IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NO: CC113/2013

DATE: 2016-07-06

DELETE WHICHEVER IS NOT APPLICABLE
(1) REPORTABLE: ~~YES~~ / NO.
(2) OF INTEREST TO OTHER JUDGES: ~~YES~~ / NO.
(3) REVISED.
DATE 17/08/2016
SIGNATURE

10 In the matter between

THE STATE

and

OSCAR LEONARD CARL PISTORIUS Accused

J U D G M E N T

MASIPA, J: On 11 September 2014 this court convicted the accused of *inter alia* culpable homicide and sentenced him to imprisonment for a
20 period of not exceeding 5 years in terms of Section 276(1)(i) of the Criminal Procedure Act, 51 of 1977

Subsequently, this court acting in terms of the Criminal Procedure Act, Section 319 and on application by the State, reserved three questions of law for the consideration of the Supreme Court of Appeal. Having heard counsel, the Supreme Court of Appeal made the following finding:

"1. The first two questions of law reserved are answered in favour of the Director of Public Prosecutions.

2. The accused's conviction and sentence on count 1 are set aside and replaced with the following:

'Guilty of murder with the accused having had criminal intent in the form of *dolus eventualis*.'

3. The matter is referred back to the trial court to consider an appropriate sentence afresh in the light of the comments in this judgment."

(See the *Director of Public Prosecution Gauteng v Pistorius*, 2016(1) SACR 431 (SCA) paragraph 52).

It now remains for this court to impose an appropriate sentence. To determine a fitting punishment based on fairness and proportion, I have to consider several factors, namely the offender, the offence and the interests of society as well as the victims of the offence. I am also obliged to have regard to the main purposes of punishment which are retribution, deterrence, prevention and rehabilitation. Lastly, because of the nature of the offence that the accused has been found guilty of, I have to determine whether there exist substantial and compelling circumstances, justifying the imposition of a lesser sentence than 15 years imprisonment, which is the prescribed minimum sentence in this case.

The evidence. Both the accused and the state led the evidence of various witnesses in mitigation and in aggravation of sentence. For purposes of this sentencing exercise, it is not necessary to set out in detail every piece of evidence that was led. I have confined myself to what I consider strictly necessary, although I have had regard all the evidence as well as submissions placed before this court. The only evidence that shall be set out in detail is that of Professor Scholtz, only because of its nature as expert evidence and the detailed report he compiled. Such evidence shall be summarised under this heading only briefly and be set out in detail under the personal circumstances of the accused. The evidence of the various witnesses shall be discussed under relevant headings hereunder.

The first and main witness for the defence was Professor Scholtz, a clinical psychologist, who assessed the accused and compiled a pre-sentencing report marked EXHIBIT SA. He had initially featured in this matter as one of the panellists appointed to assess the accused during the trial in 2014 in terms of Sections 78 and 79 of the Criminal Procedure Act. Professor Scholtz explained that in view of his previous involvement in the matter, he had sought and obtained confirmation from the Health Professions Council of South Africa (HPSCA) to proceed with the assessment for the purposes of sentence.

In assessment of the accused, Professor Scholtz found *inter alia* that the accused displayed signs and reported symptoms of posttraumatic stress disorder, anxiety disorder and depressive disorder. The short to midterm memory was compromised. In his opinion the

accused's condition was so severe that he would not be able to testify in the proceedings. He also formed an opinion that he should have been hospitalised as his condition had worsened since the last time he had seen him in 2014. I shall say more about this when I deal with the personal circumstances of the accused.

The next witness was Amber Goodmontomondo Teo from Iceland. She got to know about the accused a little more than 11 years ago when she was about 20 weeks pregnant and her doctors informed her that her son would be born without legs. She and her family were anxious as no one in Iceland had been born without legs before. She had seen an article about the accused and his photograph taken while he was running in Athens. Her mother had written to the person who had interviewed the accused to thank him for being visible. Soon thereafter, and quite unexpectedly, the accused had written back to her mother to say that it would be a pleasure for him to help in whatever way he could. Since then he has visited the family often and cares for his son as well for his sister.

