IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)

Case Number: A09/2019

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

13/11/2019

E.M. KUBUSHI DATE

In the matter between:

DARRYL JONATHAN FISHER **APPELANT**

and

THE STATE **RESPONDENT**

JUDGMENT

KUBUSHI J

INTRODUCTION

[1] This appeal is against the sentence of life imprisonment imposed against the appellant. The issue to be determined is whether the trial court misdirected itself when it made a finding that there are no substantial and compelling circumstances for deviation from imposing the prescribed minimum sentence of life imprisonment.

[2] The sentence appealed was imposed by the High Court of South Africa (Circuit Court Local Division for the Vereeniging Circuit District, Vereeniging), on 15 June 2011. The matter is on appeal, the trial court having refused to grant the appellant leave to appeal both the conviction and sentence but on petition to the Supreme Court of Appeal leave to appeal the sentence only was granted.

[3] In the trial court, the appellant was arraigned as the second of two accused in respect of the murders of the 23year old Kevin Geswent ("Mr Geswent") and his 17year old girlfriend Siobhan Waterson ("Ms Waterson"). The appellant and his co-accused were further charged with the armed robbery of Mr Geswent's motor vehicle and the illegal possession of a firearm and ammunition.

[4] The two counts of murder together with the count for robbery with aggravating circumstances were read together with the provisions of section 51 (1) read with Part 1 of Schedule 2 of the Criminal Law Amendment Act 105 of 1997 ("the Criminal Law Amendment Act") for purposes of sentencing. Before the trial began, the appellant was made aware of the consequences of section 51 (1) of the Criminal Law Amendment Act, if found guilty.

[5] Based on the principle of common purpose, the appellant and his co-accused were convicted of all the charges and sentenced to life imprisonment on each of the murder convictions, 15years imprisonment in respect of the robbery with aggravating circumstances, 3years imprisonment for the illegal possession of a firearm and 18 months imprisonment for the illegal possession of ammunition. The two life sentences were to run, by implication, together as one life sentence. The other sentences were ordered to run concurrently with the sentence of life imprisonment. Before us, only the sentence of life imprisonment is appealed.

[6] The appellant is appealing the sentence on the ground that due to his age – he was 20years old at the time of the commission of the offences; his reduced moral blameworthiness in the commission of the offences, and, the time – 4years and 10 months - spent in detention awaiting the finalisation of the trial, the trial court erred in not making a finding that, cumulatively, these factors constitute substantial and compelling circumstances for deviation from the prescribed minimum sentence.

[7] The appellant submitted further that the sentence of life imprisonment, in the circumstances of this case, is disproportionate and that this court is entitled to intervene by setting aside the sentence of life imprisonment and replacing it with an appropriate sentence that will reflect the seriousness of the offence. It was suggested on behalf of the appellant that imprisonment for a period of 20years would be an appropriate and just sentence in the circumstances of this case.

FACTUAL BACKGROUND

[8] It is common cause that during the morning of 8 August 2006, a maroon Opel Corsa ("the Corsa") was hijacked. The persons involved in the hijacking of the Corsa were one Jason Marais ("Jason") and Conrad Jacobs ("Conrad"). After

unsuccessfully trying to dispose of the Opel Corsa Jason and Conrad met up with the appellant, his co-accused and one Algemain Brownley ("Algemain"). The purpose of such a meeting was to decide how to dispose of the Corsa. Having failed to dispose of the Corsa the whole day a decision was taken that they should hijack a motor vehicle that could be easily disposed of.

[9] After fruitlessly scouring their preferred area, a decision was taken to hijack a motor vehicle in one of the areas where they might be recognised. The evidence shows that some of the members of the group tried to dissuade such action but they were overruled.

[10] Whilst they were looking, they came across a blue Volkswagen Velocity Golf (an upgraded first generation mark 1 Volkswagen Citi Golf) ("the Velocity") parked in the street. Seated inside the Velocity were two youngsters, Mr Geswent and Ms Waterson, who were boyfriend and girlfriend. Ms Waterson had just been brought back home in the Velocity and was still in the motor vehicle with her boyfriend.

[11] The Corsa stopped behind the Velocity and the appellant and his co-accused together with Jason climbed out and hijacked the Velocity, forcing Mr Geswent and Ms Waterson to accompany them. The youngsters were forced with the threat of one serviceable firearm and an unworkable firearm hence the charge for robbery with aggravating circumstances.

