

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

Case Number: A228/2024

(1)	REPORTABLE: NO YES
(2)	OF INTEREST TO OTHER JUDGES: YES/NO YES
(3)	REVISED: YES/NO YES
<u>20/04/2026</u>	
DATE	SIGNATURE 

In the matter between:

GEORGE SITHOLE

Appellant

and

THE STATE

Respondent

This judgment is prepared and authored by the Judge whose name is reflected as such and is handed down electronically by circulation to the parties / their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date for handing down is deemed to be 20 APRIL 2026.

JUDGMENT

MAKHOBHA J (Tolmay J concurring)

Introduction

[1] The appellant pleaded guilty and was convicted at the Nigel Magistrate's Court of contravening section 49(1)(a), read with sections 1, 10, 25 and 26 of the Immigration Act 13 of 2002, as amended.

[2] He was legally represented and was sentenced to two years' imprisonment without the option of a fine. The appeal is against the sentence only.

[3] It is common cause that the appellant entered the country without any documents entitling him to enter the country, hence he pleaded guilty.

Grounds of appeal

[4] The only ground of appeal submitted on behalf of the respondent is that the court a quo erred in over-emphasising the seriousness of the offence while under-emphasising his personal circumstances. The Appellant contended that the sentence is shockingly harsh and induces a sense of shock.

[5] It is further submitted that the court a quo erred in not considering the time period the appellant has spent in custody awaiting trial.

Respondent's submissions

[6] On behalf of the respondent, it is submitted that, as an illegal immigrant, should the appellant commit a further crime, it will be impossible to trace him.

[7] It is further argued that there is an influx of people entering the country illegally. On behalf of the respondent, it is submitted that the sentence is not harsh.

[8] The appellant was arrested in Nigel on 23 January 2024. He pleaded guilty on 4 April 2024 and was sentenced on the same day.

Appellant's submissions

[9] At the time of his arrest, the appellant was 27 years old with two children, seven and two years old, respectively. The children are in Mozambique with their mother. The appellant has been in custody for two months.

Legal framework and discussion

[10] In terms of section 49(1)(a) of the Immigration Act 13 of 2002 as amended, anyone who enters or remains in, or departs from the Republic in contravention of this

Act, shall be guilty of an offence and liable on conviction to a fine or to imprisonment not exceeding two years.

[11] It is trite that sentence is pre-eminently a matter within the discretion of the trial court. A court on appeal is not at liberty to interfere with the discretion of the trial court on sentence unless it can be demonstrated on the basis of the evidence, that that discretion was not judicially and properly exercised and that, as a consequence, a misdirection occurred which resulted in the imposition of a sentence that was disproportionated to the offence or been shockingly inappropriate.¹

[12] The appellant did not testify in mitigation of sentence. Counsel only placed the mitigating factors of the appellant on record from the bar.

[13] In *S v Pillay*,² the court held that:

“As the essential inquiry in an appeal against sentence, however, is not whether the sentence was right or wrong, but whether the Court in imposing it exercised its discretion properly and judicially, a mere misdirection is not by itself sufficient to entitle the Appeal Court to interfere with the sentence; it must be of such a nature, degree, or seriousness that it shows, directly or inferentially, that the Court did not exercise its discretion at all or exercised it improperly or unreasonably.”

[14] At the time the appeal was heard, the Appellant would have served one year and eleven months if he was still in custody and not released on parole or any other ground. Therefore, it would serve no purpose for this court to reduce the sentence, for any other reason.

[15] The appeal against the sentence imposed on the appellant cannot succeed.

[16] In the premises, I make the following order:

16.1 The appeal against sentence is dismissed.

¹ *Director of Public Prosecutions Kwazulu-Natal v P* [2005] ZASCA 127; 2006 (3) SA 515 (SCA); [2006] 1 All SA 446 (SCA) at para 10; *S v Rabie* 1975 (4) SA 855 (A) at 857D-F.

² 1977(4) SA 531 (A).



D MAKHOB
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

I agree



R TOLMAY
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

Date of Hearing : 12 March 2026

Date of Judgment : 20 APRIL 2026

For the appellant : Mr MB Kgagara

Instructed by : Legal Aid South Africa

For the respondent : MJ Nethononda

Instructed by : Director of Public Prosecutions, Pretoria