The third witness was Mr Marius Nel, the accused's Pastor of 3C Ministries based in Centurion. His evidence was short and to the point. The accused is a member of his Ministry. While the accused was incarcerated Mr Nel often paid him a visit to pray with him, minister to him and to encourage him. He found him a broken man. His Ministry was involved in a number of projects, to Assist Disadvantaged Children in various schools. He had discussed with the accused the possibility of his involvement in sports and athletics training in some of these schools

and the accused had shown an interest and was keen to assist.

I am now dealing with the personal circumstances of the accused. I was assured by counsel that the personal circumstances of the accused as they appear on the trial record, had not changed much. Additional information was obtained from Professor Scholtz' report, EXHIBIT SA. The accused is 29 years old, single and has no children. He is a renowned athlete. He has no previous convictions. The middle of three children, he was born with a congenital abnormality and at the age of 11 months, he had a bilateral below the knee amputation. He uses prosthetic legs. He attended both primary and high school in Pretoria. When he was in Grade 9 his mother passed on. According to Professor Scholtz the accused felt the loss deeply as he and his mother had a very close bond while he had a not so good relationship with his father. After Grade 12 the accused enrolled at the University of Pretoria for a Bachelor of Commerce Degree in Business Economics, but had to drop out because of the demands of his career as an athlete.

The background of the accused and his family is set out in paragraph 2.2 of EXHIBIT SA. In part it reads as follows:

> "History and development of Mr Pistorius, family constellation and relationships.
>
> Mother. Even though there was never any violence or serious aggression between his mother and father, the couple divorced when Mr Pistorius was 6 years old. Mr Pistorius' mother did her best after the divorce and remained positive and strong even

> though her family had to adapt in difficult circumstances, especially financially. She motivated Pistorius to live his life as normal as possible in spite of the problems he experienced as a double amputee. She was, however, also an anxious person and got startled easily. She acquired a pistol when she met her husband and learned to shoot. After the divorce she would become scared and anxious at times when she felt they were under threat. Unfortunately there were a few incidents of crime that the family experienced directly or indirectly and this exacerbated her anxiety. These experiences left a lasting impression on the young Pistorius, making him aware of his family's and his own vulnerability to crime and increasing his fear of being a victim of crime."

Professor Scholtz states that the sudden passing of his mother when he was 15 years old left the accused feeling traumatised and abandoned. He states that the accused's relationship with his father after the divorce was poor but he subsequently found father figures, mainly his uncle Arnold. He has a close relationship with both his elder brother and his younger sister. His sister left the country recently. This also was felt by the accused as a loss.

The accused was incarcerated for 12 months at Kgosi Mampuru Correctional Centre. After his release he was placed under house arrest

at the residence of his uncle and aunt. During his incarceration the accused completed a number of courses and workshops as part of his rehabilitation program. According to Professor Scholtz the accused's views about possession and use of firearms has changed. He sold all his firearms and never wants to touch a firearm again. He is not anti-social or psychopathic. He is currently enrolled for a BSc degree at the University of London.

Professor Scholtz' views are that the accused's mental health has deteriorated since 2014. He states:

> "Since the offence he has developed a serious psychiatric condition which has got worse over the past two years. Major depression and posttraumatic stress disorders. His level of anxiety have (as I see) also increased. He has become isolated and fearful of venturing out in public."

Professor Scholtz is also of the opinion that the accused's current condition:

> "Warrants hospitalisation."

He also states that because of the accused's international profile, he has had to endure intense media attention and negative reports about the incident. He also had to endure constant pressure and harassment from the media. In his report, Professor Scholtz also deals with what he refers to as traumatic and humiliating experiences that the accused allegedly had during his incarceration. These, however, were unsupported by anything concrete. Most of these experiences were

denied or put in perspective by Mrs MC Mashabane, the assistant health manager at the Kgosi Mampuru prison.

Mrs Mashabane explained that the accused could not have overheard the rape of a young man or seen the body after the young man had hanged himself, as the accused had alleged, as the section where the incident happened was far from where the accused was accommodated. Ms Mashabane appeared to be an honest witness and I was given no reason to reject her evidence and I accepted it as true and reliable. On the other hand, this court accords very little weight to most of what the accused told Professor Scholtz for the following reasons.

