



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

CASE NO.: A618/2010

In the matter between

**BRICE BANZOT**

Appellant

and

**THE STATE**

Respondent

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**JUDGMENT DELIVERED ON 29 APRIL 2011**

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**SAMELA, J**

[1] The Appellant appeared in the Bellville Commercial (Regional) Court on a charge of fraud or its alternatives. The Appellant pleaded not guilty on all charges. He exercised his constitutional rights to remain silent. After evidence was led, he was found guilty on the main count of fraud. He was sentenced to twelve (12) years direct imprisonment of which five (5) years were suspended for a period of five (5) years on condition that he is not found guilty of fraud, during the period of suspension. The Appellant noted an appeal against the sentence only.

[2] The Appellant was the mastermind in the syndicate that planned to defraud Old Mutual Insurance Company in excess of R1 003 899.08. He pretended that Ms Brickett and Ms Beumer wanted to surrender their policies. The Appellant arranged for one Connie America to take her photographs to manufacture a false identity document. She was promised "big" money by participating in the fraudulent scheme. Through

intervention of her son, she later withdrew from the scheme. The false identity document was used to open a bank account at First National Bank. The bank account was opened to host the policy money after the successful application for the surrender of the policy. Subsequently, the Appellant took control of the account by taking the bank card and the identity document from Connie America. With the assistance of one syndicate member (Cynthia Madikane), working for Old mutual Client Services, a change of address for the policy holders was made on the computer system. Captain Stahlberg of the Intelligence Operation National Law Office of SAPS (South African Police Service) infiltrated the syndicate. He arranged through "his contact" for blank surrender documents and submission of the same to the contact person. He also pretended that once money was transferred, he would arrange for immediate access through his contact. Application forms for surrender of the policy together with other documents were submitted to Old Mutual. The instructions in terms of the surrender applications were to pay the money into the First National Bank account, which Connie America opened. Old Mutual did not pay out the proceeds of the policy because of information from the police (intelligence). The Appellant was arrested together with one syndicate member. In his car the following documents were found: (a) the false identity documents of Connie America; (b) presumed false identity document of Helen Marie Beumer; (c) a debit card for the false First National Bank account; and (d) original bank deposit slip of R100.00.

[3] Ms Viljoen, who appeared for the Appellant, argued that the court a quo misdirected itself by not taking or giving sufficient weight on the following factors, that:

- (a) the Appellant was a first offender;
- (b) the Appellant was a contributing member of the society as he was permanently employed;
- (c) the Appellant had five (5) dependants, namely, an unemployed wife and four minor children;
- (d) the Appellant was the sole breadwinner in his family;
- (e) the insurance company did not suffer any prejudice;
- (f) the Appellant did not benefit economically by receiving the money from the insurance company,, since it was never paid out;
- (g) whilst evidence indicated other syndicate members who also participated



- in the commission of the crime, only the Appellant was taking the blame;
- (h) the court a quo over-emphasised the seriousness of the offence;
  - (i) the manner in which this offence was committed, did not justify that deterrence and retribution as aims of punishment should receive precedence over prevention and retribution;
  - (j) the fact that the Appellant was a first offender is indicative that he is not the type of offender that has a tendency to commit crime. He is not a type that ought to be removed from the society;
  - (k) the Appellant expressed remorse when he testified in mitigation;
  - (l) direct imprisonment was not the only appropriate sentence.

She further requested the indulgence of this court to impose a different sentence.

[4] Mr Badenhorst argued on behalf of the State that the court a quo took all the relevant factors as mentioned by Ms Viljoen into account. He submitted that the trial court took all personal factors into account which Ms Viljoen mentioned. He pointed out that Old Mutual Insurance spent R30 000.00 to investigate this fraud. He argued further that the Appellant as a member of the crime syndicate, had ample time to reconsider his actions, however, he proceeded ruthlessly. He submitted that it was not uncommon for first offenders in "white collar" crimes to be directly imprisoned. He reiterated that sentence is at the discretion of the trial court, and the Court of Appeal only interferes where there has been misdirection by the trial court. He requested this court not to interfere with the sentence of the court a quo, and to dismiss the appeal.

[5] The imposition of an appropriate sentence falls entirely within the discretion of the trial court. Unless the trial court has imposed a sentence which induces a sense of shock or misdirected itself, which misdirection should appear ex facie the record, a Court of Appeal would not lightly interfere with the sentence imposed by the trial court, see **R v Dhlumayo and Another** 1948 (2) SA 677 (A) and **S v Ntsele** 1998 (2) SACR 178 (SCA). In the present case, there is a misdirection. The court a quo imposed a sentence which is disproportionate, in the sense that the cumulative effect of the sentence operates harshly against the Appellant. Although he was the mastermind behind the plan, it never came to pass.

[6] The offence the Appellant committed is a very serious crime and the interest of the society needs to be protected against offenders. At the same time, the interest of the society needs to be balanced against that of an offender and the seriousness of the offence. It would seem to me, in the circumstances of this case, there was an over-emphasis of the seriousness of the offence as well as the interest of the society as against the interest of the Appellant and his personal circumstances. It is common cause that the Appellant was not the only person involved in the commission of this offence for example, Accused 2 (Ms Linda Maxam) and Accused 4 (Ms Cynthia Madikane). I am of the view that it is indeed not justifiable that the Appellant alone should take the blame. Equally regarding Appellant's personal circumstances that he was 39 years old, a first offender, the only breadwinner with five (5) dependants, i.e. his unemployed wife and four (4) minor children, should count in his favour. In my view, therefore, the sentence of twelve (12) years imprisonment of which five (5) years imprisonment is suspended on condition that the accused is not convicted of fraud or theft committed during the period of suspension cannot be sustained.

[7] In the result, I would accordingly propose the following order:

The appeal against sentence is upheld. The sentence of twelve (12) years imprisonment of which five (5) years is suspended on certain conditions imposed by the magistrate is set aside. It is replaced with the following:

The Appellant is sentenced to seven (7) years imprisonment, of which three (3) years is suspended for a period of five (5) years on condition that the Appellant is not convicted of fraud or theft committed during the period of suspension. The sentence will be ante-dated to 18<sup>th</sup> August 2008.



SAMELA, J

I agree and it is so ordered.



ALLIE, J