IN THE SOUTH GAUTENG HIGH COURT, JOHANNESBURG
(REPUBLIC OF SOUTH AFRICA)
CASE NO: A176/2013

In the matter:

SITHOLE, ZANDILE PRUDENCE **APPELLANT**

Versus

THE STATE **RESPONDENT**

JUDGMENT

THOBANE AJ:

[1] The appellant was charged with two counts. Firstly, Corruption - Receiving a benefit in terms of the Corruption Act 94 of 1992 read with the provisions of Sections (1)(1)(b), 2 and 3 of that Act. Secondly, Fraud read with the provisions of Section 51(2) (a) of the Criminal Law Amendment Act 105 of 1997.

[2] She appeared in the Germiston Regional Court, during which proceedings she enjoyed legal representation, pleaded not guilty but was convicted of the first count and acquitted of the second count of Fraud.

[3] She was sentenced to five (5) years correctional supervision in terms of the provisions of section 276(1) (i) of the Criminal Procedures Act 51 of 1977.

[4] She appeals against conviction and sentence with leave of the Court below.

[5] The legal representatives for both the appellant and the respondent addressed court and were in agreement that although the appellant was incorrectly charged, in that the old Corruption Act 92 of 1992, had been used in the stead of the Combating of Corrupt Activities Act 12 of 2004 which came into operation on the 27th April 2004 and which had repealed the 1992 Act in its entirety, there was no reason why the Appeal Court given its inherent powers, could not amend the charge. Mr Khunou, on behalf of the Appellant agreed that there was no prejudice on the side of the appellant.

[6] At this stage a brief background about the offence that the appellant was convicted of is relevant. On the 13th April 2006, Mr Gerhardus Jakobus Bronkhorst (the complainant) was driving on the highway, while talking on his cellphone at the same time. He was approached by a Metro Police motor vehicle and directed to get off the road. He duly did so by stopping on the emergency lane. According to him, he got off

the motor vehicle and approached the metro Police woman (the appellant), who had alighted from the metro Police vehicle. He was told that he had been speaking on the cellphone while driving, which he initially denied but later admitted and apologized. He was shown the fine book indicating that earlier on, a fine of R500-00 had been issued to another driver who had been speaking on the phone. He was then told to make a contribution to the Council. He offered R50-00 but was told that, viewed against a fine of R500-00, it was insufficient and that at least R100-00 would be enough. He went back to his car and was joined by the appellant, whom he gave the said R100-00. He had a Beeld newspaper with him, on which he wrote the registration numbers and the telephone number written on the vehicle. He was cross examined extensively.

The appellant testified that they were on patrol with his colleague, who while driving saw a traffic infringement in that there was a driver who was on the phone. He switched on his blue lights and siren and signaled to that vehicle to stop. She, appellant, alighted from the car and approached the vehicle. According to her, the complainant did not alight from his vehicle. She indicated to him that he had been using his phone however the complainant denied that. The appellant then inspected his license and warned the complainant verbally. Complainant wanted to pass compliments and wanted the names of the traffic officers but was advised that he should rather write down the registration number and the telephone number that appeared on the car.

[7] It was submitted on behalf of the appellant that the Court a quo, should have acquitted the appellant in view of the fact that the evidence was that of a single witness, that there was reasonable doubt in the mind of the court and that the complainant's evidence was not reliable.

[8] The respondent was naturally of the view that there was sufficient evidence and that the Court a quo arrived at the correct finding.

[9] When one looks at the judgment of the magistrate, he does go into detail to deal with the issue of caution, in view of the fact that the evidence confronting him was that of a single witness. In my view, he did not merely pay lip service to it. He inter alia took the following into consideration:

[9.1]. The newspaper that was entered into evidence as Exhibit "A",

[9.2]. The fact that there was no animosity between the complainant and the appellant,

[9.3]. The promptness with which the complainant reported the matter,

[9.4]. The fact that the complainant was not presented with the appellant's version on certain crucial aspects for him to comment on, during cross examination.

[9.5]. Calling of a witness by the appellant, that did not corroborate the appellant's version in material respects,

[10] Specifically with regard to the evidence of the complainant and the requirement that the evidence of a single witness ought to be satisfactory in all material respects for it to meet the bar set in the numerous decisions dealing with this aspect, I agree with the magistrate that the evidence was satisfactory in every material respect. Also that the appellant did not contradict himself and was truthful in his testimony. [**see State v Ganie 1967 (4) SA 203 (N), S v Hlanga 1991 (1) SACR 583 (A), S v Mahlangu 2011 (2) SACR 164 (SCA)**].