There was no way to test the veracity of the complaints as the accused did not give evidence. Secondly, Professor Scholtz did not fare well under cross-examination. When asked details about the infection allegedly suffered by the accused because he had no seat or chair in his shower for the first five weeks, he could provide none. In addition, the allegation that the accused's health had deteriorated was irreconcilable with what was put to state witnesses that the accused was hoarding medication which he had legally obtained over time from the nurses.

The circumstances/gravity of the crime. Murder is always a very serious crime. The fact that the accused thought that it was intruder does not make it less serious. Serious as the crime is, for purposes of sentencing, it is always useful to place facts that led to the particular matter in perspective. A short background of circumstances in which the crime was committed is therefore important. In the early hours of 14

February 2013 the accused shot and killed his girlfriend Reeva Steenkamp, the deceased, in his home in Pretoria. At the trial, the accused explained that he had mistakenly shot and killed the deceased through the locked toilet door in his bathroom, as he had thought then that there was an intruder who had entered the house through the bathroom window and imposed a threat to him and the deceased.

At the time of the shooting he was on his stumps. When he discovered his mistake, he put on his prosthetic legs and, using the cricket bat to bash open the door, he was able to unlock it and reach the deceased. The accused picked her up and took her downstairs hoping to get her to hospital. Minutes later, still at the accused's house, the deceased was declared dead by the paramedics. Witnesses who saw the accused soon after the incident told this court that the accused looked distraught. A state witness, who had earlier heard what he had referred to as shots and screams, had no doubt that the accused's distress was genuine. There was also evidence that the accused was crying and calling upon God to intervene.

Notwithstanding the above circumstances, it is worth repeating that the murder is a serious offence. In the present case, a deadly weapon in the form of a firearm was used and the results were devastating. The fact that the murder took place under circumstances as described above, does not in any way make the offence any less serious.

I now deal with the interests of society. The interests of society demand that people who commit serious crimes such as murder be

punished severely. The interests of society that are considered and protected, however, must be legitimate interests. Counsel for the defence correctly submitted that there was an unfortunate perception in the minds of some people that on the night of the murder, there was an argument between the accused and the deceased and that this is what led to the murder of the deceased.

The existence of such a perception was inadvertently confirmed by the father of the deceased, Barry Steenkamp, who, during the course of his evidence, let slip this very perception. That counsel for the state stopped Mr Steenkamp from proceeding any further, does not change the fact that such a perception does exist. It, therefore, cannot be ignored by this court. The unfortunate part of it is that there is not a shred of evidence placed before this court that supports such a perception.

Courts deal with facts placed before them, not with assumptions and not with suspicions. The fact that an accused may not have taken a court into his confidence or that he lied in certain respects, does not give such court the right to speculate against the accused and to act on such speculations. I might also add that although this case attracted the attention of groups fighting for women's rights, there is no indication at all that the deceased was in an abusive relationship. There is also no evidence whatsoever that this case is based on gender violence. Had there been such evidence, it would certainly have been a definite aggravating factor. I shall return to this issue of the misperceptions from the public in my judgment when I deal with the submissions by counsel

on the appropriate sentence.

Society at large has a real interest in the present matter mainly because both the accused and the deceased were well-known personalities with illustrious careers. There were celebrated both here at home and abroad. It is, therefore, not surprising that there would be an unprecedented level of interest in the proceedings and in the outcome and that the incident, the trial and the possible outcome, would become talking points for some time. Society has a right to have certain expectations and to demand justice. However, such expectations must be legitimate expectations before the court can take heed of them. It follows that expectations cannot be legitimate if they are based on wrong perceptions.

I deal with the deceased and her family. Although the deceased belonged to a family which is part of the wider community, it is necessary to deal with the deceased and her family separately. The deceased was young, vivacious, full of life and hope for the future. This picture was painted by the deceased's father, Mr Barry Steenkamp and the deceased cousin, Kim Michelle Martin. Both told of the pain that the family has suffered and continues to suffer as a result of the deceased's untimely death. Ms Martin described the deceased as a loving and wonderful person. She stated that as a family they would never completely get over the death of the deceased. The deceased had plans, not only for herself, but for her parents as well. She supported her parents financially and expressed the wish to continue to do so to make their lives easy.

