IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)

23/6/16

Case Number: A547/2015

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: ~~YES~~ / (NO).

(2) OF INTEREST TO OTHER JUDGES: (YES) / ~~NO~~.

(3) REVISED. ✓

23/6/16 .....

DATE

.....

SIGNATURE

In the matter between:

DOUW DE BEER **APPELLANT**

And

THE STATE **RESPONDENT**

JUDGMENT

Fabricius J,

1.

This is an appeal against the sentence of two years imprisonment imposed upon the Appellant by Msimeki J on 18 June 2014. Leave to appeal against the sentence was granted by the Supreme Court of Appeal on 18 November 2014. The appellant had been convicted of defeating the ends of justice under circumstances which had tragic results for a number of persons.

2.

Appellant is the father of Dylan Douw de Beer. They together were charged with two counts of murder, one count of defeating or obstructing the course of justice and one count of theft (against the son only). It was alleged that on 11 April 2004, the accused had wrongfully and intentionally murdered two males. It was also alleged against the Appellant that on the same day he defeated the ends of justice by burning the bodies of the two deceased so as to obliterate the cause of death.

Appellant's son was accused of wrongfully stealing a cell phone from one of the deceased.

3.

The relevant facts are not in dispute herein. The Appellant's evidence was that he owned a game farm in the district of Boschkop. The farm was fenced and contained different species of animals such as giraffes, zebras, kudus, warthogs and others. People were allowed to hunt and hike on the farm, which also had accommodation for visitors. The University of Pretoria no doubt had a considerable interest in wildlife preservation, in that someone who had won a draw would be entitled to shoot an impala on the farm and obtain free accommodation for the weekend. Appellant's son, who was at home for the weekend, was a good marksman and was accordingly assigned to do the shooting for the winner. He took the .308 rifle for that purpose. The particular ammunition had been designed by the Appellant. Later on that particular day, his son came back without the impala that he had intended to shoot, and informed his father that poachers on the farm had fired at him and that he had

returned this fire. Father and son then proceeded to the particular scene. Two bodies of the deceased were found, a dead warthog and spent cartridges from the rifle. These were all picked up and transported to a particular site where the bodies of the deceased were burned. The fence had been cut and created easy access to the game farm. The cell phone was taken and was thrown into a small dam. The Appellant's son was 16 years old in 2004. He confirmed his father's evidence regarding the particular lucky draw organised by the University. He went to hunt that afternoon and also saw warthog grazing right in front of him whilst he was looking for an impala. He then heard a rifle shot. The warthog was struck, and having been surprised by the sound of the rifle, he started investigating its possible source by going up the nearest hillock. He heard someone screaming from the bush and a shot was fired at him. He ran into a so-called fire belt and saw a man dressed in camouflage clothes running towards him. He realised that he was being shot at. He in return fired two shots, one after the other, but not particularly aiming at any person. Unknown persons continued to fire at him as well. He managed to contact his father at home and they returned to the scene of the accident where they found

two deceased persons lying in the veld. As I have said, the bodies were picked up and taken to a rubbish dump site where they were burned. The police later on investigated the events which resulted in the father and son being charged with crimes that I have referred to. Both were found not guilty of murder, but Appellant was found guilty of defeating the ends of justice, and his son of having stolen the cell phone.

4.

The learned Judge a quo dealt with the facts of the case, which as I have said, were largely common cause. He referred to the discretion that he had to exercise in imposing a proper sentence, taking the purpose of punishment into account, namely the deterrent, preventative, reformative and retributive aspects. He also correctly mentioned that punishment should fit the criminal as well as the crime and should also be fair to society.

See: ***S v Rabie 1975 (4) SA 855 at 862 A - G.***

Appellant was a first offender and according to pre-sentencing reports was a good candidate for a community based sentence. He had been granted bail and had complied with all bail conditions. He was married and had two major children, who were gainfully employed. At the time of sentencing he was 59 years old and the learned Judge mentioned that the case had been pending for about 10 years. The probation officer regarded the offence as an isolated incident which was not planned, but was committed in a state of distress and fear. The Appellant's actions, according to her were further motivated by a strong sense of protection as he wanted to protect his son. The learned Judge was also informed that the Appellant had virtually lost everything that he had, because he had to sell his farm at a loss due to threats by the surrounding community. His family had been traumatised by the incident and Appellant himself was suffering from depression.

5.

The learned Judge a quo dealt with the interests of society which also served an important role in the sentencing of offenders. The Court found it difficult to condone

the actions of father and son after the poachers were shot. They had enough time to reflect on their actions. He also mentioned that the families of the deceased were severely traumatised, because they could not mourn the death of their loved ones. They were still the victims of an unresolved trauma with suppressed emotions of anger and sadness.

6.

On behalf of Appellant, it was submitted that an important consideration was that the case had dragged on from 2004 until 2014, because the Boputhatswana High Court had assumed jurisdiction for a certain period, whereas the Supreme Court of Appeal had then directed that the case be heard by the Gauteng Division of the High Court. Appellant had been in custody for three months before bail had been granted. He submitted with reference to ***S v R 1993 (1) SACR 209 (A)***, that the legislature had made it clear that a difference ought to be made between two types of offenders, those who had to be removed from society and those who could be punished without imprisonment by way of alternative correctional supervision

procedures. Accordingly, the sentence was disturbingly inappropriate, and the Appellant had been punished enough.

7.

On behalf of Respondent, it was submitted, as I have already said, that sentencing is pre-eminently a matter for the discretion of the trial Court. Sentence can only be interfered with if there was an irregularity, or the Court misdirected itself materially in respect of the imposition of sentence or if the sentence was disturbingly or shockingly inappropriate. The fact that a Court of Appeal may have imposed a different sentence, or a lighter sentence, is irrelevant. It is not free to interfere if it is not convinced that the trial Court could not reasonably have passed the sentence that it did.

8.

It is clear that Appellant's conduct had been calculated and contrived. The conduct prevented the holding of post mortem examinations and the families of the deceased were also severely traumatised.

9.

The submission therefore was that the trial Court did not over-emphasize the interest of the community, and that the sentence was indeed proportionate to the offence.

10.

In my view, the learned Judge a quo delivered a very carefully reasoned judgment and took all considerations properly into account. He exercised his discretion as he was obliged and entitled to do. There is no material misdirection that I could gather from the facts or his reasons for judgment. His discretion was exercised properly. Defeating the ends of justice is a serious offence as it will, in most cases, if not in all cases, undermine the Rule of law. Its seriousness must not be underestimated.

11.

Accordingly, there is no merit in the appeal against the sentence and the appeal is accordingly dismissed. The Appellant is ordered to report to the nearest police

station to his present place of residence within 10 days from date hereof. He is entitled to the return of the bail paid.

JUDGE H.J FABRICIUS
JUDGE OF THE GAUTENG HIGH COURT, PRETORIA

I Agree

JUDGE W. R. C. PRINSLOO
JUDGE OF THE GAUTENG HIGH COURT, PRETORIA

I Agree

JUDGE N. V. KHUMALO
JUDGE OF THE GAUTENG HIGH COURT, PRETORIA

17 JUNE 2016