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IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

(1) NOT REPORTABLE

(2) NOT OF INTEREST TO OTHER JUDGES

(3) REVISED.

CASE NO: A446 /2016

2/3/2018

In the matter between :

STANLEY THEMBA MANZINI Appellant

and

THE STATE Respondent

DATE OF HEARING : 28 NOVEMBER 2017

DATE OF JUDGMENT : 02 MARCH 2018

JUDGMENT

MANAMELA, AJ

Introduction

[1] The appellant is a 34-year-old man, currently serving a sentence of life imprisonment, after his conviction by the Regional Court for the Regional Division of Mpumalanga, Nelspruit (Mbombela) (the Trial Court) on 18 September 2014.

He was convicted on two counts of rape, involving two complainants. The two counts were taken as one for purposes of his sentencing by the Trial Court.

[2] The appellant exercised his automatic right of appeal in bringing this appeal before us, on 28 November 2017 , whereat Ms MMP Masete, appeared on behalf of the appellant, and Mr Molatudi, appeared for the State or respondent.

[3] The appellant submits that the Trial Court erred on a number of grounds, in respect of both his conviction and sentence. The appeal is opposed by the State, which supports both the conviction and sentence of the Trial Court. Before the Trial Court, the appellant entered a plea of not guilty to both counts of rape and contended that both complainants consented to the sexual intercourse. He testified in his own defence and had the benefit of legal representation during the trial. The Trial Court, after finding no existence of substantial and compelling circumstances, imposed the prescribed minimum life imprisonment in terms of section 51(I) of the Criminal Law Amendment Act 105 of 1997 (the Minimum Sentences Act).

Grounds of appeal (in summary)

[4] As already stated, the appellant challenges both his conviction and sentence on a number of grounds . I deal with the conviction under separate sub-headings *per* complainant and issues relating to sentencing under one sub-heading , next.

Conviction on Count 1 (Ms N)

[5] The appellant submits that the evidence of Ms P S N, the complainant in the first rape committed on or about 30 August 2009, was not treated with the necessary caution, as she was a single witness. Her evidence was not satisfactory in material respect and the Trial Court erred in finding her a reliable witness, when there were discrepancies between her testimony and contents of her statement made to the police, shortly after the rape. Her evidence is contradicted by her sister's evidence, N T, particularly with regard to the latter

witnessing the rape, the submission concludes.

Convictionon Count 2 (Ms N)

[6] Ms B N, was raped on or about 01 January 2011. The same contentions, as in count 1 , regarding Ms Ngcongwane being a single witness, are repeated under this count. It is also submitted that she was an unsatisfactory witness, as her evidence was full of improbabilities; said she was threatened with a knife, when she did not see any; falsely denied consumption of alcohol in the company of the appellant; failed to scream, when she was raped, despite the presence of several people at the tavern.

[7] The appellant's version is basically that both complainants were his girlfriends and sexual intercourse, with both, was consensual.

Sentence (both Counts 1 and 2)

[8] Regarding sentence, the appellant makes the following contentions. The Trial Court overemphasised the serio usness of the offences and the interests of the society over his personal circumstances. As a result, it imposed a sentence which is harsh , induces a sense of shock and is strikingly disproportionate to the offences committed. The Trial Court failed to individualise the sentence and show some mercy on the appellant. The rapes, for which the appellant was convicted, may not be classified the worst cases of rape, as the complainants did not suffer serious physical harm, as a result.

[9] It is further submitted that the Trial Court erred in the following respects: by not investigating existence of substantial and compelling circumstances before imposing sentence it did, and not considering the cumulative effect of the appellant's personal circumstances to constitute substantial and compelling circumstances . The appellant was 30 years old at the time of his sentencing on 18 September 2014; a first offender on a charge of rape,[1] and had spent 3 years and 8 months in custody, awaiting trial. It is, therefore, submitted that he had

[1] The appellant had two previous convictions: one for malicious damage to property in Barberton on 08 January 2004, for which the passing sentence was postponed for five years to 08 January 2009, and another for house breaking, also in Barberton, for which he was sentenced to imprisonment for one year on

increased prospects of rehabilitation.

[10] As stated, the State is opposing the appeal. Next, I deal with the evidence adduced at the Trial Court, together with submissions made on behalf of the parties.

