IN THE HIGH COURT OF SOUTH AFRICA

(WESTERN CAPE HIGH COURT, CAPE TOWN)

CASE NO: A765/10

DATE: 6 May 2011

In the matter between:

GAVIN LAVERLOT Appellant

and

THE STATE Respondent

JUDGMENT

GOLIATH, J

The appellant was convicted on 29 April 2009 by the Regional Magistrate Worcester on one count of rape. He was sentenced to eight years imprisonment. He now appeals against the sentence only.

The main grounds upon which the appellant is attacking the sentence are *inter alia* that the magistrate erred in over-emphasizing the element of retribution at the expense of the personal circumstances of the accused, and secondly that the sentence imposed were unduly harsh and induces a sense of shock.

In terms of the provisions of Section 51(2) read with part 3 of Schedule 2 of the Criminal Law Amendment Act 105 of 1977, the Court is required to impose a minimum sentence of ten years in respect of this particular charge, unless substantial and compelling circumstances exists, which justify the imposition of a lesser sentence.

The State submits that the magistrate misdirected himself by imposing a lesser sentence than the prescribed minimum sentence, since no substantial and compelling circumstances were noted by the court *a quo*. The State therefore submits that the sentence should be increased to ten years imprisonment. It is a trite principle of our law that the imposition of sentence is a matter which falls pre-emminently within the discretion of the trial court. The power of the court of appeal to interfere with such sentence is limited. It will only interfere with such sentence if the trial court has misdirected itself in any material respects, or failed to exercise its discretion judicially, or imposed a sentence that no court could have reasonably imposed, or that was shockingly inappropriate. See S van Malgas 2001(1) SACR 469 (SCA) at 478 d-h, S v Salzwedel and Others 2000(1) SA 786 (SCA) at 79 para 10, and S v Petkar 1988(3) SA 571 (A) at 574C.

Even if this Court as the Court of first instance would have decided to impose a different sentence, this Court cannot on that ground alone interfere with the sentencing discretion of the trial court. (See S v Malgas *supra* at 478 g-h.)

The appellant is a 23 year old first offender, he was employed at the time of the commission of the offence and earned approximately R300 per week. He was in custody awaiting trial for a period of six months. The magistrate in my view took into consideration all the relevant factors when imposing sentence, and properly assessed and balanced such factors in the light of the personal circumstances of the appellant, the interest and expectations of society, the interest of the victim and the nature and seriousness of the crime.

The complainant was on her way home from work when she was accosted and raped by the appellant in a bushy area. This is a very serious offence and women need to be protected from this type of vicious act. On a proper assessment of the sentence by the magistrate, I cannot say with any degree of conviction that the magistrate misdirected himself in any material respects or failed to exercise his discretion judicially, or imposed a sentence that no reasonable court would have imposed, or that the sentence was shockingly inappropriate. There is in my view no need to interfere with the sentence.

In the circumstances the following order is made:

The APPEAL AGAINST SENTENCE IS DISMISSED.

GOLIATH, J

I agree,

SABA, AJ