According to Mr Steenkamp the deceased used to call home almost every weekend to talk to him and his wife separately. It is, therefore, not surprising that three years later, the family is still grieving. It is clear from the evidence that the Steenkamps had a very close bond and used to celebrate special occasions together as a family. Now, Christmas, birthdays and Valentine's day are a painful reminder that the deceased is no longer with them. It is on such days that they feel the loss deeply. Mr Steenkamp spoke of the impact the deceased's death has had on him specifically. He now suffers from ill health, he thinks of the deceased every day. He has her photographs everywhere in the house. He now avoids meeting people and often gets up at 03:00 to sit in the veranda smoking and talking to the deceased. He told this court that his wife also suffers as much as he does.

The evidence of both Mr Steenkamp and Ms Martin shows that the pain runs deep and that the impact of the accused conduct on the family of the deceased has been devastating. Ms Martin told this court that the family is anxious and depressed, they have been exposed to the media. She is loathe to meet people or go places as she never knows when someone might say something about the deceased, the accused or about the incident. She, however, has to cope and go on with her life for the sake of her children. That fact is relevant and must be taken into consideration in the sentencing process.

The Criminal Law Amendment Act, 105 of 1997 (Act 105 of 1997).

In terms of the provisions of Act 105 of 1997, as amended, this court is obliged to impose the prescribed minimum sentence which is 15 years

imprisonment unless, of course, there exist substantial and compelling circumstances justifying the imposition of a lesser sentence than the prescribed minimum sentence. Section 51(2)(a) of the Act, that is Act 105 1997, specifically provides that when an accused who is a first offender is convicted of murder that is not planned or premeditated, the court shall sentence him or her to imprisonment for a period of not less than 15 years. The Act does not define the phrase:

"substantial and compelling circumstances"

but has left it to the courts to make that determination. Fortunately, the correct approach in this regard is set out in *S v Malgas*, 2001(1) SACR 469 (SCA). There the Supreme Court of Appeal stated the following:

> "In short, the legislature aimed at ensuring a severe standardised consistent response from the courts to the commission of such crimes, unless there were, and could be seen to be, truly convincing reasons for a different response. When considering sentence the emphasis was to be shifted to the objective gravity of the type of the crime and the public's need for effective sanctions against it. But that did not mean that all other considerations were to be ignored. The residual discretion to decline to pass the sentence which the commission of such an offence would ordinarily attract, [plainly] was given to the courts in recognition of the easily foreseeable

injustices which could result from obliging them to pass the specific sentences come what may."

In *S v Vilakazi*, 2012(6) SACR 353 (SCA) at paragraph 15 the following was said:

"[15] It is clear from the terms in which the test was framed in *Malgas* and endorsed in *Dodo* that it is incumbent upon a court in every case before it imposes a prescribed sentence to assess upon a consideration of all the circumstances of the particular case whether the prescribed sentence is indeed proportionate to the particular offence. The Constitutional Court may be clear that what it meant by the offence in that context... consist of all factors relevant to the nature and seriousness of the criminal act itself as well as all the relevant personal and other circumstances relating to the offender which could have a bearing on the seriousness of the offence and the culpability of the offender. If a court is indeed satisfied that a lesser sentence is called for in a particular case, thus justifying the departure from the prescribed sentence, then it hardly need saying that the court is bound to impose that lesser sentence. That was also made clear in *Malgas* which said that the relevant provision in the Act vests the sentencing court with power indeed

the obligation to consider whether the particular circumstances of the case require a different sentence to be imposed. And a different sentence must be imposed if the court is satisfied that substantial and compelling circumstances exist which justify... it."

Malgas in paragraph 22 puts it this way:

"The more a court feels uneasy about an imposition of a prescribed sentence, the greater its anxiety will be that it may be perpetrating an injustice and that once that uneasiness becomes a conviction then an injustice will be done."

In my view the above is a reminder that each case ought to still to be decided on its own peculiar facts. A useful point of departure therefore, is a proper investigation of the pertinent facts and circumstances in the present matter. In addition to answer the question whether there exist substantial and compelling circumstances justifying a lesser sentence, courts must also consider aggravating factors as well as mitigating factors in a particular matter.