Evidence at the Trial Court (summarised)

The State's Case (Count 1)

[11] The State called three witnesses. Ms Nkosi, the complainant, testified that on 30 August 2009, around 19h00, she was alone in her room, when she heard a knock on the door. She went to the door and found that it was the appellant. He had a bottle in his hand. He slapped her three time s on the face with an open hand and tried to hit her with a bottle, but missed. He pushed her and she fell on the floor; grabbed her by the arm and placed her on the bed. He then undressed her clothes; instructed her to suck his private part (ostensibly his penis), which she did, and then had sexual intercourse with her without consent. Her sister, X, came back from the shops and walked in on the appellant raping her. Upon her sister running out of the house to go seek help from neighbours, the appellant left her house.

[12] Ms N T was the second witness to testify in respect of this count. She told the Trial Court that she is a relative of the complainant and was actually her caregiver at the time of the incident. The complainant was recovering from stroke. On 30 August 2009, at around 18h45, she left the house for the shop to go buy bread. She left behind the complainant and her (i.e. the witnesses') 3-year-old son. Whilst on her way to the shop, her son came crying and told her that a certain man pushed him out of the house. She turned back to the house only to find a naked unknown man, whose face she could not see, pushing the complainant onto the bed. She ran out of the house to go seek help.

[13] Mr S M, the complainant' s brother in law , was the last witness to take the stand for the State. He testified as follows. At about 19h00, on 30 August 2009, he received a telephone call from the complainant asking him to rush to her

home. Upon his arrival at the complainant's home , he found her crying and shaking. She told him that she has been raped by the person (referring to the appellant) she was with in the street, earlier around 14h00 that day, when he (i.e. Mr M) went past them. He then went looking for the appellant at his house and didn't find him, but later when he was on his way to the police station, he saw the appellant in another vehicle by the BP garage. The appellant has been known to him for 20 years.

The appellant 's case (Count 1)

[14] The appellant testified .that he met the complainant during the day on 30 August 2009, when they fell in love. She gave him directions to her house . Later that day, he went to the complainant's house and found her in the company of two other people. The complainant chased the two-other people out of the house, after telling them that her husband (referring to the appellant) wanted to talk to her. This made the appellant think she wanted to have sex with him. Thereafter, they had consensual sex.

[15] Under cross-examination, the appellant mentioned that he met the complainant, who was by then unknown to him and was attracted to her by her facial appearance and body structure. He did not notice her disability then, but only when she testified in court. When he left her home, after the sexual intercourse, she was happy and did not appear to have any problems. He was surprised when he was arrested for rape.

The State's Case (Count 2)

[16] Ms N, the complainant, testified that on 01 January 2011 , around 23h30, she went to Duke's tavern looking for her friend , Sarah, when she met the appellant. She did not know him, but he volunteered to help her find her friend inside the tavern. When he did not find her friend, she wanted to go back home to sleep, but the appellant offered to accompany her home , only after they had stayed a while by the tavern. At some stage, whilst she was talking to another male person, the appellant called her and when she went to him, he threatened to kill her with a knife, if she made noise. They proceeded to the back of the

tavern, where he assaulted her with open hands and fists in the face and she fell to the ground. She was also assaulted with a brick by her mouth. He took off her pair of trousers and panties, and had sexual intercourse with her, without her consent. When two male persons appeared, the appellant got off and tried to run away, but he was apprehended .

[17] Mr I M was the other witness for the State on this count. He testified that on 01 January 2011, at around 23h00 he was also at Duke's tavern. Whilst there, he was approached by a certain girl, who told him that another girl was being raped outside, at the back of the tavern. They ran to the scene and found the appellant on his feet, whilst the complainant was crying and struggling to put on her pants. The appellant was known to him. The complainant was bleeding from the mouth and nose. The appellant told him that the complainant was his girlfriend, but the complainant denied this. She told the witness that the appellant had raped her and hit her with a brick. A crowd of onlookers gathered around and some started assaulting the appellant. He tried to run away, but was apprehended. Realising that the crowd of people gathered there could kill the appellant, the witness fired gunshot in the air and the crowd dispersed. The witness phoned the police and the appellant was arrested.

The appellant's case (Count 2)

[18] The appellant testified that he met the complainant, in this count, at the tavern. They sat around the same table consuming alcohol; he proposed love to her and she accepted his proposal. Thereafter, they stood up and went out of the tavern, having agreed to have sexual intercourse. They had sex in a toilet behind the tavern, but when some people appeared and asked what they were doing, the complainant told them that he was raping her. He told them that she was his girlfriend. In his view, she told them that she was being raped because she saw people coming to the scene. He denied threatening to kill her.

