

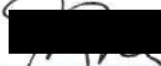


IN THE HIGH COURT OF SOUTH AFRICA,

GAUTENG DIVISION, JOHANNESBURG

CASE NUMBER: A2025-111601

DPP REF NO: 10/2/5/1-2025/21

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: YES
<u>24/05/2026</u>	
DATE	SIGNATURE

In the matter between:

MANDIWO SIPHIWE

APPELLANT

and

THE STATE

Respondent

JUDGMENT

NEMAVHIDI, AJ:

APPLICATION FOR CONDONATION AND APPEAL AGAINST SENTENCE

A. INTRODUCTION

[1] This is an appeal against the sentence imposed upon the Appellant by the learned Magistrate Evans in the Regional Court, Protea, on 26 February 2024.

[2] The Appellant also seeks condonation for the late filing of this appeal.

[3] The Appellant was convicted on three counts of housebreaking with intent to steal and theft, to which he pleaded guilty. He was sentenced as follows:

Count 1: 10 years' imprisonment

Count 2: 10 years' imprisonment

Count 3: 5 years' imprisonment

The sentences were ordered to run consecutively, resulting in an effective term of 25 years' direct imprisonment.

[4] The Appellant does not appeal against his convictions. The appeal is directed solely at the sentence imposed.

B. CONDONATION

[5] Background to the delay

[5.1] The Appellant was sentenced on 26 February 2024.

[5.2] An application for leave to appeal was initially filed late. The Appellant's family experienced severe difficulties in obtaining the funds needed to prosecute the appeal, as the Appellant was in custody and had to rely on the charity of friends and family to raise the necessary funds. The transcript was applied for promptly once funds were available.

[5.3] The court considered that the appellant had reasonable prospects of success on appeal and condonation was granted.

C. GROUNDS OF APPEAL

[6] The Appellant appeals against the sentence on the following grounds:

[6.1] The learned magistrate misdirected himself by over-emphasising the seriousness of the offence and the interests of society, while under-emphasising the Appellant's personal circumstances and mitigating factors.

[6.2] The learned magistrate erred in finding that a suspended sentence would be wholly inappropriate, despite the State having no objection to a suspended sentence.

[6.3] The learned magistrate misdirected himself by comparing the Appellant to unrelated cases involving violence and community attacks, thereby allowing extraneous factors to cloud his judgment.

[6.4] The learned magistrate erred in his approach to the two years spent by the Appellant in custody awaiting trial, stating that this period should be "doubled to the amount of four years".

[6.5] The learned magistrate failed to give proper weight to the Appellant's guilty plea, his remorse, and his cooperation in facilitating the return of stolen property.

[6.6] The effective sentence of 25 years' imprisonment is so excessive that it induces a sense of shock and is disproportionate to the offences committed.

D. APPLICABLE LEGAL PRINCIPLES

[7] Approach on appeal against sentence

[7.1] It is trite that the imposition of sentence is pre-eminently a matter for the discretion of the trial court. An appeal court will not interfere with the sentence imposed by a lower court unless it is satisfied that the trial court did not exercise its discretion properly and judicially.

[7.2] In *S v Malgas*¹ 2001 (1) SACR 469 (SCA) at para 12, the court held that interference is justified where:

¹ 2001 (1) SACR 469 (SCA) at para 12

- The sentence is vitiated by a misdirection;
- The sentence is startlingly inappropriate;
- The sentence induces a sense of shock; or
- A disparity exists between the sentence imposed and the sentence the appeal court would have imposed, such that the appeal court's interference is warranted

[7.3] In *S v Kgosimore*² 1999 (2) SACR 238 (SCA) at 241f-h, the court stated: *"It is trite law that sentence is a matter for the discretion of the court burdened with the task of imposing the sentence. Various tests have been formulated as to when a Court of appeal may interfere. These include whether the reasoning of the trial court is vitiated by misdirection or whether the sentence imposed can be said to be startling inappropriate or to induce a sense of shock or whether there is a striking disparity between the sentence imposed and sentence the Court of appeal would impose. All these formulations, however, are aimed at determining the same thing, viz whether there was a proper reasonable exercise of the discretion bestowed upon the court imposing sentence. In the ultimate analysis, this is the true inquiry. Either the discretion was properly and reasonably exercised or it was not. If it was, a Court of appeal has no power to interfere; if it was not, it is free to do so"*.

[8] The triad of sentencing

[8.1] In *S v Zinn*³ 1969 (2) SA 537 (A) at 540G, the court established the triad of factors to be considered in sentencing:

- The personal circumstances of the offender;
- The seriousness of the crime; and
- The interests of society.

[8.2] These factors must be balanced. No single factor should dominate the sentencing exercise to the exclusion of others.

² 1999 (2) SACR 238 (SCA) at 241f-h

³ 1969 (2) sa 537 (A) at 540G

[9] The purposes of punishment

[9.1] In *S v Mhlakaza*⁴ 1997 (1) SACR 515 (SCA) at 518a-b, the court held that the objectives of punishment include deterrence, prevention, rehabilitation, and retribution.

[9.2] However, as stated in *S v Dodo*⁵ 2001 (1) SACR 594 (CC) at para 38:

"Human beings are not commodities to which a price can be attached; they are creatures with inherent and infinite worth; they ought to be treated as ends in themselves, never merely as means to an end. Where the length of a sentence, which has been imposed because of its general deterrent effect on others bears no relation to the gravity of the offence... the offender is being used essentially as a means to another end and the offender's dignity assailed."

[10] Proportionality

[10.1] In *S v Bogaards*⁶ 2013 (1) SACR 1 (CC) at para 42, the Constitutional Court affirmed that sentences must be proportionate to the offence and the offender's blameworthiness.

