[6] S v Romer 2011 (2) SACR 153 (SCA) par [22]

[7] The Regional Magistrate, while questioning whether the appellant benefitted personally from the crimes, nonetheless found that the crimes were committed during the pandemic to save his business.

[29] The appellant was the sole proprietor of a second-hand car dealership established in 2010. It may thus be generally accepted that by 2020-2021, when he committed the fraud, his business was well-established and operating for at least 10 or 11 years. It is therefore not unreasonable to conclude that Gary Rule Motors would by then have established a fair reputation in the motor dealership arena in Mossel Bay. There is certainly no evidence on record that there were issues with the dealership prior to the onset of the pandemic.

[30] I shall accept, and it is a well-known fact that the COVID-19 pandemic and the concomitant lockdown regulations imposed throughout the country in terms of the Disaster Management Act 57 of 2002 affected all citizens and businesses in several ways. Nobody was left unscathed by the consequences, including large and small businesses, traders and commercial entities. As one came to discover daily in media and news reports, the restrictions on businesses often had a long-term economic impact with the result that many enterprises and small businesses suffered financially. I shall accept that the appellant's plea and his statements to the probation officer indicated that Gary Rule Motors also buckled under the impact and effect of the COVID-19 pandemic and its lockdown regulations.

[31] However, committing fraud - a serious offence - and asking the Court *a quo* to accept that such commission, motivated by the financial difficulties experienced due to the pandemic, should be viewed as a mitigating factor, is a far stretch. The pandemic and its effect on his motor dealership cannot, in my view, be considered as justification or a mitigating factor to garner sympathy.

[32] On the contrary, the commission of five counts of fraud during the first year of COVID-19, perpetrated against complainants who were also constrained by the lockdown restrictions, is an aggravating factor. To elaborate, Mr Groenewald (count 1) was a pensioner: an elderly person who is generally regarded as a vulnerable member

of society, deserving of its care and protection, and even more so during the pandemic[8].

[33] Yet the appellant preyed on this unsuspecting pensioner who had paid over more than R140 000 to the appellant, only to be left empty handed as no vehicle was handed over to him. Mr Groenewald received money from his daughter and because of the appellant's deceitful and dishonest actions, he was severely financially prejudiced as a result. Furthermore, the appellant offered neither a vehicle nor a refund and it is clear from the record of proceedings and probation officer's report, that there was no intention to ever refund Mr Groenewald.

[34] Similarly, the appellant's fraud perpetrated against Mr Strydom (count 3) had a far-reaching effect, as it not only affected him, but also his business, BAJ Auto Investments (Pty) Limited, his family and the lives of his employees. While no evidence was led by the State of the R1,3 million alleged loss indicated to the probation officer, all indications are that the appellant's conduct, by using his car dealership to perpetrate the fraud, prejudiced Mr Strydom in that he suffered an actual financial loss of R168 924,80. My view is that the appellant's conduct was indicative of someone who had no regard for the complainants nor their livelihood.

[35] I consider the appellant's actions toward Ms Grobler (count 4) in a similar serious light. She entrusted him to sell her VW Golf and then use the proceeds as a deposit for the procurement of another vehicle which he would purchase for her. Instead, she was left with a vehicle which did/does not work, causing her to borrow money from her parents as she was single and unemployed. The effect of the consequences of the fraud was clearly felt by Ms Grobler's parents as well.

[8] It is common knowledge that prior to the COVID-19 immunity vaccines, in the early stages of the pandemic, the very young, elderly and frail citizens were amongst those people more at risk of contracting the COVID-19 virus

[36] The probation officer did not interview the complainants in counts 2 and 5, but it is clear from the guilty plea and the Regional magistrate's findings that they were equally victims of the appellant's dishonest scheme. In my view, the appellant's conduct in relation to all the complainants is reprehensible and his moral blame-worthiness is on the upper scale.

[37] In a clearly orchestrated plan commencing in September 2020 and continuing through to November 2021, which occurred during the first tumultuous one and a half years of COVID-19, the appellant set about enriching himself and his business by defrauding unsuspecting private clients and a business and using his car dealership as the *modus* to succeed with his devious plan.

[38] I fully agree with the Regional magistrate and probation officer's views that the appellant was in a position of trust: he was in possession of large sums of money entrusted to him and was required to purchase vehicles, settle vehicle financing for clients and attend to registration of the vehicles. Instead, he defrauded these innocent victims who trusted him, pocketed their money and made no attempt at all to either refund them and/or deliver vehicles and/or attend to providing Ms Grobler with a roadworthy vehicle.