[12] The Velocity was driven to an isolated place along the old drag road where Mr Geswent and Ms Waterson were shot each with one bullet at the back of the head execution style. The Velocity was first stopped and the youngsters were ordered out of the Velocity and told to lie on the ground face down. The first to be shot was Mr Geswent and then Ms Waterson. Mr Geswent had folded his hands so

that his head could rest on them. Ms Waterson, on the other hand, must have moved her hands before she was shot because her hands were open against her face almost clasping at the palms inward as one would find a person who is struck by the horror of the situation once she realised that once Mr Geswent had been shot, she would also die within the next instant.

[13] Unfortunately for the appellant and his friends, the hijacking was seen by Ms Waterson's brother through the window of his bedroom. He notified his family about the maroon Corsa that had stopped behind the Velocity when the youngsters were hijacked. Mr Geswent's family went out looking for the Corsa and found it two days after the hijacking being driven by the appellant's co-accused. When he was arrested the appellant's co-accused implicated Jason who in turn when arrested implicated the appellant.

AD SENTENCE

[14] As already stated the appellant together with his co-accused were sentenced for the two murders in terms of the provisions of section 51 (1) read with Part 1 of Schedule 2 of the Criminal Law Amendment Act. In terms of the provisions of Part 1 of Schedule 2 the murders each carried a prescribed minimum sentence of life imprisonment for two reasons, namely, that the death of each deceased was caused by the appellant and his friends in committing an offence of robbery with aggravating circumstances and that the offences were committed by a group of persons acting in the execution or furtherance of a common purpose.

[15] In terms of the provisions of the Criminal Law Amendment Act, life imprisonment as a prescribed minimum sentence can only be imposed by a court where there are no substantial and compelling circumstances warranting deviation from that sentence. When passing sentence, the trial court came to the conclusion that there are no substantial and compelling circumstances and as such imposed the sentences of life imprisonment. Whether there are substantial and compelling circumstances is answered by considering whether the minimum sentence is clearly disproportionate to the crime.[1]

[16] It is the appellant's submission that the trial court erred in concluding that there are no substantial and compelling circumstances warranting deviation from imposing the prescribed minimum sentence. It was argued on behalf of the appellant that factors such as the age of the appellant, he was 20years old at the time of the commission of the offences; his reduced moral blameworthiness when the offences were committed; and the time spent in detention awaiting trial, 4years and 10 months, cumulatively taken ought to have convinced the trial court to find that there are substantial and compelling circumstances. The question, therefore, is whether the trial court misdirected itself and whether the aforementioned factors, cumulatively considered, constituted such substantial and compelling circumstances.

[17] The court in *S v Malgas* held that when considering whether there are substantial and compelling circumstances *"All factors traditionally taken into account in sentencing (whether or not they diminish moral guilt) thus continue to play a role; none is excluded at the outset from consideration in the sentencing process. While the emphasis has shifted to the objective gravity of the type of crime and the need*

[1] See Centre for Child Law v Minister of Justice and Constitutional Development & Others (National Institute for Crime Prevention and the Re-integration of Offenders, as Amicus Curiae) 2009 (2) SACR 477 (CC) para 39.

for effective sanctions against it, this does not mean that all other considerations are to be ignored. The ultimate impact of all the circumstances relevant to sentencing must be measured against the composite yardstick ('substantial and compelling') and must be such as cumulatively justify a departure from the standardised response that the Legislature has ordained."

[18] From the record, it is apparent that when embarking on the inquiry whether substantial and compelling circumstances exist, the trial court took into account all the factors traditionally taken into account during sentencing. It considered what is traditionally known as the 'sentencing triad', as outlined in the case of *S v Zinn*[2], that is, the crime committed, the interest of society as well as the moral blameworthiness of the appellant. The trial court, correctly so, came to the conclusion that save for the issue of the 4years and 10 months imprisonment that the appellant spent in detention awaiting trial, there were no substantial and compelling circumstances warranting deviation from imposing the prescribed minimum sentence required in law.

[19] The trial court in its judgment on sentence considered the murder of Mr Geswent and Ms Waterson to have been callous and inhuman. Inhuman in the sense that even though it is not known what went on from the moment Mr Geswent and Ms Waterson realised that the Velocity was being stopped in an isolated area, but, human experience tells that if nothing was said beforehand by their assailants, then Mr Geswent and Ms Waterson had hoped that they would be dropped off in a remote area so that their assailant could have an opportunity to get away. There can be little doubt that when Mr Geswent and Ms Waterson were required to position themselves on the side of the road or when the firearm was taken out, they realised

[2] 1969 (2) SA 537 (A).

that death was a real possibility and would have pleaded to be spared. Instead they were brutally killed.

