REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NO: A4/2013

DATE: 19/5/2014

(1) REPORTABLE: YES / NO
(2) OF INTEREST TO OTHER JUDGES: YES / NO
(3) REVISED.

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DATE **JUDGE: AC BASSON**

In the matter between:

THEMBA BANGANI ZULU Appellant

vs

THE STATE Respondent

JUDGMENT

BASSON, J:

[1] The appellant was found guilty and sentenced in the circuit court in Middleburg on the following counts: (i) Count 1: Murder read with the provisions of section

51(1) of the Criminal Law Amendment Act 105 of 1997 – imprisonment for life. (ii) Count 2: The illegal possession of an unlicensed firearm in contravention of the Firearms Control Act 60 of 2000 - three years' imprisonment. (iii) Count 3: Unlawful possession of ammunition - one year imprisonment. The sentences imposed on counts 2 and 3 were ordered to be served concurrently with the sentence imposed on count 1. This is a full bench appeal against sentence only.

[2] The appellant was one of two accused charged with conspiring to murder and murdering the deceased. The appellant's co-accused passed away shortly before the commencement of the trail.

[3] The appellant was found guilty of shooting and killing the deceased. After his arrest he was placed into custody during which he made a confession in which he admitted that he committed murder under the circumstances as alleged by the State. The confession was admitted as evidence after a trail-within-a-trail.

Ad sentence

[4] In considering an appropriate sanction the Court *a quo* highlighted the fact that this was not only a case of premeditated murder (thereby bringing it within the ambit of Part I of Schedule 2 of the Criminal Law Amendment Act) but a case where the appellant assassinated the deceased in cold blood for personal gain. This, according to the Court *a quo*, is one of the most reprehensible forms of murder and is in itself a reason to impose the highest sentence in terms of the Criminal Law Amendment Act.

[5] It is accepted that any discretion that the Court may exercise in respect of sentence must be in the context of what constitutes substantial and compelling circumstances. In this regard the Court *a quo* duly considered the personal circumstances of the appellant, the fact that he was a first offender, the fact that he was persuaded by a more educated man (his co-accused) to commit the murder and the fact that he will be 64 by the time he is released. The fact that the appellant confessed to the crime was also considered by the Court *a quo*. Against this background, the Court *a quo* then weighed up the fact that society is

beleaguered by crime and the fact that Parliament has prescribed minimum sentences in an attempt to combat crime.

[6] On behalf of the appellant it was submitted that the Court *a quo* erred in its conclusion that there are no substantial and compelling circumstances justifying the Court to deviate from the prescribed minimum sentence of imprisonment for life.

[7] I am in agreement that life imprisonment, as the ultimate sanction, should not be imposed lightly even in circumstances where the legislature has prescribed it as a minimum sentence. I am, however, mindful of what the Court in *S v Malgas*[1] held:

> *"C. Unless there are, and can be seen to be, truly convincing reasons for a different response, the crimes in question are therefore required to elicit a severe, standardised and consistent response from the courts.*
>
> *D. The specified sentences are not to be departed from lightly and for flimsy reasons. Speculative hypotheses favourable to the offender, undue sympathy, aversion to imprisoning first offenders, personal doubts as to the efficacy of the policy underlying the legislation and marginal differences in personal circumstances or degrees of participation between co-offenders are to be excluded.*
>
> *E. The Legislature has, however, deliberately left it to the courts to decide whether the circumstances of any particular case call for a departure from the prescribed sentence. While the emphasis has shifted to the objective gravity of the type of crime and the need for effective sanctions against it, this does not mean that all other considerations are to be ignored."*

[8] I am not persuaded that the sentence of life imprisonment in the circumstances of this case is shockingly harsh and inappropriate and that this Court should interfere by setting aside the sentence and substituting it with a lesser sanction. Although there are mitigating circumstances such as the fact that the appellant is a first offender, relatively uneducated and the fact that he was influenced by a

[1] 2001 (2) SA 1222.

more educated man, the aggravating factors present in this case, in my view, far outweigh these factors. Moreover, the Court cannot disregard the fact that the appellant committed a murder out of greed: He shot and killed the deceased four times in cold blood whilst the deceased was seated inside his vehicle and lastly, the appellant showed no remorse[2] after he had been convicted. Furthermore, the appellant did not act on the spur of the moment: In fact, he and the (deceased) co-accused had met on various occasions prior to the murder during which time the co-accused pointed out the victim to him. He therefore had ample time to re-consider. Despite the aforegoing, it is trite, however, that each case must be considered having regard to its particular facts. In this instance, I am not persuaded that life imprisonment is an inappropriate sanction nor am I persuaded that the appellant is a candidate for rehabilitation especially given the fact that he has shown no remorse despite the fact that he had confessed to such a heinous crime.

[9] In the event the appeal against sentence is dismissed.

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AC BASSON

JUDGE OF THE HIGH COURT

I agree

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C PRETORIUS

JUDGE OF THE HIGH COURT

I agree

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N B TUCHTEN

JUDGE OF THE HIGH COURT

[2] See in this regard *S v Matyityi* 2011 (1) SACR 40 (SCA) at paragraph [[12] where the Supreme Court of Appeal held that *"[i]n order for the remorse to be a valid consideration, the penitence must be sincere and the accused must take the court fully into his or her confidence."* Where the accused does not take the Court into his confidence *"the genuineness of the contrition alleged to exist cannot be determined".*