[39] As to whether he used the money personally, I do not agree with the submission and the Regional magistrate's view that the appellant was not personally enriched by the R800 000 he obtained from the complainants. He was the sole proprietor/owner of Gary Rule Motors and through his fraudulent misdeeds and dishonest conduct, investing in his business meant that as its sole proprietor and owner, he also enriched himself at the expense of the complainants.

[40] It is notable that the appellant failed to disclose to the probation officer and the Regional Court the extent of his business's financial difficulties, nor whom he had paid with the money obtained through his misdeeds, whether a balance remained which

could be refunded and why such a large sum was defrauded. In this regard, and notwithstanding his apology to the victims, the appellant was cagey and certainly did not take the Court into his confidence. Thus, while he pleaded guilty and took responsibility for his actions, my view is that genuine remorse was absent. There was no expressed intention to make amends and repay the victims, and it is unclear why he would go to such lengths to also prejudice a fellow auto business in the area, financially.

[41] There is a further aggravating factor. The fraud was not a "once-off" incident. Indeed, over a period of a year and three months, the appellant committed five separate actions and in respect of each, had the intention to cause actual and/or potential prejudice to his victims. The facts indicate that actual prejudice in the form of substantial financial losses was suffered by the complainants. Simply put, the appellant did not stop his dishonest conduct after the first crime in September 2020 but continued his duplicitous and cunning actions on four further occasions for more than a year, unconcerned about the damage and financial prejudice these actions would have for the complainants. For all of these reasons, his apology only after conviction is a case of too little, too late.

[42] In my view, the commission of the offences during COVID-19 to ostensibly save his car dealership is an aggravating factor for the following reasons: the extent of the actual losses suffered by the complainants; the appellant's *modus* in that he used his dealership to commit the fraud; he occupied a position of trust in relation to his clients and was required to conduct business honestly; and, his failure to attempt to refund the victims of his fraud.

[43] The only mitigating or positive factors are the appellant's personal circumstances, his guilty plea and that he was regarded as a first offender. Where I disagree with the Regional magistrate is that I do not equate his late apology with genuine remorse, especially as he failed to take the Court *a quo* fully into his

confidence, as explained above. For these reasons, this ground of appeal cannot succeed.

[44] The other main ground of appeal is that the Regional Magistrate failed to consider the cumulative effect of the 10-year sentence which he imposed. The appellant's legal representative argued that the imposition of such sentence, when the appellant was serving 15 years for theft, equates to a sentence of life imprisonment, which is shockingly disproportionate. Counsel explained that the 10 years which he would serve after the expiration of the 15 years would result cumulatively in 25 years in prison.

[45] There is no doubt that the Regional Court took the probation officer's report, sentencing options, the appellant's personal circumstances, and interest of society into account. I fully agree with the respondent's submission that there is no bar on a Court sentencing a first offender to direct imprisonment for a serious offence. In this instance, the Regional Court studiously considered the sentence options and correctly determined that direct imprisonment was the most suitable in the circumstances. The Regional magistrate was correct that the interests of the community and the seriousness of the offences clearly trumped the appellant's personal circumstances.

[46] I must point out that while the judgment does not specifically refer thereto, it is evident that the Court *a quo* indeed had regard to the appellant's 15-year sentence which he served for two counts of theft. The last fraud was committed in November 2021, and four months later the appellant was convicted of two counts of theft and sentenced in the Van der Bijl Park Regional Court in August 2022.

[47] A Court must be mindful of the extent of the cumulative effect of the severity of the sum or total of all its sentences, particularly when there are multiple offences, as in this case. In ***S v Muller***[9], Leach JA stated as follows:

[9] 2012(2) SACR 545 (SCA) par [9]

"[9] When dealing with multiple offences, a sentencing court must have regard to the totality of the offender's criminal conduct and moral blameworthiness in determining what effective sentence should be imposed, in order to ensure that the aggregate penalty is not too severe. In doing so, while punishment and deterrence indeed come to the fore when imposing sentences for armed robbery, it must be remembered, as Holmes JA pointed out in his inimitable style, that mercy, and not a sledgehammer, is the concomitant of justice. And while a judicial officer must not hesitate to be firm when necessary, he should approach his task with a humane and compassionate understanding of human frailties and the pressures of society which contribute to criminality. In addition, although it is in the interest of the general public that a sentence for armed robbery should act as a deterrent to others, an offender should not be sacrificed on that altar of deterrence. As Nicholas JA observed in S v Skenjana:

> *"A sentence of 20 years' imprisonment is undoubtedly very severe ... My personal view is that the public interest is not necessarily best served by the imposition of very long sentences of imprisonment. So far as deterrence is concerned there is no reason to believe that the deterrent effect of a prison sentence is always proportionate to its length. Indeed, it would seem to be likely that in this field there operates a law of diminishing returns: a post is reached after which additions to the length of a sentence produce progressively smaller increases in deterrent effect, so that, for example, the marginal deterrent value of a sentence of 20 years over one of say 15 years may not be significant.*
>
> *...*
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> *Nor is it in the public interest that potentially valuable human material should be seriously damaged by long incarceration. As I observed in S v Khumalo and Another 1984(3) SA 327 (A) at 331, it is the experience of prison administrators that unduly prolonged imprisonment brings about the complete mental and physical deterioration of the prisoner.*
> *Wrongdoers "must not be visited with punishments to the point of being broken". (Per Holmes JA in S v Sparks and Another 1972(3) SA 396 (A) at 410G)'*

(footnotes omitted)
(my emphasis)

[48] In ***S v Kruger***[10], an earlier judgment of the Supreme Court of Appeal (SCA), the Court held the view that the inappropriateness to order the sentences to run concurrently because they were committed at different places and times, may be a consideration, but it cannot justify a Court's failure to consider the cumulative effect of the total number of years imposed on an accused. It is apparent from these cases that a Court which imposes an imprisonment sentence should ameliorate the severity of the sentence it intends imposing for multiple offences by considering the cumulative effect of the number of years' imprisonment it intends to impose, so as to prevent an accused from undergoing *"an unjustifiably severe sentence."*[11] in view of the judgment, I am satisfied that the Regional magistrate indeed had regard to such principles when he ordered that one year of each of the three years imposed on each of the five counts, was to run concurrently with the 15 years' imprisonment which the appellant was already serving.

[49] In doing so, the Regional magistrate reduced the total of 15 years for fraud to an actual 10-year period of imprisonment. This indicates that he was mindful of the appellant's circumstances and lengthy imprisonment term yet provided for retribution and deterrence by imposing a sentence which also balances the seriousness of the offences and the interests of the complainants and society .

[50] Furthermore, my view is that in the event that the Regional magistrate had taken the offences together for purposes of sentencing and so potentially reduced the punishment further, it would have amounted to an arbitrary and overly sympathetic approach to the appellant, which would not have achieved the aims of sentencing and

[10] 2012 (1) SACR 369 para [9] – [10]
[11] 2022 (1) SACR 43 (WCC) para [26]- [28

would have relegated the seriousness of the offences to the sidelines. In my view, this would have amounted to an unbalanced sentence.

[51] Furthermore, the submission that the Regional Court should have ordered the entire 15 years for the fraud convictions to run concurrently with the 15 years for theft is unsustainable, because such sentence would have been shockingly inappropriate in the circumstances of the matter. In such event, the sentence for fraud would also have elevated the appellant's personal circumstances above the remaining factors of the triad and would have ignored the aggravating factors listed above in this judgment. In addition, a concurrent sentence would certainly have sent out a wrong message that fraud, totalling more than R800 00, only deserves a light rap on the knuckles.

[52] On the contrary, fraud is regarded as a serious offence, and dependent on the circumstances of the case, warrants the imposition of direct imprisonment, as seen from the findings by Marais JA in ***S v Sadler***[12]:

> *"[11] I am satisfied that the circumstances of this case call for the imposition of a period of direct imprisonment and that the interests of justice will not be adequately served by leaving the sentence imposed by Squires J undisturbed. So called 'white-collar' crime has, I regret to have to say, often been visited in South African courts with penalties which are calculated to make the game seem worth the candle. Justifications often advanced for such inadequate penalties are the classification of 'white-collar' crime as non-violent crime and its perpetrators (where they are first offenders) as not truly being 'criminals' or 'prison material' by reason of their often ostensibly respectable histories and backgrounds. Empty generalisations of that kind are of no help in assessing appropriate sentences for 'white-collar' crime. Their premise is that prison is only a place for those who commit crimes of violence and that it is not a place for people from 'respectable' backgrounds even if their dishonesty has caused*

[12] [2000] 2 All SA 121 (A)

substantial loss, was resorted to for no other reason than self-enrichment, and entailed gross breaches of trust.