[20] The trial court found that a callous and deliberate decision to kill Mr Geswent and Ms Waterson was taken by all who participated [including the appellant] by considering their self-interest in not being caught for hijacking or in not proceeding with the robbery where some money could be made through disposing of the Velocity and the cell phone. The trial court's view was that for the appellant, acquiring the mag wheels for himself was of paramount importance against the life of two youngsters. The appellant is said to have seen himself as a businessman in the death of the two youngsters who he accepted as collateral damage for him to make a decent living.

[21] The deceased were still very young. Mr Geswent was only 23 years old three years older than his assailants. Ms Waterson, on the other hand, was a mere 17 year old who was three years younger than her assailants. The trial court found that Mr Geswent had co-operated with the attackers when he was asked about the tracking device of which he knew nothing about. He took off his shoes when he was ordered to do so by the appellant. Despite that, they were brutally killed –execution style –by their assailants who showed no mercy.

[22] The trial court, also, considered the interest of society. In so doing, it remarked that a community was entitled to believe that the hard industry, the hard labour, the work that goes in the suffering to educate children, to give them a better life, can be rewarded. It applauded the responsibility taken by the parents of Mr Geswent and Ms Waterson that translated into the fulfilling lives that were lived by their children until their death. Both mothers described their children as law

abiding citizens and responsible children. It is Ms Waterson's testimony that her daughter was an "A" grade student who excelled at school. Mr Geswent's mother testified that Mr Geswent was a quite child who was always at home and took life very seriously.

[23] The trial court also applauded the members of the community who through their actions, by scouring the streets looking for the perpetrators, have resulted in the apprehension of the killers of Mr Geswent and Ms Waterson.

[24] The trial court stated, further, that there appears to be a view that if one kills a victim, one will be free. It was, therefore, necessary to send a strong message that all such action will do, will be to aggravate the situation, and the judgment it was to give in this case must give effect to that. In its findings, it regarded the court as not being there to afford any compensation to persons who believe that despite the act of robbery, despite the act of hijacking, the further act of killing can be justified.

[25] When it came to the personal circumstances of the appellant, the trial court comprehensively considered all factors stated in the probation officer's report. The factors were as stated hereunder.

[26] The appellant's father was a German citizen, who effectively abandoned him. His mother similarly appeared to have difficulty remaining in the country and moved back to Swaziland leaving the appellant with her sister. Apparently the mother seldom visited him and even on her passing, he only effectively became aware of it sometime after it had happened. He was effectively brought up through the parents of a friend with whom he stayed, despite these deprivations and particularly the emotional sustenance that one expects a parent to provide, he was able to complete grade 11 and started with grade 12, but did not complete it, because of an arrest for

shoplifting. He was not married but has a child. He informed the probation officer that he did not return to school because he could not get his school books after he came out of prison and was too ashamed to go back to school and ask for new books. He then started doing piece jobs, and helped a friend by effectively becoming a disc jockey at the friend's night club. He was then again arrested and after release in June 2006, started what he claimed was his own business of buying and selling mag wheels. He stayed with the friend and the friend's mother until he was 17year old and after that, which would be a period of three years until he committed the crimes for which he is now convicted, he rented a room or stayed with other friends including his co-accused.

[27] The appellant's psychological functioning was set out in the probation officer's report and it was found that he mixes easily. He will join his friends, and will even join them when they do negative things, but it does appear that he was looked up to by his peer group since he indicated that he helped the group members with their personal problems. He was found to be physical and intellectually stimulated and had many friends.

[28] While the appellant was a Christian by birth, he had followed the Islamic faith. His daughter was 7 years of age at the time of sentencing, but he never lived with the mother of his child. The mother of the child had moved to Cape Town. Apparently her family did not approve of him. Despite the feelings of rejection, he did not believe that he belonged anywhere, because his mother was black and his father was white. He believed that when he was taken by the friend's mother that he did well at school, and there were no problems. He believed that the problems occurred when Shiela relocated to another area, he then claims that he befriended those who had a negative impact on him and he started abusing drugs. He claimed that he

smoked a few cigarettes *per* day but abused alcohol on weekends and in grade 10 started abusing ecstasy. From 2006 he started sniffing cat with his friends, but only abused this drug while his friends abused other drugs.

