

IN THE HIGH COURT OF SOUTH AFRICA  
(WESTERN CAPE HIGH COURT, CAPE TOWN)

CASE NUMBER:

SS260/2005

DATE:

20 APRIL 2006

5 In the matter between:

THE STATE

and

ZUKO NAPHAKADE

ACCUSED

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SENTENCE

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ZONDI, A J

Mr Naphakade, by sentencing you I have to take in into  
15 account your personal circumstances, the nature of the offence  
and the interest of the community.

As far as your personal circumstances are concerned, it was  
indicated that you are a first offender, that you were born in  
20 Oktober 1981 and you are not married, but you have two  
daughters who are three and one year's respectfully. At the  
time of your arrest, you were staying with your parents who  
were looking after you, as you were unemployed. At school  
you past standerd ten and since you left school you have done  
25 some courses on security management, first aid and English.  
CD/

This briefly summarizes your personal circumstances.

As far as the nature of the offence is concerned, is there no doubt about the seriousness thereof. You have been convicted of murder, attempted murder and unlawful  
5 possession of firearms and ammunition. There was evidence that these offenses took place in the cause of robbery and a firearm was used in committing these atrocious offences. Murder is a serious offence as it involve the lost of human life which cannot be replaced. It seems to me that murder has  
10 become prevalent in these days and in most cases illegal firearms is used in committing it. It is for these reasons that the legislator has seen it fit to set a minimum sentence in order to deal squarely with serious offences such as murder. This legislation prescribes minimum sentences for these  
15 offences, in other word the minimum sentence legislations sets out a minimum sentence to be imposed on a persone convicted of murder. The charges you are facing are subjected to Section 51 of Act 105 of 1997 (The Minimum Sentence Legislation). I shall return to this aspect later and I will deal  
20 more thoroughly with it.

Mr April, who gave evidence in this matter, testified on how you shot him and the deceased after instructing them to lie on the ground. They covered their faces while other, who was with you, removed various goods from the owner of the  
25 house, who he had visited. You shot them at a close range  
CD/

and you shot the deceased in the head. The postmortem relating to the injuries sustained by the deceased was handed in as EXHIBIT D and upon examination the deceased was found to have four gunshot wounds to the head. The gunshot  
5 wounds trekked through the brain. Mr April was also shot four times and sustained bodily injuries.

Now as far as the interest of the community is concerned, it is correct that the community needs to be protected against offences of this nature and they are looking up to courts for  
10 protection. The only way the court can do so is by imposing appropriate sentences. It is the duty of this court to protect the community by imposing appropriate sentences and to send out the message that offences of this nature would not be tolerated.

15 It was argued by ms Verrier, on your behalf, that the minimum sentence legislation is not applicable in this matter, because the murder was not planned or premeditated. The prescribed minimum sentence for murder, when it is planned or premeditated, is life imprisonment. Now it is clear from the  
20 evidence of mr April that the deceased was shot at a very close range. When you shot mr April and the deceased you were over them while they were sitting. The deceased and mr April had covered their faces. The deceased had covered his face with his hands, while mr April had pulled his shirt over his  
25 face. It is clear to me that you killed the deceased in CD/

execution style; you did not show any mercy to him. The deceased was defenseless and it seems to me that you killed him in order to avoid detection as possible prosecution. It is also clear from the evidence of mr April that even if the murder  
5 of the deceased was not pre-planned before you went into Thulani's house, that is the house which mr April visited. Planning must have taken place either during the robbery or immediately after the robbery. Before you left the house, you shot the deceased and the witness, thereafter you closed the  
10 door and left. In these circumstances the murder charge is subject to the minimum sentence legislation. The Act prescribes the life imprisonment sentence for murder, which was either planned or premeditated, or when the victim was a person who was likely to give material evidence with reference  
15 to any offence referred to in Schedule 1 of the Criminal Procedure Act of 1977, that is the criminal proceedings in any court. I just want to make it clear that the Act prescribed the minimum sentence, but the minimum sentence is not a mandatory one. This will be a case where there are  
20 substantial and compelling circumstances and which would justify the imposition of a lesser sentence, than the sentence prescribed by legislation.

Now the question is whether there are any substantial and compelling circumstances in this matter that would justify  
25 me giving you a sentence less than the prescribed minimum  
CD/




sentence. I have fully investigated this and unfortunately I could not find any substantial and compelling circumstances in your favor. The only thing is that you have been in prison since January 2004, other than that there is nothing to indicate  
5 why these offences were committed and whether there was any need on your part to do so. There was ...(indistinct) in the fact that your defense was an alibi, in other words you were saying you had no knowledge of the allegations against you. In other words there is no indication that either alcohol or drug abuse  
10 was involved in this matter. Or that the deceased had done something to provoke you – there is nothing.

In the circumstances I have no alternative, but to sentence you to life imprisonment for murder. Ten (10) years for attempted murder. Count four and five relating to unlawful  
15 possession of a firearm and ammunition will be taken together for the purposes of sentence and in respect of counts four and five you are accordingly sentenced to five (5) years imprisonment. It is further ordered that sentences in respect of count two, that is attempted murder, four and five, that is  
20 unlawful possession of a firearm and ammunition, will run concurrently with the life imprisonment sentence in respect of count one. And you are declared unfit to possess a firearm license.

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CD/

 6/12/2012  
ZONDI, AJ  