I deal with aggravating facts and mitigating factors. In the present case there are a number of aggravating factors. The accused used a lethal weapon, a high calibre firearm and ammunition and fired not one, but four shots into the toilet door knowing full well that there was someone behind the door. The toilet was a small cubicle and there was no room for escape for the person behind the door. The accused had

been trained in the use of and in handling firearms. He used the firearm without taking precaution of firing a warning shot, as found by the Supreme Court of Appeal.

Mitigating factors are the following. The accused approached the bathroom in the belief that an intruder had entered his house. At the time he was without his prosthesis and felt vulnerable. His belief that there was an intruder in the house is supported by his actions when he realised that it was the deceased in the toilet. Details of the sequence of events after the shooting, most of which were not disputed, are on record. It is not necessary to repeat them for purposes of sentencing. It is sufficient to state that the accused immediately took steps to try to save the deceased's life. Dr Stipp, who lived in the same complex, gave evidence that when he went to the accused's house, soon after the shooting, the accused implored him to do something to save the deceased life. He was distraught and kept on asking God to save the deceased's life and promising to serve him in return. What is significant about this evidence is that it was volunteered by a state witness and that no other evidence was led to contradict it.

Counsel for the state submitted that there were no substantial and compelling circumstances justifying a lesser sentence than the prescribed minimum sentence. He reiterated that the accused showed no remorse as he did not come clean before this court. I disagree. At the commencement of the proceedings the accused apologised to the family of the deceased. This public apology could easily have been interpreted as a ploy to gain public sympathy. Had it not been for the

fact that the accused had previously, unsuccessfully, tried to meet the parents of the deceased to apologise for the pain that he had caused them and to ask for forgiveness, I might have doubted his bona fides.

What weighs heavily with me, amongst other things, is that the request was repeated more than once. This court was informed that after his release from incarceration, the accused tried once more to approach the deceased's family with an apology without success. Mr Steenkamp confirmed that the accused had made such a request through lawyers, but the Steenkamp family was not yet ready to meet the accused.

It is my view that it must be one of the most difficult things for any accused to have to face the victims of his crime and to apologise. It is highly improbable, therefore, that the accused would persist in his request to meet the parents of the deceased and ask for forgiveness, if he was not genuinely remorseful. Counsel for the state submitted further that in the event the court found that substantial and compelling circumstances exist justifying a lesser sentence than the prescribed minimum sentence, the court still ought to impose a very long term of imprisonment on the basis that the crime the accused was found guilty of bordered on *dolus directus*. I disagree with this submission. There is no suggestion in the judgment of the Supreme Court of Appeal that this is the case. The finding of the Supreme Court of Appeal was that the accused had intent in the form of *dolus eventualis*. It is this finding that this court has to bear in mind and use as a basis to impose a sentence afresh.

I have taken all the above into consideration and am of the view that mitigating circumstances outweigh the aggravating factors. I find that there are substantial and compelling circumstances which justify a deviation from the imposition of the prescribed minimum sentence of 15 years.

The appropriate sentence. While it is true that sentences ought to be standardised or consistent, each case is different and sentences must be individualised. This court is indebted to both counsel who referred to a number of cases during their submissions. Although none of the cases can be said to be on all fours with the present case, they certainly assisted as a guide. As a starting point counsel for the defence zeroed in on concerns that he submitted had a potential to cloud the real issues. The first had to do with an impression gained by the public that the accused was found guilty of *dolus directus* when in fact he was found guilty of *dolus eventualis*.

The second had to do with the fact that the accused was, in the minds of most people, portrayed as the confident 1.84 metres tall, strong, ambitious person, winning gold medals. This obscured the relevant fact that at the time the accused shot at the toilet door and killed the deceased, it was 03:00 and dark, he was not wearing his prosthesis but was on his stumps and measured 1.5 metres in height and felt vulnerable.

The third had to do with emotions of the public emanating from the perceptions above. Defence counsel submitted that because of these emotions, there was a danger that the true facts might escape the

general public who may then have unreasonable expectations in terms of an outcome. I shall come back to these submissions later.

Counsel for the state sought to argue that Mr Steenkamp's pain had nothing to do with any perception he might have had about what led to the death of the deceased and that in fact to link the two, would be to diminish a father's real pain. I do not think that anything anyone says or does can diminish the pain suffered by the deceased's family. The pain is there, it is real and it is tangible. Nevertheless, the misperception that there was an argument before the deceased was shot and killed and that the accused was guilty of murder *dolus directus*, cannot be ignored, as to do so, may not serve the ends of justice.