[10.2] In *S v RO & Another*⁷ 2010 (2) SACR 248 (SCA) at para 30, Heher JA stated:

"Sentencing is about achieving the right balance (or, in more high-flown terms, proportionality. The elements at play are the crime, the offender and the interests of society or, with different nuance, prevention, retribution, reformation and deterrence".

E. SUBMISSIONS ON THE MERITS OF THE APPEAL

[11] The learned magistrate misdirected himself by over-emphasising extraneous factors

[11.1] During sentencing, the magistrate referred to unrelated cases which have no bearing to the appellant's case.

⁴ 1997 (1) SACR 515 (SCA) at 518a-b

⁵ 2001 (1) sac 594 (CC) at para 38

⁶ 2013 (1) SACR 1 (CC) at para 42

⁷ 2010 (2) SACR 248 (SCA) at para 30

[11.2] In *Ndlovu v S* (AR 29/10) ⁸ [2010] ZAKZPHC, the court held that a sentencing court must focus on the facts of the case before it and not be swayed by factors unrelated to the offence or the offender.

[12] The magistrate failed to give proper weight to substantial mitigating factors

[12.1] The Appellant's personal circumstances were compelling:

- He was 28 years old at the time of sentencing.
- He is married in terms of customary law.
- He has two minor children, aged 4 and 2 years.
- He possesses a Grade 12.
- He spent two years in custody awaiting trial.

[12.2] The Appellant demonstrated genuine remorse:

- He consistently expressed his intention to plead guilty from an early stage.
- He pleaded guilty to all three charges, saving the court time and sparing complainants the trauma of testifying.
- In count 3, he facilitated the return of stolen property by taking the complainant to where the goods were stored.
- He expressed remorse and took full responsibility for his actions.

[12.3] In *S v Matyityi*⁹ 2011 (1) SACR 40 (SCA) at para 13, the court emphasised the importance of genuine remorse as a mitigating factor, stating that it demonstrates an acceptance of responsibility and a willingness to turn away from a life of crime.

[12.4] While the Appellant was not a first offender (having a previous conviction for possession of drugs for which he was cautioned and discharged), the magistrate correctly treated him as a first offender for purposes of these proceedings, as the previous conviction was for an unrelated offence.

[12.5] In *S v De Kock*¹⁰ 1997 (2) SACR 171 (T) at 200d-e, the court held that a sentencing court must consider all appropriate sentencing options and provide reasons for rejecting non-custodial alternatives where they are seriously proposed.

⁸ 2010 ZAKZPHC

⁹ 2011 (1) SACR 40 (SCA) at para 13

¹⁰ 1997 (2) SACR 171 (T) at 200d-e

[13] The effective sentence of 25 years is shockingly disproportionate

[13.1] The offences in question are housebreaking with intent to steal and theft. They do not involve violence, threats, or confrontation with complainants. They do not fall within the category of offences for which minimum sentences are prescribed.

[13.2] The total value of stolen property, while significant, does not justify an effective sentence of 25 years' imprisonment. Count 1 involved items valued at approximately R25,500; count 2 involved items valued at approximately R21,250; count 3 involved items of unspecified value, most of which were recovered.

[13.3] The cumulative effect of consecutive sentences is a term of imprisonment that is more appropriate for serious violent offences or offences involving minimum sentence legislation.

[13.4] In *Ras v The State* (885/2024) ¹¹[2025] ZASCA 92 the court cautioned against the cumulative effect of consecutive sentences, stating that the overall sentence must be proportionate to the totality of the criminal conduct.

[13.5] In *S v Mhlakaza* (supra), the court emphasised that while deterrence is important, an offender must not be "sacrificed on the altar of deterrence."

[13.6] The sentence of 25 years' imprisonment for non-violent property offences, committed by a relatively young offender who pleaded guilty and demonstrated remorse, is so disproportionate that it induces a sense of shock and warrants interference by this Court.

[14] Comparative sentences

[14.1] In *Zimila v S* (1179/16)¹² [2017] ZASCA 55, the court ordered sentences for multiple counts to run concurrently, reducing the total effective sentences by mitigating the overall length.

[14.2] In *Ntuli v S* (128/2023)¹³ [2025] ZASCA 114, the court ordered 12 of 15 years for robbery to run concurrently with another 15-year sentence to avoid an excessive 30-year sentence.

¹¹ 2025 ZASCA 92

¹² 2017 ZASCA 114

¹³ 2025 ZASCA 114

[14.3] While each case must be decided on its own facts, these comparative sentences demonstrate that the sentence of 25 years imposed on the Appellant falls outside the normal range for offences of this nature.

Consequently, the cumulative sentence of 25 years is set aside, and the following sentence is imposed:

1. Sentences in count 2 and 3 to run concurrently with the 10 years in count 1
2. Two years of the concurrent sentence in count 1 is suspended for a period of 5 years on condition the appellant is not convicted of a similar offence committed during the period of suspension.
3. Appellant is to serve a total sentence of 8 (eight) years imprisonment.
4. The sentence is antedated to 26 February 2024.

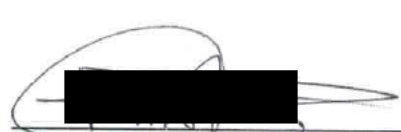


NEMAVHIDI AJ

ACTING JUDGE OF THE HIGH COURT

JOHANNESBURG

I concur



MOTHA J

JUDGE OF THE HIGH COURT

JOHANNESBURG

APPEARANCES:

For the Appellant:	Mr. Matsimbi
For the Respondent:	Adv. Matshidza
Instructed by:	National Director of Public Prosecutions
Date of appeal:	9 February 2026
Dat of Judgment:	27 March 2026