

IN THE HIGH COURT OF SOUTH AFRICA(CAPE OF GOOD HOPE PROVINCIAL DIVISION)CASE NO.:

A407/2007

DATE:

25 APRIL 2004

5 In the matter between:

HILDA RYNEVELD

Appellant

and

THE STATE

Respondent

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## JUDGMENT

(Appeal against Sentence)

BINNS-WARD, AJ

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In this matter the Appellant was convicted of contravening section 319(3) of the old Criminal Procedure Act, Act 56 of 1955, that is of making contradictory statements on two occasions on oath. The appellant had apparently made allegations on oath against her husband in the context of a family violence matter, and when that matter came to court confirmed those allegations on oath, and thereafter, when called back into the witness box, somewhat curiously to testify on behalf of her husband, retracted those allegations, confessed that they were untrue and indicated

that they had been made in the circumstances of a family feud between her family and her husband.

The magistrate imposed a sentence of 12 months imprisonment in terms of Section 276(1)(i) of the Criminal Code and it is against that sentence that the appellant, with the leave of the trial Court, comes on appeal.

Mr Brand who appeared in this Court for the appellant drew attention to two previous judgments of this Court, the first being a judgment of Maraais AJ in S v Fass 1980(4) SA 102 Cape, in which van den Heever J concurred and the second being a judgment of Tebbutt J in S v Wagner 1998(2) SACR 423, Cape, in which Chetty J concurred. The judgments in both those cases were to the effect that it was inappropriate to impose sentence, and particularly a sentence of imprisonment, in a matter of this nature without a proper enquiry into the circumstances of the commission of the offence.

In Wagner's case, for example, there were indications that the false statement under oath, which was contradicted under separate oath later, had been made because of duress in a gang related environment, but there was an absence of detail concerning the nature of that duress and the extent to which it affected the making of the false statement.

In the current case the Magistrate was informed in stark terms that the family feud, to which I referred earlier, had influenced the making of the contradictory statements under oath, but he undertook no investigation to obtain clarity in that regard. In my judgment, particularly having regard to the authority to which I have just referred, his approach was misdirected.

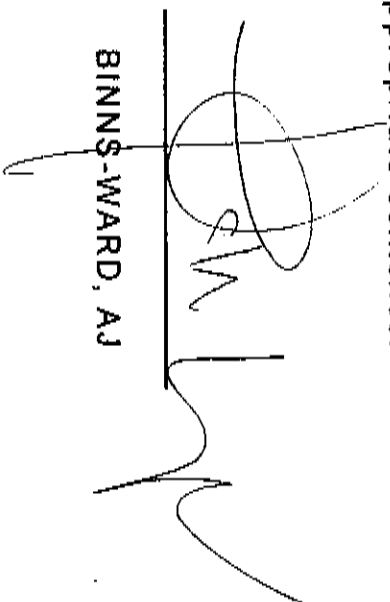
His approach was further misdirected in the sense apparent in his reasons for sentence furnished later in which he justified the sentence imposed, explaining that it had to be remembered that the appellant would serve at most two months before she was released on correctional supervision. Mr De Villiers correctly conceded that that was a material misdirection by the magistrate and that a 12 month sentence of imprisonment imposed in terms of Section 276(1)(i) of the Code is an effective sentence of 12 months imprisonment, and it is by no means certain in those circumstances that the prison authorities would act as permitted in terms of the provision to achieve the release of the accused on correctional supervision at any particular stage during those 12 months.

In the circumstances, as both counsel agreed, it is appropriate that the APPEAL AGAINST SENTENCE SHOULD BE UPHELD, the sentence should be set aside, and the matter should be

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referred back to the trial court for a proper investigation into the circumstances of the commission of the offence for the determination of an appropriate sentence.

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BINNS-WARD, AJ

I agree, and it is so ordered.

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CLEAVER, J