[11] A further inquiry in the alternative is whether the evidence of the complainant is corroborated. Corroboration should be on those aspects that are relevant for determination of the guilt or innocence of the accused. The finding by the court *aquo,* that the evidence of the complainant was corroborated, was in my view the correct one.

[11.1] Taking the following into consideration:

[11.1.1] The circumstance surrounding the recordal on the newspaper of the registration and telephone number of the Metro Police vehicle and that the newspaper was admitted into evidence.

[11.1.2] the immediate reporting of the incident to the authorities

[11.2] Considering the contradictions between the appellant and her witness on the following aspects.

[11.2.1] That the appellant saw the traffic infringement.

[11.2.2] That it was the appellant's idea that the registration and telephone numbers be written down.

[11.2.3] That the appellant withheld her name from the complainant because. it was difficult to write down

[12] The rejection of the appellant's version as being unreasonable and improbable was in the circumstances appropriate.

[13] Therefore, the appeal against the conviction must fail.

[14] With regard to the sentence the magistrate had the benefit of being presented with a Correctional Supervision Report prepared by Mr T.J. Pali and dated the 10th October 2007. The report captured, inter alia, the following personal circumstances of the appellant:

- She was 33 years of age,
- She is unmarried,
- She had a fiancé, one Mr Lindile Nicholus Nkosi, who had confirmed the details of the appellant,
- She had attended schooling, and had passed grade 12,
- She had attended a Damelin computer course and as well as a Traffic Diploma offered by the Johannesburg Metro Police,
- She had been employed by the Ekurhuleni Metropolitan Council as a traffic officer for a period of five years
- She owned a house at Dawn Park where she was staying with her fiancé, her mother, her daughter and her brother's son,
- That she had strong family ties with her family and was close to her siblings
- That she had to pay for the house, car and other necessary expenses,
- That she had other persons dependent on her.

[15] The recommendations in terms of the report were that the appellant was a good candidate for correctional supervision in terms of Section 276(1) (i) of the Criminal Procedures Act 51 of 1977. The recommended conditions were also attached to the report.

[16] The magistrate, in my view, did try to strike a balancing act by considering the triad as set out in many cases dealing with sentence. **[R v Zinn 1969(2) SACR 537(A)]**

[17] It is trite that the Appeal Court will only interfere with the sentence if a trial Court misdirected itself, or did not exercise its discretion judicially and properly, or if the sentence is shockingly inappropriate and finally if the interest of justice call for intervention. **[S v Obisi 2005(1) SACR 250(W)]**

[18] From the judgment it is evident that the personal circumstances of the appellant were examined against the backdrop of the crime itself and the interest of society.

[19] In the case of **S v Pillay 1977(4) SA 531(A) at p535 E-G** 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, direct or inferentially, that the court did not exercise its discretion at all or exercised it improperly or unreasonably."*

[20] I cannot find that the trial Court conducted itself in a manner that warrants interference, nor can I find that the sentence imposed is shockingly inappropriate.

[21] The appeal against sentence must therefore fail.

[16] The magistrate, in my view, did try to strike a balancing act by considering the triad as set out in many cases dealing with sentence. **[R v Zinn 1969(2) SACR 250(W)]**

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[20] I cannot find that the trial Court conducted itself in a manner that warrants interference, nor can I find that the sentence imposed is shockingly inappropriate.

[21] The appeal against sentence must therefore fail.

[22] In the result I make the following order:

1. The Charge Sheet is amended by removing the contravention in terms of the repealed Act to reflect the following "contravention of Section 3(a)(ii)(cc) read with sections 1,2 and 26 of Act 12 of 2004".
2. The appeal on behalf of the appellant against conviction and sentence is dismissed.
3. The sentence imposed by the trial Court is confirmed.

SA THOBANE

Acting Judge of the High Court

I AGREE.

B MASHILE

JUDGE OF THE HIGH COURT

Date of Hearing: 14/10/2013

Date of Judgment: 22/10/2013

Counsel For Appellant: Adv. MA Khunou

Counsel For Respondent: Adv. CL Smit

Instructed by: National Prosecuting Authority