

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NO: A245/14

DATE: 4 SEPTEMBER 2014

NOT REPORTABLE

NOT OF INTEREST TO OTHER JUDGES

In the matter between:

M[...] Z[...] N[...]

Appellant

and

THE STATE

Respondent

JUDGMENT

Tuchten J:

1 This is an appeal against a sentence imposed following a conviction on a charge of murder in a regional court. On 24 April 2013, the appellant murdered his lover, the deceased, during an argument. At the beginning of their relationship, both the appellant and the deceased were tested for the HIV virus. The tests were negative. The appellant, who was throughout faithful to the deceased, heard rumours that she was involved in other relationships. He had himself tested again.

2 These tests were positive, thus showing that the appellant was infected with the HIV virus. He confronted the deceased with the accusation, justifiable on the facts accepted by the court below, that the deceased had infected him. She became aggressive and hysterical. The appellant seized her by the neck and strangled her.

3 The appellant was convicted on his plea of guilty and sentenced to imprisonment for ten years. In considering an appropriate sentence, the court below found that there were substantial and compelling

circumstances present which justified a sentence less severe than the statutory minimum of 15 years which the court would otherwise have been obliged to impose. The court below refused leave to appeal against the sentence but such leave was granted on petition to this court.

4 In evaluating the questions both of substantial and compelling circumstances and an appropriate sentence, the court below pointed to the following factors. The deceased had probably infected the appellant with the HIV virus. The law requires a person to exercise self-control under such circumstances and not to wreak vengeance by taking the law into one's own hands. The appellant is a young first offender, aged 26 at the time. He pleaded guilty and showed remorse.

The appellant will have the death of the deceased on his conscience for the rest of his life. He loved the person he had killed.

5 Counsel for the appellant submitted before us, correctly, that the appellant is an excellent candidate for rehabilitation and that the chances of his repeating the offence are remote. Counsel further correctly did not suggest that the court below had misdirected itself in any way and, also correctly, identified the question before us for consideration as being whether this court would have imposed a markedly lesser sentence.

6 This is the correct approach because it is settled law that the determination of an appropriate sentence is preeminently the task of the court which tries and convicts the offender. Only where a material misdirection is present, which in this case there is not, or the sentence is so strikingly more severe than that which the appeal court would have imposed, can an appeal court intervene at the instance of the accused and reduce the sentence imposed by the trial court.

7 The court below rightly regarded the crime as serious. The appellant intentionally killed a defenceless woman in a fit of rage. I might add that there is substance in the submission of counsel for the state that the evidence suggests that the appellant did not strangle the deceased with his own bare hands but with a ligature consisting of two electric cords tightly bound into complicated knots. Taking into account the crime, the offender and the interests of society and blending into this mix a measure of mercy, it cannot be said that the sentence is so strikingly different from the sentence the members of this court would have imposed as to warrant interference on appeal.

8 The appeal against sentence therefore cannot succeed. I make the following order:

The appeal against sentence is dismissed and the conviction and sentence imposed by the court below are confirmed.

Judge of the High Court

1 September 2014

I agree.

DS Fourie

Judge of the High Court

1 September 2014