[19] Under cross-examination, the appellant confirmed that he was assaulted by the people gathered at the scene. He says this was after the complainant has told them that he had raped her. He admitted that Mr M protected him from the

crowd. He does not know how the complainant got her injuries and neither did he observe any injuries on her. It came out under cross-examination that the appellant had initially denied having sex with the complainant, but recanted his story, when DNA results became available.

Trial Court's judgment

[20] In my view, the Trial Court handed down a very comprehensive judgment. It dealt with the essentials of the evidence before it, significantly repeated above. There is no need to rehash the evidence. I will discuss the essential aspects thereof, below, to the extent warranted for this appeal.

[21] Regarding count 1, the Trial Court was mindful of the fact that the complainant' s evidence stood alone, as a single witness and emphasised that it will be treated with the necessary caution . The court stated that it was impressed by the complainant. She was a forceful witness, even though she had some limitations relating to her disability. It found that she had given a comprehensive version of what had transpired in the house and had stood firm in her testimony, despite the rigours of cross examination. Her evidence, in some respect particularly regarding the fact that she was crying after the incident, is supported by the evidence of the two other witnesses. The court was alive to the fact that there are some criticisms that could be levelled against the complainant' s evidence , like when she stated under cross-examination that she saw the accused once in Greyville prior to the incident, after testifying that she does not know the accused. However, the court found that this could not be considered a contradiction, as seeing somebody is not the same as knowing somebody. Regarding the perceived discrepancies between her statement to the police and her testimony in court, the court found her evidence clear and to be that when the accused came to her house, her sister and brother- in-law had already le ft, and she was alone. The court also found her forgetfulness or amnesia regarding the name of her brother-in-law or referring to him as a friend, not to affect the high quality of her evidence, overall. It accepted her evidence and that of the two other State witness as the truth.

[22] Regarding count 2, the Trial Court was equally impressed by the evidence

of the complainant and considered her to have given a comprehensive version of what transpired during the incident, whilst mindful of the need to exercise the necessary caution. The court found the evidence that she was bleeding from the mouth and nose supported by the evidence of the witness, Mr Masuku. It nevertheless acknowledged the shortcomings in her testimony, in some respects, and criticisms that may be levelled against her statement to the police. The complainant denied some of the contents in the statement (like that she drank several beers on the day, in question) and insisted that she had mentioned to the police that the appellant had threatened her with a knife. In the Trial Court's view the police might have made a mistake when they took her statement in this regard. However, the court found this not adversely affecting the high quality of her evidence, supported by that of Mr Masuku, a member of the Correctional Services. Whilst the court was alive to the so-called contradictions, it accepted her evidence and that of Mr Masuku, as the truth.

[23] The Trial Court found it remarkable that the appellant had initially denied having sexual intercourse with the complainants, but only later to contend there was consensual sexual intercourse, when the DNA results became available. It found the appellant's version " pregnant with improbabilities". [2] It found it improbable that the witnesses would have invented such a detailed version or merely sucked the testimonies from their thumbs. In count 2, the court also found it improbable that the complainant had consented to the sexual intercourse , when she was found bleeding from the mouth and nose, and other people had called out for her help. She would not have consented to sex, when she was menstruating , the court also found. Further, the court pointed out that Masuku who protected the appellant from the crowd, wouldn't have lied about the complainant bleeding through the mouth and nose. Due to the improbabilities , the court rejected the appellant's version as improbable and not reasonably possibly true and accordingly found, on .the basis of available evidence, the counts to have been proven beyond reasonable doubt.

Grounds of appeal judgment and legal principles (an analysis)

[24] Below, follows an analysis of the grounds of appeal and the material parts of the judgment, against the applicable legal principles. This will not be a rehash of the discussions appearing above. I use the grounds of appeal as subheadings.

Complainants as single witnesses and alleged discrepancies in their evidence

[25] As stated above, one of the appellant's grounds for challenging his conviction is on the basis that the Trial Court did not apply cautionary rules to the evidence of both complainants, as single witnesses, in the respective matters. But, the Trial Court clearly stated that the evidence of both complainants will be treated with necessary caution and there is nothing suggesting the contrary.

