



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

Case No: A520/2010

In the matter between:

KANTINI MOLEFINYANA

Appellant

Versus

THE STATE

Respondent

JUDGMENT DELIVERED ON 10 DECEMBER 2010

Allie, J

[1] The appellant was charged in the Regional Court held at Vredenburg with attempted murder, illegal possession of a firearm and with illegal possession of ammunition. He pleaded not guilty on all 3 counts. He had legal representation.

[2] He was acquitted of the attempted murder count but was convicted of illegal possession of a firearm and of ammunition. Both counts were taken together for the purpose of sentence. He was sentenced to 7 years direct imprisonment.

[3] He now appeals against the sentence imposed on the basis that it is a shockingly inappropriate sentence. On his behalf it was submitted that his personal circumstances and the fact that he was in prison awaiting trial for almost

a year was not taken into account. On his behalf it was further submitted that the court *a quo* over-emphasised the interests of the community.

[4] On behalf of the state it was submitted that the Magistrate was correct in finding that the offences were serious and that illegal firearms are a scourge which causes damage in society.

[5] Section 3 of the Firearms Control Act 60 of 2000 prohibits possession of a firearm without a licence, permit or authorisation in terms of the Act.

[6] Section 90 prohibits possession of ammunition unless the holder has a licence, permit or authorisation to possess a firearm or ammunition.

[7] The maximum penalty prescribed by the Act for a contravention of Section 3 is 15 years imprisonment and for a contravention of Section 90 it is also 15 years imprisonment.

[8] The court *a quo* clearly looked at the previous conviction of assault with intent to inflict grievous bodily harm of 2003.

[9] The court *a quo* clearly did not impose the maximum penalty. The circumstances in which the appellant's possession came to light are relevant. He was found to be in possession because the witnesses testified that he had the firearm and discharged live ammunition from it in a public place and because he

was seen throwing it immediately beneath him on the ground where the firearm was found by the police.

[10] The nature and circumstances of appellant's possession must clearly be taken into account. He possessed a dangerous weapon which he had no authority to hold. The weapon is known to have lethal consequences when used. He used it with little concern for the consequences on the evening in question. He cannot however be punished for the use of the firearm as he was not charged for that.

[11] The personal circumstances of the accused should also be considered. He has only 1 previous conviction of assault with intent to inflict grievous bodily harm. He was 28 years old when he committed the offence. He was gainfully employed.

[12] The punishment should fit the offence. In this matter a term of direct imprisonment is necessary to act as a deterrent. The sentence generally imposed for these offences range from 3 to 5 years.

[13] An appeal court will only interfere with the sentencing discretion of the trial court if it has misdirected itself in a material respect, or if the sentence imposed was shockingly inappropriate or where the discretion was exercised unreasonably or capriciously [**S v Rabie 1975 (4) D SA 855 (A) at 857D - E; S v Pieters 1987 (3) SA 717 (A) at 727F - H; and S v Malgas 2001 (1) SACR 469**

(SCA)]. It is clear that the sentence must be tempered with a measure of mercy. The Magistrate clearly over-emphasised the interests of the community. I am of the view that 7 years direct imprisonment is unduly harsh. I conclude that sentence imposed is shockingly inappropriate.

[14] The sentence of 7 years imprisonment on counts 2 and 3 is set aside. The sentence now imposed on counts 2 and 3 taken together is 4 years direct imprisonment.

I agree



ALLIE, J



ENGERS, AJ

And it is so ordered.