IN THE HIGH COURT OF SOUTH AFRICA

(CAPE OF GOOD HOPE PROVINCIAL DIVISION)

CASE NO: A22/2007

DATE 30 MAY 2008

In the matter between:

MARIUS ARENDSE Appellant

and

THE STATE Respondent

J U D G M E N T

WAGLAY, J:

[1] The appellant was convicted in the Wynberg Magistrate's Court as follows.

Count 1 - murder, the shooting and killing of one Bradley Galant

Count 2 – attempted murder for shooting and attempting to kill the complainant Thelma Dalmen

Count 3 – attempted murder for shooting and attempting to kill the complainant Deon Davids.

Count 4 – unlawful possession of a firearm

Count 5 – unlawful possession of ammunition

He was sentenced as follows:

Count 1 – 15 years' imprisonment

Count 2 – five years' imprisonment

Count 3 – five years' imprisonment

Count 4 and 5 – three years' imprisonment

The sentences on counts 4 and 5 were ordered to run concurrently with the sentence impose in respect of count 1. He was thus sentenced to an effective term of imprisonment of 25 years.

[2] After being convicted and sentenced, appellant sought leave to appeal, which was refused. The appellant then petitioned this Court for leave. The petition was partly successful in that the appellant was granted leave to appeal against his sentence.

[3] As recorded earlier, the appellant was sentenced to an effective 25 years' imprisonment. When one has regard to the crimes for which he was convicted, can this term of imprisonment be said to be one which induces a sense of shock? The appellant shot and killed Bradley Galant in cold blood. His appetite unsatisfied, he went on to shoot Thelman Dalmen simply because she pleaded with him not to do so. Deon Davids, who happened to be in the house, was also not spared. It was their good fortune that neither of them were killed. For these crimes the

imposition of sentences of 15 years, five years and five years cannot be said to be inappropriate.

[4] It is clear that in considering the appropriate sentences, the Court *a quo* took cognisance of the personal circumstances of the appellant, the fact that he was 19 years of age when he committed the offences; he was unmarried with no dependents; had attended school only up to Standard 4; that he was unemployed at the time he committed the offence; also that the appellant was a first offender and that he was held without bail for a period of about 15 months before his trial was finalised. The Court *a quo* acknowledged that the above facts constituted important mitigating factors. The Court then went on to consider the interests of society and finally the cumulative effect the sentences imposed would have had on the appellant. The Court thus considered all the relevant factors and arrived at a decision which it considered fair.

[5] For this Court to interfere with that decision it must find that the Court *a quo* either misdirected itself or imposed a sentence that induced a sense of shock. There is also the issue of the minimum sentence. Fifteen years for the murder committed is the minimum the Court was obliged

was obliged to impose unless there were substantial and compelling circumstances not to impose such minimum sentence. However, the existence of substantial and compelling circumstances does not signal that the sentence should be less than the Legislature had in mind when setting out what it believed to be an appropriate minimum sentence.

[6] In this matter, appellant's youth and the fact that he was incarcerated for over 15 months does constitute substantial and compelling circumstances for the Court not to be bound by the minimum sentence the Court was required to impose in terms of the Act. However, notwithstanding the substantial and compelling circumstances, I am satisfied that the imposition of a sentence of 15 years' imprisonment was not inappropriate.

[7] There is no misdirection by the Court *a quo*. Seen individually, the sentences also do not induce a sense of shock. In fact, five years for the attempted murder is on the light side as far as I am concerned. However, as these sentences did not run concurrently with the sentence for murder, the net effect of the sentences does appear to be a bit harsh. I believe the sentences

imposed for the two counts of attempted murder should run concurrently with the sentence imposed in respect of count 1.

[8] In the result the sentences imposed by the Court *a quo* are amended to read as follows:

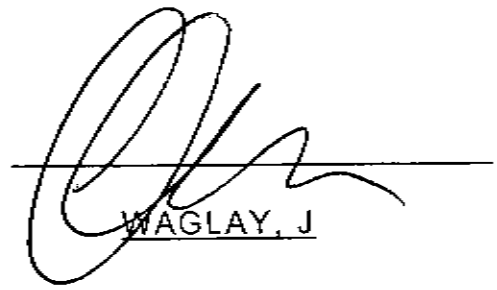
Count 1 – 15 years' imprisonment

Count 2 – five years' imprisonment

Count 3 – five years' imprisonment

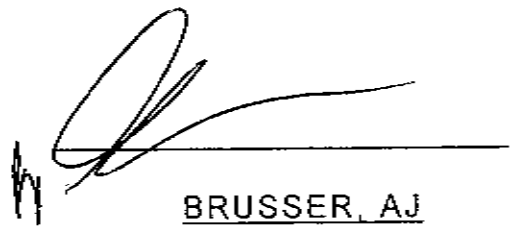
Counts 4 and 5 – three years' imprisonment

The sentences imposed in respect of counts 2, 3, 4 and 5 should run concurrently with the sentence imposed in respect of count 1.



WAGLAY, J

BRUSSER, AJ: I agree.



BRUSSER, AJ