[26] n terms of section 208 of the Criminal Procedure Act 5 I of 1977, an accused person " may be convicted of any offence on the single evidence of any competent witness" . In the relatively new matter of *Modiga v The State,*[3] the Supreme Court of Appeal repeated the longstanding "salutary warning .. .that even when dealing with the evidence of a s.ingle witness, courts should never allow the exercise of caution to displace the exercise of common sense" from the decision in *S* v *Snyman.*[4] The single witness must still be credible.[5] The Trial Court comprehensively assessed the evidence of both complainants against the circumstances in the respective matters. In the sum, the court found that the complainants gave comprehensive versions of what transpired. It also considered their evidence to be supported by those of the other State witnesses, despite the so-called contradictions, which did not affect the quality of their evidence.

[27] In the decision of *S v Teixeira*[6]*,* the court emphatically held that regarding the evidence of the single witness, "a final evaluation can rarely, if ever, be made without considering whether such evidence is consistent with the probabilities".[7] Despite, the so-called inconsistencies and contradictions, I agree with the Trial Court that, the quality and probative value of the complainants was indeed in line

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[2] See line 15 on indexed p 167.
[3] [2015] 4 All SA 13 (SCA) at pars [32]· [33].
[4] 1968 (2) SA 582 (A) at 585G; [1968) 3 All SA 18 (A).
[5] See S *v Sauls* 1981 (3) SA 172 (A) at 180 C- H. See further Wigmore JH *A Treatise on the Law of Evidence* vol 3 at par 2034 at 262.
[6] 1980 (3) SA 755 (A).
[7] See *S v Teixeira* at 761

with the circumstantial evidence and probabilities in the matters. Any flaws that may have existed [as it would indeed be remarkable if there were none in a testimony of a witness of the kind of the complainants[8]] were of no consequence under the circumstances. In terms of the *dictum* in *Modiga,* the exercise of caution ought not to yield to the exercise of common sense.[9] Therefore, it is my view that nothing under this ground of appeal justifies interference with the judgment of the Trial Court.

Contradictions amongst State witnesses

[28] The alleged contradictions were briefly dealt with under the previous heading. Suffice to reiterate that, the Trial Court found no material contradictions. The approach of the Trial Court is supported by the authorities, including in the decision of S *v Van der Meyden,*[10] that a defence cannot be possibly true "if at the same time the State's case with which it is irreconcilable is "completely acceptable and unshaken" .[11] Therefore, I agree that the so-called contradictions did not materially affect the probative value of the evidence and the conclusions reached by the Trial Court, thereon. This ground of appeal is also without merit. Therefore, the appeal in respect of conviction, will fail.

Sentencing

General

[29] Regarding sentence imposed on the appellant, it is submitted that the Trial Court erred in imposing sentence of imprisonment for life. The court ought to have deviated from the prescribed minimum sentence, if it had not failed to investigate existence of substantial and compelling circumstances or had considered the cumulative effect of the appellant's personal circumstances. Further from what is stated above,[12] the appellant was an unemployed 30-year-

[8] *S v Sauls* 1981 (3)SA 172 at 180H.
[9] See *Modiga* at par (32).
[10] see S *v Van der Meyden* 1999 (I) SACR 447 (W).
[11] See S *v Van der Meyden* at 449f - 450b.
[12] See par (9), above.

old and is unmarried father of two kids. Due to his relatively youthful age and "first offender" status, it is submitted that the appellant had increase d prospects of rehabilitation.[13] It is further, submitted that, the Trial Court was without mercy; harshly sentenced the appellant disproportionately to the offences he committed, and that the rapes he committed are not the worst cases of rape, as the complainants did not suffer serious physical harm therefrom. I deal with these grounds of appeal under subheadings , below.

[30] During oral submissions before us, Ms Masete for the appellant argued that in terms of the decision of *Ndlovu v* S,[14] the Trial Court could not have convicted the appellant in terms of section 51(1) of the Minimum Sentences Act to life imprisonment, when the charge sheet mentioned both sections 51(1) and 51(2) of the same legislation. The charge sheet included both sections as potentially applicable and used the conjunction "or" in respect of the two sections.[15] In *Ndlovu,* the charge sheet did not mention section 51(1), but only section 51(2). Consequently , the Constitutional Court found that the Regional Court lacked jurisdiction to impose a sentence in terms of the former statutory provision, when the charge sheet only included the latter provision.[16] The Trial Court accepted, in respect of count 2, that the complainant had been assaulted with intent to do previous bodily harm, due to her injuries sustained during the rape.

