

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



Case Number: A105/2015

17/3/2016

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

14 March 2016

DATE

SIGNATURE

In the matter between:

SIPHO MOSES RADEBE

Appellant

and

THE STATE

Respondent

JUDGMENT

JANSE VAN NIEUWENHUIZEN J

- [1] The appellant was convicted of murder in the Regional Division of South Gauteng, held at Benoni and sentenced to 15 years imprisonments.
- [2] This appeal is only against sentence.

EVIDENCE

- [3] On 27 July 2013 between 10h00am and 11h00am in the morning, the appellant visited the Primary Care Clinic in Daveyton with his wife who was pregnant at the time. The clinic is situated in a shopping mall and the appellant parked his vehicle outside the shopping mall. Upon his return to his motor vehicle, it appeared to the appellant that his motor vehicle had been washed during his absence which fact upset him. He noticed a tin next to one of the tyres of his motor vehicle and kicked the tin, which caused the contents of the tin to spill.
- [4] Shortly after kicking the tin the appellant was accosted by the deceased and a certain Pedro. Both the deceased and Pedro were washing cars in the parking lot where the appellant's car was parked.
- [5] The deceased and Pedro was aggrieved by the fact that the contents of the tin spilled when the appellant kicked it and an argument ensued between the appellant, the deceased and Pedro. From the evidence it appears that the argument became heated resulting in the appellant stabbing the deceased 3 times with a knife in his neck and back. These injuries caused the death of the deceased.
- [6] The appellant admitted that he stabbed the deceased and that the injuries caused the death of the deceased, but maintained that he acted in self-defence. In substantiation of his defence, the appellant testified as follows:
- "As I wanted to hit him with the fist he then took out a knife. When he took out a knife Your Worship I managed to grab hold of him with a knife. (demonstration around the hand Your Worship). He still had his knife on him. At that stage the other friend Your Worship, who said I must be beaten up was now closer. I managed to grab the hand Your Worship, which had the knife and eventually I managed to take the knife from him. I took it and then I stabbed him with the knife. Then I realised Your Worship that I made a mistake. I then got inside the motor vehicle, I drove to the police station. When I got to the police station I made a statement or statements were taken down. Then I was kept in custody, kept in the cells."*

- [7] The appellant's version was not accepted by the court *a quo*, which resulted in the conviction on the murder charge.

SENTENCE COURT A QUO

- [8] In view of the conviction on the aforesaid facts, the provisions of the Criminal Law Amendment Act 105 of 1997 ("the Act") and more specifically section 51 (2) (a) is applicable to the sentence to be imposed. The section provides for a minimum sentence of 15 years imprisonment in the prevailing circumstances.
- [9] The court *a quo*, in a judgment consisting of four paragraphs, sentenced the appellant to 15 years imprisonment without considering whether substantial and compelling circumstances, as contemplated in section 51 (3) of the Act, exist that would justify a lesser sentence.

GROUND OF APPEAL

- [10] The appellant submits that the court *a quo* erred in not having had regard to the provisions of section 51(3) of the Act. I agree and the appeal against sentence must succeed.

APPROPRIATE REMEDY

- [11] Both Mr Mashuga, counsel for the State and Ms Dube, counsel for the appellant agreed that the record contains enough facts to enable this court to consider sentence afresh.

SENTENCE REVISITED

Personal circumstances

- [12] The appellant is a 40 year old male, married and has four minor dependants.
- [13] The appellant was gainfully employed at the time of the commission of the offence.
- [14] The appellant is a first offender for purposes of the crime he has committed.
- [15] The appellant is remorseful and had paid the burial costs of the deceased in the amount of R4000, 00.

Nature of crime

- [16] The crime of murder is no doubt very serious in nature. It is for the aforesaid reason that the Legislator enacted the Minimum Sentence Act. The murder of the deceased was a senseless crime committed in circumstances where there was no threat to the life of the appellant. The appellant clearly lost his temper and in a fit of rage stabbed the deceased to death.

Interests of the community

- [17] Having regard to the prevailing murder rate in South Africa, it is incumbent upon courts to impose a sentence that would send a message to the community at large, that murder is not acceptable. It is the right of each member of society to live their daily lives peacefully and without the fear that one's life can be taken away senselessly and a callous manor at any given moment. The community, no doubt, has an interest in the proper punishment of persons who commit murder.

Evaluation

- [18] In considering the imposition of a minimum sentence, the Supreme of Appeal in *S v Malgas* 2001 (2) SA 1222 SCA, laid down the following test at 1236 D:

"If the sentencing court on consideration of the circumstances of the particular case is satisfied that they render the prescribed sentence unjust in that it would be disproportionate to the crime, the criminal and the needs of society, so that an injustice would be done by imposing that sentence, it is entitled to impose a lesser sentence".

- [19] The appellant was up until the day he committed the crime in question, a law abiding citizen who contributed positively to the well-being of his family. He was, furthermore, gainfully employed and made a contribution to the economy at large. The senseless murder of the deceased was largely occasioned by the fact that the appellant is not able to control his temper. The record reflects that the appellant immediately realised that he had made a mistake. To this end, the appellant will benefit from an anger management course.
- [20] The appellant showed true remorse in that he engaged with the family of the deceased and as stated *supra* contributed to the burial costs of the deceased. In view of the aforesaid circumstances, the imposition of the minimum sentence of 15 years is, in my view, disproportionate to the crime, the appellant and the interests of society. Society will, in view of the attributes of the appellant, be better served if the appellant is rehabilitated and introduced back into society.

[21] The appellant was sentenced on 16 May 2014 and has therefore to date almost served two years of his sentence. In the premises, the appellant has already experienced the harsh punishment of imprisonment.

[22] As stated *supra*, the appellant, in my view, will benefit from an anger management course. Should the appellant be capable to control his temper, the chances of the appellant committing further violent crimes in future will at least be minimised. In all the circumstances, I am of the view that the imposition of the minimum sentence will not be fair and reasonable.

[23] In the premises, I suggest the following sentence:

Eight years imprisonment of which five years are suspended on condition that:

1. The appellant successfully completes an anger management course; and
2. That the appellant does not commit a violent offence during the period of suspension.

ORDER

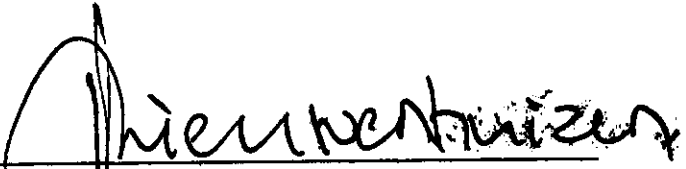
I propose the following order:

1. The appeal against sentence is upheld
2. The order of the court *a quo* is set aside and replaced with the following:


"Eight years imprisonment of which five years are suspended on condition that:

- a. The appellant successfully completes an anger management course; and*
- b. That the appellant does not commit a violent offence during the period of suspension.*

3. The sentence is antedated to 16 May 2014.


N.JANSE VAN NIEUWENHUIZEN
JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

I agree.


VRNS NKOSI
ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

It is so ordered.

Appearances:

Counsel for the Appellant	:	Advocate S M Dube
Instructed by	:	Q Khumalo Attorneys
Counsel for the state	:	Advocate Mashuga
Instructed by	:	The State