[29] He claimed to have committed the shoplifting offence in order to survive and also to be part of his friends and be accepted by them. He viewed his actions as effectively a consequence of seeking acceptance from friends and to belong. He did not accept responsibility for his actions and belatedly claimed that he felt upset that somebody died, even if he did not do it.

[30] From the aforementioned and when reading the trial court's judgment on sentence what comes through is that the trial court found the seriousness of the murders and interest of society to outweigh the personal circumstances of the appellant. The question at this juncture is whether or not in the light of the aforementioned considerations by the trial court, can this court interfere with the sentence?

[31] The determination of an appropriate sentence resides pre-eminently within the discretion of the trial court. This discretion can be interfered with only under circumscribed conditions, namely, when the trial court misdirected itself in a material respect or when the disparity between the imposed sentence and that which the court of appeal would in the circumstances have imposed is so striking that the sentence can be described as shocking and disturbingly inappropriate.[3]

[3] Director Public Prosecutions v Mngoma 2010 (1) SACR 427 (SCA) para 11.

[32] The above position was reiterated in the case of *S v Malgas*[4] when the court stated the following:

> *"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."*

[33] For the reasons that follow hereunder, I find the sentence of life imprisonment imposed by the trial court on the appellant not vitiated by any material misdirection on the basis of which this court may interfere. I find the argument by the appellant that his age, reduced moral blameworthiness and the time he spent in detention awaiting trial, cumulatively, taken should have convinced the trial court that substantial and compelling circumstances exist, to have no merit.

[34] It is apparent from the record that all the aforementioned factors were comprehensively considered by the trial court in its judgment on sentence. These factors, in my view, whether individually or collectively considered do not carry the necessary weight against the gravity of the offences, the interest of society and the role played by the appellant in the commission of the offences.

[35] When the trial court considered the youthfulness of the appellant as a factor in mitigation of sentence, it first acknowledged the probation officer's report which indicated a far more serious lack of mentoring and the failure of basic support from effectively the day the appellant was born, but expressed itself as follows:

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[4] 2001 (1) SACR 469 (SCA) at 478d-g.

"Those were callous and conscious decisions that were made and in the case of accused 2 [the appellant], *he had an education, he had somebody who cared for him, and there is nothing to suggest that at the time that he committed these offences, his business was not doing well for whatever reason, whether within or outside the law. His conduct on the night in question was simply of a person who believed that he was doing a business deal and the consequences was nothing to be concerned about, because he would not be caught. Once again, the clearly mitigating factors, he was 20years at the time, but as I have indicated already, this is not an immature 20year-old, this is a person who have seen life, who has seen what life can do but does not rise and concern himself with the lives of others, but selfishly looks to his own end even when his stomach is full and continues with his business operation. Yes, he has had a hard upbringing, so have others. He has been effectively an orphan, but so have others. Of great concern is that despite his own deprivations and even taking into account that he made that choice, he did place the value of just another amount of money in his back pocket, just the avoidance of being arrested, above the life of two individuals."*

[36] On appeal, it was argued on behalf of the appellant that the trial court, wrongly, elevated the appellant's deprivations and hardships he had undergone to a higher standard. It expected the appellant to be more mature than the other perpetrators. The argument being that such deprivations should have instead counted in the appellant's favour when sentence was passed.

[37] I do not agree with the sentiment expressed that the trial court expected a higher standard from the appellant due to his deprivations. The deprivations, in my view, were explained in the context in which the appellant's age was considered.

[38] In fact the trial court did find the age of the appellant to be mitigating. However, it went further to explain why, in this case, the age, which would normally be taken as a mitigating factor, did not count in favour of the appellant. The explanation given was that the appellant was a 20year old who got to know more than even the police - he knew where to sell a cell phone, which street corner is a man who will give you drugs and money; he was in direct contact with the person who will strip a vehicle knowing that it is stolen, and no doubt knowing that there may be blood on him. The trial court did make a finding that the appellant's age is a mitigating factor but, correctly so, did not find it to be a substantial and compelling factor.

[39] The appellant was not a vulnerable immature young person when it came to crime. Thus, the submission that he was still at a vulnerable age where peer pressure played a role, is not sustainable. He had been on the street a long time and was looked up by his peers. There is also no evidence that he was persuaded by his peers or influenced by his personal background to take part in the commission of the offences. At the time of the commission of these offences, he was already a career criminal. He was a criminal and lived and sustained himself through crime.

