

REPUBLIC OF SOUTH AFRICA**IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)**

4/11/2014
CASE NO: A125/2014

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| (1) | REPORTABLE: NO |
| (2) | OF INTEREST TO OTHER JUDGES: NO |

In the matter between:

MAFA MOSES

APPELLANT

and

THE STATE

RESPONDENT

J U D G M E N T

Date of Hearing: 31 OCTOBER 2014

Date of Judgment: 4 NOVEMBER 2014

KUBUSHI, J

[1] The appellant was charged and convicted in the magistrate's court, Whiterivier, with one count of the theft of a generator. The trial court sentenced him to twelve months imprisonment in terms of s 276 (1) (i) of the Criminal Procedure Act 51 of 1977. A further twelve months imprisonment was wholly suspended for five years on condition that he is not found guilty of theft or fraud committed during the period of suspension. He appears before us on this appeal the trial court having granted him leave to appeal the sentence only. The appellant is out on bail.

[2] The conviction and sentence against the appellant emanates from his alleged theft of a generator at his place of employment. The appellant was employed at Gavic Express in Whiteriver. His work entailed delivering products to Builders Warehouse. On the day in question, whilst loading products for delivery to Builders Warehouse, he was seen loading a generator which was not on the list of goods he was to deliver. The person who saw the appellant reported him to the supervisor and he was eventually arrested for the theft of that generator.

[3] The appellant's contention is that the sentence imposed induces a sense of shock and calls for interference by this court. According to the appellant the personal circumstances of the appellant cumulatively taken into

consideration should have persuaded the trial court to impose a sentence less than the sentence imposed.

[4] The issue for determination by this court is whether the sentence imposed induces a sense of shock.

[5] A court's powers to interfere with a sentence on appeal are circumscribed. It may only do so if the sentence is vitiated by irregularity, misdirection or is one which no reasonable court could have come to, in other words one where there is a striking disparity between the sentence and that which this court considers appropriate.¹

[7] An appeal court cannot simply interfere with a sentence imposed. One or more of the accepted grounds which justify interference with the sentence on appeal must exist.²

¹ See *S v Petkar* 1988 (3) SA 571 (A).

² See *S v Mutungwa en 'n Ander* 1990 (2) SACR 1 (A).

[8] According to the triad of Zinn, the court in considering an appropriate sentence should take into account the personal circumstances of the accused, the offence of which he or she has been convicted and the interest of the community.³

[9] It is not in dispute that the trial court in sentencing the appellant complied with the triad of Zinn. The appellant's contention is also not that the trial court misdirected itself. What is in issue is that the sentence induces a sense of shock.

[10] It is trite that an appeal against sentence on the ground of excessive severity, where there has been no misdirection on the part of the court which imposed the sentence, justifies interference by the appeal court. In such situations the trial court's discretion is regarded as having been unreasonably exercised. However, for interference to be justified, it is not enough to conclude that the appellate court's choice of penalty would have been an appropriate penalty but the appellate court must conclude that its choice of penalty is the appropriate penalty and that of the trial court is not.⁴

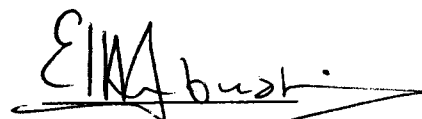
³ *S v Zinn* 1969 (2) SA 537 (AD).

⁴ *S v Sandler* 2000 (1) SACR 331 (SCA) para [8] – [10].

[11] To my mind, the trial court's choice of sentence, in this instance, is appropriate. In its assessment of sentence, it gave a balanced consideration of all the factors pertaining to sentence - the nature and seriousness of the offence, the interests of society and the personal circumstances of the appellant. There is nothing persuasive about the personal circumstances of the appellant, cumulatively or otherwise, which warrants deviation from the sentence meted out by the trial court. The sentence is also not disproportionate to the totality of the appellant's mitigating factors and I would recommend that it should not be interfered with.

[12] In the premises I would make the following order:

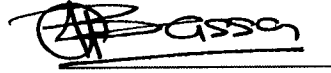
1. The appeal against sentenced~~d~~ is dismissed. *Em*
2. The conviction and sentence are confirmed.
3. The appellant must report to the nearest Correctional Services Centre within 72 hours from date hereof.



E. M. KUBUSHI

JUDGE OF THE HIGH COURT

I concur and it is so ordered

A handwritten signature in black ink, appearing to read 'A.C. Basson', written over a horizontal line.

A.C. BASSON

JUDGE OF THE HIGH COURT

Appearances:

On behalf of the appellant:

Adv. Matlapeng

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On behalf of the respondent:

Adv C. Harmzen

Instructed by:

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