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

Case Number: A143/2010

Coram: Le Grange, J et Ngewu, AJ

In the matter between:

LORENZO DOTY **Appellant**

and

THE STATE **Respondent**

JUDGMENT DELIVERED ON 19 AUGUST 2010

Le Grange, J:

[1] I have had the opportunity of reading the judgment herein prepared by Acting Judge Ngewu. I am in agreement with the result. Regrettably, I differ with some of the views expressed by her in arriving at the result.

[2] For instance in paragraph [20] she held that, "*in cases of serious crimes, the personal circumstances of an offender do not come to the fore*". This is bad in law and at variance with the well established principles on sentencing. Due to trial courts not

having sufficient regard to the personal circumstances of the offender, many appeals have succeeded, on this basis alone, in our courts. In this regard see: (Guide to Sentencing in South Africa 2nd Edition by SS Terblance - at para 7.2.4 and the relevant case law referred to therein.)

[3] The principal reason why the Court *a quo* misdirected itself in not imposing an appropriate sentence was, it seems, a direct result of its failure to properly consider and weigh up the Appellant's personal circumstances against the interest of the society, the seriousness of the offence and whether the prescribed minimum sentence is unjust and disproportionate in the particular circumstances of this case. See: S v Vilakazi 2009 (1) SACR 552 at 560 *e*.

[4] The trial magistrate, in his reasons for granting leave to appeal against the imposed sentence a few weeks later after the conviction and sentence, clearly suggested that the prescribed minimum sentence of 15 years for the Appellant, as a young offender was indeed unduly harsh, but was bound to impose it. At page 73 of the record, the following was recorded by the trial magistrate:-

> "*Dit is inderdaad so dat 15 jaar gevangenisstraf vir 'n jong persoon 'n lang tyd is. Dit het en sal 'n dramatiese uitwerking hê op die lewe van 'n persoon soos die beskuldigde. Ek het egter gevoel dat my hande tot 'n groot mate gebind was deur die minimum vonnis Wetgewing, omdat ek nie wesenlike en dwingende omstandighede kon op rekord plaas om 'n afwyking daar te stel nie.*
>
> *Ek kan egter die moontlikheid dat 'n ander Hof deur ander oë mag kyk na die omstandighede van hierdie saak en inderdaad bevind dat daar wesenlike en dwingende omstandighede bestaan en dat dit derhalwe geregverdig is dat daar*

afgewyk word van die minimum vonnis wetgewing nie en derhalwe dat 'n vonnis minder as 15 jaar gevangenisstraf opgelê behoort te word."

[5] Having regard to the Appellant's personal circumstances, and upon a consideration of all the factors pertaining to sentence, I am satisfied that the imposition of the prescribed minimum sentence of 15 years would be unjust and disproportionate to the crime, the Appellant and the needs of the society. A sentence of 10 years' imprisonment, in my view, would be a more just and equitable sentence in the circumstances of this matter.

[6] It follows that the appeal against sentence must succeed.

[7] In the result the following order is made:-

a) The appeal against sentence succeeds.

b) The sentence is set aside and substituted with the following:

"Ten (10) years' direct imprisonment".

LE GRANGE, J