Emphasis of the offence and interests of the society over appellant's personal circumstances

[31] The Trial Court was clearly appreciative of the responsibilities regarding its sentencing exercise and the need to balance the competing interest s, in this regard.[17] From its judgment, part of which is repeated above, it is clear that the Trial Court considered the personal circumstances of the appellant. The court, equally, considered the fact that the crimes committed by the appellant were of a

[13] See footnote 1 , above.
[14] 2017 (2) SACR 305 (CC).
[15] See indexed pp 2 and 3.
[16] See *Ndlovu* at pars [46]- [47].
[17] See lines 4-20 on indexed p 172.

serious nature; its duty to protect women without sacrificing the appellant[18] or deterring others without making the appellant a scapegoat for the offences of others.[19] I am, there fore, satisfied that the Trial Court reasonably discharged its sentencing responsibilities in this regard.

Substantial and compelling circumstances I cumulative effect of the appellant's personal circumstances

[32] The Trial Court did not find existence of substantial and compelling circumstances to deviate from the minimum sentence it imposed: lifelong imprisonment. It is submitted, on behalf of the appellant, that the Trial Court actually failed to investigate existence of substantial and compelling circumstances. It is correct that the responsibility regarding the presence or absence of substantial and compelling circumstances falls on the State, the defence or accused and the court itself. It is not the sole responsibility of the defence to place on record the substantial and compelling circumstances in the matter, although the defence or accused has a responsibility to " pertinently raise such circumstances for consideration"[20] by the trial court.[21] The defence or an accused often discharges its part, in this regard, during the pre-sentencing address in terms of section 274(2) of the Criminal Procedure Act 51 of 1977, but this is generic to all criminal matters.

[33] Both sides made submissions with regard to the substantia l and compelling circumstances. The defence submitted on behalf of the accused that the Trial Court ought to deviate from the prescribed minimum sentence, as the

[18] See lines 15-18 on indexed p 175.
[19] See lines 18-21 on indexed p 175.
[20] In *S* v *Roslee* [2006) SCA 15 (RSA) at 545e the court affirmed the pre-sentence responsibilities of accused and held: "Although there is no onus on an accused to prove the presence of substantial and compelling circumstances, it must be so that an accused who intend s to persuade a court to impose a sentence less than that prescribed should pertinently raise such circumstances for consideration." I omitted the references to this quotation.
[21] This apparent from the reading of the following part from section 51(3) of the Minimum Sentences Act:*"(a)* If anv court referred to in subsection (1) or (2) is satisfied that substantial and compelling circumstances exist which justify the imposition of a lesser sentence than the sentence prescribed in those subsect ions, it shall enter those circumstances on the record of the proceedings and must thereupon impose such lesser sentence ... " [underlining added for emphasis]

accused is a first offender and has greater prospects for rehabilitation.[22] The State submitted, in the main, that the lack of remorse throughout the trial ought to sway the court to impose the applicable minimum sentence . The court, in my view, meticulously went through the particular circumstances of this matter from all angles. This included the personal circumstances of the appellant, as already stated above or the cumulative effect of those circumstances; the fact that the first rape was committed in 2009 and the second in 2011 , which the court considered to be indicative of inability to learn from past mistakes , on the part of the appellant. Also considered were that, in count 1, a disabled woman was raped and in count 2, the complainant was also assaulted with an open hand, fists and a brick , which the court considered to be indicative that the appellant is a violent person. The court also considered that the appellant spent almost 4 years in custody awaiting his trial. It relied on the decision of S v *Fortune,*[23] whose findings were in fact reliant on the decision of S *v Malgas,*[24] regarding the fact that any " circumstances that would render the prescribed sentence disproportionate to the offence would constitute the requisite " weighty justification" for the imposition of a lesser sentence ",[25] but found none in the matter . I also agree with this finding of the Trial Court arrived at after meticulous investigation of the circumstances in the matters. Therefore, there is nothing meritorious under this ground of appeal.