[40] The proposition by the appellant that the appellant played a lesser role in the murder of the two youngsters is not borne out by the facts of the case. It comes out very clear that even though there is evidence indicating that the appellant was

against the killing of Mr Geswent and Ms Waterson, he did not distance himself from his co-accused's conduct either before or after the killing.

[41] For instance, the trial court found that as a 20year old, the appellant did not demonstrate redemption when he had two opportunities to do so. The first time was when they were discouraged from going into an area where they appreciated the risk of being discovered and identified. The second time was when two out of three people in the motor vehicle said no to the killer. On both these occasions he should have walked away and disassociated himself. He, however, persisted because he wanted the mag wheels, and did not follow the path of the two others who once on hearing that the two youngsters had been murdered, immediately distanced themselves.

[42] In this regard the trial court stated as follows:

> " *there are two other aspects that are common to both accused 1 and 2* [appellant] *and that is one cannot look upon those last moment of the youngsters in a way where nothing was said by them, they were seeking pity, seeking that their lives could be spared. That is not the real world, the real world is what they saw and what they faced and from the moment the decision was made to stop that vehicle until the trigger was pulled, they saw, they heard the expressions and whatever else may have been said, or gestured by two young innocent people, but they persisted. I regard those second to be hours. There was no reason why there could not be a turning back, there were options open, they decided [the appellant included] not to take it and they did not take it for the most reprehensible reason.*"

[43] It was conceded on appeal that enough was not done by the appellant to show his disapproval of the killings. The concession is that he could have done more, which he did not do, to disassociate himself from the killings. In my view, nothing was done by the appellant to show his disapproval or to distance himself from the killings of the two youngsters. The only thing that he did was to make gestures with his hands whilst in the Velocity that the two youngsters should not be killed. Other than that, which in my view is not enough, he did nothing.

[44] The role the appellant played in the commission of these offences was not of someone who was incidentally there and did not do enough. The evidence show that the appellant was an active participant at all material times – from the time the Velocity was hijacked until Mr Geswent and Ms Waterson were killed. He was part of the people who alighted from the Corsa and hijacked the Velocity. He is said to have been in possession of an unworkable firearm which he used to threaten the two youngsters. He was in the Velocity when it was driven to a secluded place where the killings took place. At the secluded place he is said to have ordered Mr Geswent and Ms Waterson out of the Velocity and instructed them to lie face down on the ground. He ordered Mr Geswent to take out his shoes which were taken by the group.

[45] The proposition that the appellant failed to distance himself from the murders because he was afraid of his co-accused who was in possession of the firearm and had also threatened them, is not convincing. This is not what the appellant said in his evidence in court. As already stated, the appellant failed to tell the trial court what actually happened that fateful night. What is on record about this issue is only the evidence of Jason whose evidence the trial court did not accept in many parts because he was found to be protecting himself.

[46] From the evidence tendered it is evident that, though the appellant was 20years old at the time, he was already a career criminal. There was no basis in law for the trial court to deal with him differently from his co-accused. He was found guilty of the murders based on the principle of common purpose. The purpose of common purpose is so that all the perpetrators are dealt with the same.

[47] The contention on behalf of the appellant that common purpose in respect of the murders was not proven cannot be true. I am in agreement, therefore, with the argument that an inference cannot be made that the appellant did not make common purpose or he did not have common cause with what happened there. The finding of the trial court that the appellant and his co-accused were guilty of the murders was based on the factual matrix that the killers of Mr Geswent and Ms Waterson acted with common purpose. The finding having not been appealed stands. It is rather ingenious, therefore, that an argument could be raised against such finding when only sentence is appealed.

[48] As a result, the further proposition by the appellant that the trial court ought to have treated him differently because he did not pull the trigger must fall flat. As already stated the conviction was based on common purpose. There is no basis in law that the appellant should have been treated differently from the person who pulled the trigger. That is what common purpose entails. When a group of persons are found to have acted in common purpose not each one of them pulled the trigger but they are equally liable.