I return to submissions by counsel for the accused concerning the public's perception of what may have happened on 14 February 2013. That the submissions by defence counsel have merit insofar as some members of the public are concerned cannot be disputed. I am, therefore, constrained to accept that all the submissions which were made, were made with good reason. Had it not been for the unique features of this case and the wide publicity the case has attracted, I would probably have dismissed such submissions as improper and unnecessary. I say this for the following reasons.

Our courts are courts of law, not courts of public opinion while judicial officers are expected to and should adjudicate matters without fear, without favour and without prejudice. The court is aware that natural indignation of interested persons and of the community at large should and does receive some recognition in the sentences that courts

impose as counsel for the state correctly argued. (*See R v Karg*, 1961(1) SA 231 (A) at 236). However, in my view such indignation must be based on facts as reflected in the evidence properly placed before court under oath and tested under cross-examination. Where a wrong perception about a particular fact exists as it does in this matter, and has been brought to the attention of a court, it is the duty of the court to correct it and put the correct facts in perspective to prevent unjustified outrage from the public.

It is appropriate at this stage to say something about the limited role of public opinion in sentencing as set out in *S v Mhlakaza & Another*, 1997(1) SACR 515 (SCA). There Harms JA stated *inter alia* that the object of sentencing was not to satisfy public opinion but to serve or lead public opinion or the public interest. He stated that a sentencing policy that catered predominantly or exclusively for public opinion was inherently flawed as it was the court's duty to impose an appropriate and fair sentence fearlessly, even if the sentence did not satisfy the public. He further stated the following:

> "Public opinion may have some relevance to the enquiry, but in itself, it is not a substitute for the duty vested in the court. The court cannot allow itself to be diverted from its duty to act as an independent [indistinct] by making choices on the basis that they will find favour with the public."

In the present case public opinion may be loud and persistent, but it can play no role in the decision of this court. The objective facts on

the merits in this matter are on record and do not warrant repetition for purposes of the present procedure. Suffice it to state that as defence counsel correctly submitted, those facts have not been disturbed as no further evidence was led on appeal. It is those facts, not conjecture and certainly not suppositions, which are guiding this court in its decision.

Defence counsel is correct in his submission that this court ought not to lose sight of the fact that the 'Oscar' who shot and killed the deceased on the morning of 14 February 2013, was not the acclaimed 'Oscar' who defied odds on the racetrack and won medals.

My view is that even without the physical demonstration that took place in court to show the difference between the accused on his stumps and the accused on his prosthetic legs, it is easy to see that we are here dealing with two different persons. This was clearly set out by Professor Scholtz in his earlier report, EXHIBIT QQQ. This evidence was not contradicted and the assessment of the accused's personality in this manner is not farfetched in my view. To ignore this fact would lead to an injustice, in my judgment. However, it is also important to keep in mind that the accused's personal circumstances are just one consideration amongst many in the sentencing process. There are other equally important considerations to be taken into account.

I understood counsel for the defence to be contending, (although not in so many words), for a non-custodial sentence. Relying on the report of Professor Scholtz, he submitted, *inter alia*, that a custodial sentence would serve no purpose as the accused had been rehabilitated. He based his submissions on the fact that the accused

had completed a number of courses and had attended workshops while he was incarcerated. This submission loses sight of the fact that rehabilitation is only one of the purposes of punishment. The other purposes mainly retribution, deterrence, reformation and prevention are just as important and ought to be properly addressed as well. The degree with which each will feature in any sentencing procedure will depend on the crime the accused has been found guilty of as well as on the circumstances of each case.

The circumstances in this matter have changed as the accused has now been found guilty of murder *dolus evantualis*, which is a more serious offence than culpable homicide. Having regard to the changed circumstances the rehabilitation programs that the accused was exposed to during his incarceration may or may not be sufficient for present purposes, now that the accused has been found guilty of a more serious crime. It is not for this court to determine their sufficiency or insufficiency. That is the prerogative of the prison authorities if the accused is sent to prison. This court, however, is obliged to and does take into consideration the fact that the accused successfully completed the programs referred to above. This, in my view, is an indication that the accused is a good candidate for rehabilitation and that the other purposes of punishment, although important, ought not to play a dominant role in the sentencing process.