Lifelong sentence: shockingly harsh and strikingly disproportionate to the offences

[34] It was conceded, on behalf of the appellant, that the crimes for which he was convicted are of serious nature.[26] The concession is ordinarily normal. As Mohammed JA (as he then was) stated in the decision of the Supreme Court of Appeal in S *v Chapman,*[27] "[r]ape is a very serious offence, constituting as it does

[22] See Iines 21 - 24 on indexed p 170.
[23] 2014 (2) SACR 178 (WCC).
[24] 2001 (I) S ACR 469 (SCA).
[25] See *S v Fortune* at 185d- e.
[26] See line 19 onwards on indexed p 170 ; pa r 17 of the appellant ' s heads of argument
[27] 1997 (2) SACR 3 (SCA).

a humiliating, degrading and brutal invasion of the privacy, the dignity and the person of the victim ".[28] The same sentiments have been repeated in countless other cases, including another decision of the Supreme Court of Appeal in S *v Vilakazi.* [29] Against that reality, I, therefore, do not agree that the crimes committed by the appellant were not rapes of the worst kind. In fact , I do not subscribe to the notion that one can apply degrees of comparison to a serious and abominable crime, like rape. If there ever was a need for a fair comparison, such may only be regarding exterior activities to the actual crime of rape, including circumstances under which the crime of rape was committed. But, not the rape itself .

[35] In this matter, the appellant raped a disabled woman, after assaulting her, and less than two years later , he raped another woman whose penchant to befriend strangers he betrayed that fateful night, also after assaulting her. And in the absence of substantial and compelling ·circumstances, the Trial Court imposed the prescribed minimum sentence: life lo ng imprisonment. However, the Trial Court showed some level of mercy to the appellant by taking the two counts of rape as one, for purposes of sentencing , thus avoiding the cumulative effect of the sentence- practically awkward, as the notion of consecutive life sentences, may be.

Prospects of (rehabilitation

[36] Despite, his two other previous convictions for malicious damage to property and house breaking , it is submitted that the appellant lacks propensity to commit crimes. This, including his age (i.e. 30 years old, at the time of sentencing on 18 September 2014) increases his chances of rehabilitation, it is submitted. The Trial Court comprehensively dealt with all these aspects and was unpersuaded that the imposition of a sentence other than for life lo ng imprisonment, was appropriate. And I see no valid cause to differ or interfere.

Conclusion

[28] See *S* v *Chapman* at 5a- b.

[37] It is trite that sentencing or punishment is pre-eminently a matter for the discretion of a trial court. The discretion of an appellate court becomes available only where there is misdirection; the sentence imposed is shockingly or disturbingly inappropriate or there is an irregularity originating from the trial court not properly and judicially exercising its discretion.[30] It is my view that, the Trial Court judiciously discharged its responsibilities, regarding both conviction and sentence. There is no room for this Court, on appeal, in any way, to interfere with the judgment of the Trial Court, in any respect. Therefore, the appeal will fail with regard to both conviction and sentence.

Order

[38] In the result, I propose that the following order be made:

a) the appeal against conviction and sentence is dismissed ;
b) The conviction and sentence of the Regional Court for the Regional Division of Mpumalanga, Nelspruit is confirmed.

K. La M. Manamela
Acting Judge of the High Court
02 MARCH 2018

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[29] 2009 (1) SACR 552 SCA at 555g-h.
[30] See S v *Rabie* 1975 (4) SA 855 (A) at 8570-E]. See furthers v *Pillay* 1977 (4) SA 531 (A) at 535D-F wherein the court said the following about the concept of misdirection: "Now the word " misdirection " in the present context simply means an error committed by the Court in determining or applying the facts for assessing the appropriate sentence. As the essential enquiry in an appeal against sentence, however, is not whether the sentence was right or wrong, but whether the Court in imposing it exercised its discretion properly and judicially, a mere misdirection is not by itself sufficient to entitle the Appeal Court to interfere with the sentence ; it must be of such a nature, degree, or seriousness that it shows, directly or inferentially, that the Court did not exercise its discretion at all or exercised it improperly or unreasonably. Such misdirection is usually and conveniently termed one that vitiates the Court's decision on sentence."

NV KHUMALO

Judge of the High Court

I agree and it is so ordered

Appearances:

For the Appellant	:	Adv MMP Masete,
	:	Pretoria Justice Centre, Pretoria
For the Respondent	:	Adv M.R. Molatudi
		Director of Public Prosecutions
		Gauteng Division, Pretoria