[49] Except for a cursory mention in passing, there is nothing in the judgment of the trial court that indicates that consideration was given to the time spent by the appellant in detention awaiting trial. As already stated this factor was taken as

mitigating sentence by the trial court. However, the period spent in custody awaiting trial is a factor which does not, in the circumstances of this instance, assist the appellant. This factor has been held by the Supreme Court of Appeal[5] as one of the factors to be taken into account when considering whether substantial and compelling circumstances exist and ought to be weighted with other circumstances. On its own, it does not constitute a substantial and compelling circumstance.[6]

[50] Similarly like the age factor, though it was found to have a mitigating effect on the sentence, the trial court could not find it to be a substantial and mitigating factor. The trial court was correct to have found as such, for when weighed with other factors it is trumped by the gravity of the crime and the interest of society.

[51] The trial court went to the extent of considering the possibility of rehabilitation and found that rehabilitation in the circumstances of the appellant ought to happen within the confines of a prison. This finding in my view is correct as the appellant showed no remorse at all.

[52] It was argued during trial on behalf of the appellant that he was remorseful in that he handed himself up to the police but the trial court found otherwise. In its disagreement the trial court expressed itself, correctly, as follows:

> *"I disagree. He had no choice. Accused 1, he saw being effectively identified by the family of Kevin* [Mr Geswent], *being removed from the car, he did not give himself up, when Jason was arrested, he must have known that the writing was on the wall and giving himself up was not part of the remorse. He did not then say this is something I regret, this is something I wish to identify,*

[5] See S v Radebe and Another 2013 (1) SACR 165 (SCA).

[6] See the unreported judgment in S v Solomon Nendangwana Oupa Mashile above para 14.

what happened, who did it, who perpetrated it, because one thing is given, accused 2 [the appellant] *did not pull the trigger."*

[53] Indeed, the writing was on the wall for the appellant he had no other option but to hand himself to the police. It was a matter of time and they would have pounced on him. What makes matters worse is that even when already found guilty he continues to distance himself from the commission of the offence. The appellant opted not to come clean with what happened that night and failed to take the trial court and the probation officer into his confidence.

[54] Focusing solely on the wellbeing of the appellant, one would like to give him a chance because of his age and background but it would not be in the interest of justice to do so. This is so because he continues to take no responsibility and this reflects negatively on his prospects of rehabilitation. The submission on his behalf that he is young, intelligent, has gone through hardship and thus makes him a candidate for rehabilitation is meritless. He must first accept that he has done something wrong before he can be rehabilitated.

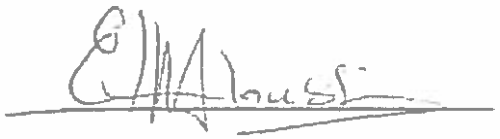
[55] In *S v Malgas*, the court stated as follows:

"Courts are required to approach the imposition of sentence conscious that the Legislature has ordained life imprisonment (or the particular prescribed period of imprisonment) as the sentence that should ordinarily and in the absence of weighty justification be imposed for the listed crimes in the specified circumstances. Unless there are, and can be seen to be, truly convincing reasons for a different response, the crimes in question are therefore required to elicit a severe, standardised and consistent response from the courts. The specified sentences are not to be departed from lightly

and for flimsy reasons. Speculative hypotheses favourable to the offender, undue sympathy, aversion to imprisoning first offenders, personal doubts as to the efficacy of the policy underlying the legislation and marginal differences in personal circumstances or degrees of participation between co-offenders are to be excluded. The Legislature has, however, deliberately left it to the courts to decide whether the circumstances of any particular case call for a departure from the prescribed sentence."

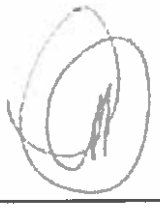
[56] I am satisfied that the trial court gave a thorough and well balanced judgment which requires no interference from this court. There are no truly convincing reasons why the trial court should have departed from imposing the sentence it imposed, there is, also, none on appeal. There is, also, no material misdirection that can be attributed to it. The sentence of life imprisonment is just and appropriate under the circumstances. The sentence fits the crime and the offender and is in the interest of the society. The appeal against sentence ought to be dismissed.

[57] The appeal is, therefore, dismissed.



E.M. KUBUSHI
JUDGE OF THE HIGH COURT

I agree



C.M. SARDIWALLA
JUDGE OF THE HIGH COURT

I agree

D. M. LEATHERN
ACTING JUDGE OF THE HIGH COURT

Appearance:

Appellant's Counsel	: Adv. F Van AS
Appellant's Attorneys	: Legal-Aid SA, Pretoria Justice Centre.
Respondent's Counsel	: Adv. A Coetzee
Respondent's Attorneys	: NDPP
Date of hearing	: 04 November 2019
Date of judgment	: 13 November 2019