Also to be taken into consideration is the fact that the accused has already spent some time in prison serving his original sentence. I may add that a contrary impression to whether the accused was a good

candidate for rehabilitation, may have been created, perhaps inadvertently, during the cross-examination of Professor Scholtz when it was put to him that initially the accused had difficulty adjusting as an inmate. Professor Scholtz was quick to disagree with such a statement, stating that the accused was not a violent person. The basis of the disagreement was not clear to me as no one had said anything about the accused being violent by nature. What was said was simply a fact, as observed by the author of the report, that initially the accused struggled to adjust as an inmate and cited relevant examples of un acceptable conduct.

I did not get the impression from this report or from anything stated by anyone, during the proceedings, that prison authorities were trying to vilify the accused or brand him as a violent person. On the contrary, from the documentation placed before this court and the evidence, the impression I got was that, after the initial challenges the accused had in adjusting, he had made progress and was cooperating with prison authorities. I may add that the fact that the accused may perhaps be quick tempered, does not necessarily mean he is a violent person.

Defence also sought to rely on Professor Scholtz's evidence that the accused needed to be hospitalised as his condition had worsened since the last time he saw him in 2014. I am in agreement with counsel for the state that Professor Scholtz evidence in this regard is not convincing. I say this for the following reasons:

1. There was no confirmation form the accused's treating

psychiatrist that the accused's condition was such that his admission to hospital was warranted.

2. No steps were taken to have the accused admitted to hospital, notwithstanding that according to Professor Scholtz, he had discussed the issue with the accused's psychiatrist, Dr Bosch. The inference is irresistible that Dr Bosch does not support Professor Scholtz's view on the matter.

Conclusion. The determination of an appropriate sentence that satisfies every relevant interest is never easy. It is made even more difficult by the fact that nothing that this court will do or say today shall bring back the life of the deceased. As stated earlier, each case must be assessed on its own facts in search of a balance between the accused's personal circumstances, the gravity of the offence, the interests of society as well the victim of the offence committed. All these have been taken into account. Earlier I set out the impact that the crime committed by the accused has had on the family of the deceased. It is difficult to fully describe its ramifications. What was evident from the testimony of both Mr Steenkamp and Ms Martins that their lives shall never be the same. Details of what they went through and are still going through as a family, have been described above. Thankfully healing has already started as both Mr Steenkamp and Mrs Steenkamp have stated that they have forgiven the accused.

The life of the accused shall also never be the same. He is a fallen hero, he has lost his career and is ruined financially. The worst is that, having taken the life of a fellow human being in the manner that he

did, he cannot be at peace. It came as no surprise, therefore, when both Mr Nel, his Pastor, and Professor Scholtz described him as a broken man. Recovery is possible, but it will depend mostly on the accused's attitude to the punishment imposed on him. This court is aware that the accused, through his Pastor, has shown a willingness and expressed a wish to do community work as punishment.

That is a noble gesture. However, punishment is not what you choose to do. It is something that is imposed on you. By its very nature, punishment is unpleasant, it is uncomfortable, it is painful and it is inconvenient. It is certainly not what you love to do.

I have considered the evidence in this matter, the submissions and argument by counsel as well as the relevant case law and other authorities. Although a custodial sentence is a proper sentence, I am of the view that a long term of imprisonment will not serve justice in this matter. The accused has already served a sentence of 12 months imprisonment. He is a first offender and considering the facts of this matter, he is not likely to re-offend.

The sentence that I impose will have to reflect not only that fact, but also the seriousness of the offence. It will, insofar as it is possible, have to be fair to the accused as well as to the deceased family and society at large.

In the result the sentence that I impose on the accused for the murder dolus eventualis of the deceased, that is Reeva Steenkamp, is 6 years imprisonment.

Once more I would like to thank counsel, all counsel involved, for their assistance. I would like to thank all the officers of this court and all the staff of this court. In the meantime, I will adjourn and I will be in chambers, just in case I have to come back to court. Counsel might like to consider whether or not they want to apply for leave to appeal. I am willing to hear it today if that is what counsel want. Court will adjourn.

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