

IN THE HIGH COURT OF SOUTH AFRICA (SOUTH GAUTENG)**JOHANNESBURG****CASE NO:** A33/12**DATE:** 2012-11-19

In the application for leave to appeal between

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THE STATE

and

KHOZA, OSCAR

Accused

CORAM: WILLIS J and KOLBE AJ

J U D G M E N T

WILLIS, J:

20 [1] The appellant was arraigned in the Regional Court held at Protea, Soweto on a charge of extortion, it being alleged that on 14 August 2009, at or near Soweto, he committed the offence of extortion, alternatively contravened section 3(a) read with sections 1, 2, 24, 25, and 26 of Act 12 of 2004.

[2] At the conclusion of this trial, the appellant and his co-accused were found guilty on the main count. The appellant was sentenced to five years' imprisonment. This occurred on 27 September 2010.

[3] The appellant pleaded not guilty, and enjoyed the benefit of legal representation. His co-accused has since died. The evidence of the State was that the appellant, who is a police officer, went to extract the sum of R12 000 from the two complainants, namely Johannes Tsegotso and Mildred Makosi. It is true that they contradict each other in minor
10 respects regarding the detail of what happened, but they totally support each other as to the fact that the two accused arrived at their house in a police vehicle and demanded the payment of a bribe.

[4] Not only did they give clear and cogent evidence, and not only is it common cause that the appellant and his co-accused went to their house in a police vehicle, but in my opinion, it is utterly damning that the evidence clearly shows that there was no corroboration whatsoever that this case was under investigation.

20 [5] There is no record in the diaries, the pocketbooks of the appellant or his co-accused. There is no record in the "voorvalleboek" book. There is no record in the register relating to warrants of arrest being issued. The senior officer on duty at the time has no record whatsoever of any complaint having been lodged about these two persons, neither did he dispatch the appellant and his co-accused to investigate the matter.

[6] If one views the evidence in its totality, it is, frankly, damning and, in my respectful opinion, the appellant was correctly convicted. Insofar as sentence is concerned, again in my respectful opinion, the appellant can consider himself fortunate only to have been sentenced to five years.

[7] It is frankly horrific when police officers abuse their police powers to extort money from innocent persons in their home. A loud, clear, firm message has to be sent out that we are on the road to a disgusting, fascist police state if this kind of behaviour gets out of hand. I
10 emphasise, once again, that in my opinion, the appellant can consider himself fortunate that he was sentenced only to five years' imprisonment.

[8] It is true that he was a first offender. It is true that his personal circumstances deserve some sympathy. All of that was considered by the learned magistrate, and I can see no misdirection by the learned magistrate, and no basis to interfere with sentence.

[9] The appellant has been on bail of R5 000. Certainly, there has been
20 no enthusiasm on his part to have this appeal heard. Indeed, it has been postponed and protracted. Accordingly, I propose that the following order be made:

1. The appeal against conviction and sentence is dismissed.
2. The appellant is given seven days to report to the clerk of the court, Soweto, in order to start serving his sentence.

KOLBE, AJ: I agree.

It is so ordered.

WILLIS J
JUDGE OF THE HIGH COURT

KOLBE AJ
JUDGE OF THE HIGH COURT