

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE No: A638/2015

DELETE WHICHEVER IS NOT APPLICABLE

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

DATE

SIGNATURE

15/6/2016

In the matter between:

JACKY BUTINYANE BOPAPE

Appellant

And

THE STATE

Respondent

JUDGMENT

HUGHES J

1. On 29 June 2015, the appellant, Jackie Butinyane Bopape, was convicted of murder read with the provisions of section 51(2) of the Criminal Law Amendment Act 105 of 1997 and sentenced to 15 years' imprisonment and

declared unfit to possess a firearm in terms of section 103 (1) of the Firearms Control Act 60 of 2000.

2. At the trial the appellant was legally represented and pleaded guilty to the charge preferred. On application the trial court granted the appellant leave to appeal against the sentence imposed.
3. Briefly, the appellant on 31 August 2013 unlawfully and intentionally killed Senzile Sidney Gadje. The appellant and the deceased were patrons at a stokvel drinking alcohol. The deceased asked the appellant for a cigarette and the appellant refused, an altercation ensued, which other patrons managed to diffuse. The appellant left the stokvel and at some stage obtained a knife from a friend. Thereafter he met the deceased with his cousin on the street and they assaulted him. He drew the knife and stabbed the deceased once in the chest. The deceased was not armed neither was the cousin. The post-mortem report records the cause of death as "penetrating incised wound of the heart".
4. It emerged from the pre-sentencing report that the appellant handed himself to the police after the commission of the offence. He also instructed his mother to seek forgiveness from the family of the deceased even though the mother of the deceased refused to forgive the appellant.
5. The submission made in mitigation on behalf of the appellant are merely general in nature :
 - 5.1.1. He was relatively young, 26 years of age;
 - 5.1.2. He is a first offender;
 - 5.1.3. He is a candidate to rehabilitation;
 - 5.1.4. He pleaded guilty;
 - 5.1.5. He did not waste the court's time;
 - 5.1.6. He showed remorse;
 - 5.1.7. He accepted responsibility for his actions, and
 - 5.1.8. He was under the influence of liquor at the time of the commission of the offense.

6. The main import of the appellant's argument in the face of the submissions above is that the magistrate erred in finding that there were no substantial and compelling circumstances to deviate from the imposition of the prescribed minimum sentence and that the sentence was shockingly inappropriate. Further, the mitigating factors weighed heavily in favour of the appellant but the magistrate showed no mercy in the sentencing. Lastly, a longterm prison sentence would not rehabilitate the appellant but rather turn him into a hardened criminal.
7. Besides the general submissions usually made by the State:
- the minimum sentence was imposed;
 - another court would not likely interfere with the findings of the trial court;
 - no substantial and compelling circumstances were advanced;
 - sentence must address retribution, deterrence, prevention and the protection of society when sentencing;

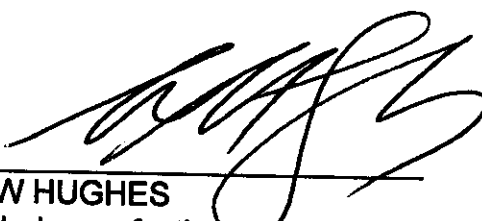
The State argued that the conduct of the accused in using a knife to kill the deceased showed that he had no respect for human life.

8. It is trite that sentencing is within the discretion of the trial court, an appeal court does not lightly interfere with a sentence imposed by the trial court unless there is an irregularity or misdirection. The circumstances entitling a court of appeal to interfere with a sentence imposed by a trial court were recapitulated in *Malgas* (para 12) where Marais JA held:

'A court exercising appellate jurisdiction cannot, in the absence of material misdirection by the trial court, approach the question of sentence as if it were the trial court and then substitute the sentence arrived at by it simply because it prefers it. To do so would be to usurp the sentencing discretion of the trial court. . . . However, even in the absence of material misdirection, an appellate court may yet be justified in interfering with the sentence imposed by the trial court. It may do so when the disparity between the sentence of the trial court and the sentence which the appellate Court would have imposed had it been the trial court is so marked that it can properly be described as "shocking", "startling" or "disturbingly inappropriate".'

9. In my view, the magistrate, took into account the mitigating factors expressed on behalf of the appellant in respect of youth, rehabilitation prospects and being a first offender. It weighed these against the aggravating circumstances of the seriousness of the offence, the intention of the appellant to kill the deceased, the taking of the deceased's life, the loss to his family, society's need to deter perpetrators or potential perpetrators and the taking of the law into one's hands.
10. I am not convinced that the magistrate did not take into account the nature of the crime, the personal circumstances of the appellant and the interest of society, as was stated in *S v Zinn 1969 (2) SA 537 (A)* at 540G, in the evaluation stated above. In the circumstances, in the absence of any misdirection by the magistrate it stands to reason that the appeal against sentence must fail.
11. In conclusion the following order is made:
- The appeal against sentence is dismissed.

It is so ordered



W HUGHES
Judge of the High Court
Gauteng, Pretoria

I concur

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

AC BASSON

Judge of the High Court
Gauteng, Pretoria

Date of hearing: 06 June 2016

Date delivered: 15 June 2016

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