[12] These are heresies. Nothing will be gained by lending credence to them. Quite the contrary. The impression that crime of that kind is not regarded by the courts as seriously beyond the pale and will probably not be visited with rigorous punishment will be fostered and more will be tempted to indulge in it.

[13] It is unnecessary to repeat yet again what this Court has had to say in the past about crimes like corruption, forgery and uttering, and fraud. It is sufficient to say that they are serious crimes the corrosive impact of which upon society is too obvious to require elaboration. In the present case we have a bank official of some seniority. He was employed specifically to devise and implement a system to enable the bank to evaluate the creditworthiness of applicants for bank credit and to eliminate as far as possible the potential losses inherent in extending credit to persons unlikely to be able to meet their obligations to the bank. He was given authority by the bank to advance credit himself within given parameters."

(my emphasis)

[53] In view of the sentiments expressed in ***Sadler***, it is evident that society calls out that perpetrators such as the appellant, who breached the complainants' trust, enriched himself and his business and made no attempt to remedy the financial harm and prejudice which he caused, must be dealt with strictly and without undue sympathy. Having regard to the record, the submissions, and the judgment, I am satisfied that the Regional Court approached the sentencing task in a balanced and fair manner, mindful of the cumulative effect of the sentence and the possibility of the appellant's rehabilitation in future. On a conspectus of all these considerations, the judgment of the Court *a quo* thus did not fall foul of the SCA's caution in ***Kruger*** regarding the concurrency of a sentence.

[54] Accordingly, I thus find in all the circumstances of the matter that the sentence imposed on the appellant was neither vitiated by misdirection or irregularity, nor

startingly or disturbingly inappropriate, nor disparate. The judgment also does not induce a sense of outrage. In the result, there is thus no room for this Court to interfere with the Regional magistrate's exercise of his discretion in respect of sentencing, thus the appeal should fail.

Post-hearing information

[55] The day after the appeal hearing, the State Advocate provided us with copies of a judgment, ***Gary Rule v S,*** delivered by the Gauteng High Court, Pretoria, on 24 April 2024[13]. This is the appeal judgment against the sentence on theft imposed by the Van der Bijl Park Regional Court. The judgment indicates that the appellant stole R835 000 and R230 000 from Mr PR Strydom, whom I presume is the same Mr PR Strydom in the fraud count 3 in the Mossel Bay matter.

[56] The Gauteng High Court upheld the appeal against the theft sentence and reduced the appellant's sentence to 6 years on count 1 and 3 years on count 2, which sentences were to run concurrently and were ante-dated to 23 August 2023, the date on which the appellant was sentenced by the Van der Bijl Park Regional Court.

[57] I note with respect that there may be an error in the order of the Gauteng High Court as to the sentence date of the trial Court. According to the appellant's SAP 69s, the appellant was sentenced in Van der Bijl Park on 23 August 2022, and not on 23 August 2023. In the Mossel Bay matter, the appellant was sentenced on 21 August 2023[14].

[58] Regardless, the effect of the Gauteng High Court order is that the appellant's theft sentence was reduced from 15 years' imprisonment to an effective 6 years' imprisonment, with the sentences on the two counts to run concurrently. In addition, it

[13] Appeal A169/2023 - Judgment delivered by Khumalo J (Ntanga AJ concurring)
[14] My emphasis

is antedated to 23 August 2023, meaning that as at even date, the appellant is regarded as having served at least two years and seven months of the theft sentence. This is to the benefit of the appellant.

[59] In conclusion, while I note the Gauteng High Court's judgment and order, in respect of the appeal before us, that order neither influences my findings nor the order below in respect of the appeal against sentence.

Order

[60] In the result, the following order is granted:

The appeal is dismissed.

[redacted]

M PANGARKER

JUDGE OF THE HIGH COURT

[redacted]

I agree.

T J MGENGWANA

ACTING JUDGE OF THE HIGH COURT

Appearances:

For Appellant:	Ms P Andrews
Instructed by:	Legal Aid CAPE TOWN
For Respondent:	Adv L H Ntshokoma
Instructed by:	Director of Public Prosecutions CAPE TOWN