

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

5 CASE NUMBER: A184/2011

DATE: 2 SEPTEMBER 2011

In the matter between:

NONTOBEKO YVONNE MERILE Appellant

10 and

<u>THE STATE</u>	Respondent
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J U D G M E N T

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VAN STADEN, AJ:

1. The appellant, previously a maintenance officer at the George Magistrate's Court, was convicted on five counts of fraud.

2. On 26 May 2008, she was sentenced to three years imprisonment suspended for five years.

25 3. Leave to appeal was refused on 4 August 2008. A
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petition directed to the Judge President of this court dated 27 August 2011, asking for leave to appeal against sentence only, was successful. Leave, however, was granted in respect of both conviction and sentence.

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Conviction:

4. The five counts of fraud of which the appellant was convicted, involved four separate and independent
10 complainants. Their evidence disclosed unrelated incidents of fraud and there is no question of collusion between them. Aspects of their evidence were corroborated by other witnesses.

15 5. Ms McKenzie, who appeared for the appellant in this court, referred to a number of discrepancies and contradictions in the evidence presented by the state. She also relied on the fact that some of the complainants were single witnesses in certain respects. The evidence
20 of the complainants was furthermore disputed by the appellant. Suffice it to say that these discrepancies and contradictions were of a nature that one would expect in the evidence of honest witnesses attempting to convey the truth.

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6. The evidence in respect of all the counts was that the appellant accepted cash maintenance payments and undertook to deliver it to the designated recipients, which she never did. I agree with Mr Stephen, appearing for the state, that the evidence tends to establish that the appellant evolved a system to commit the fraud that she is charged with.¹
7. It is also relevant to note that in respect of one of the counts, the appellant admitted that she had accepted cash despite the fact that the conditions of her employment did not allow her to do so.
8. In a thorough judgment the magistrate analysed her evidence in some detail and dealt with all the discrepancies and contradictions. His conclusions can, in my view, not at all be faulted.
9. I would, therefore, dismiss the appeal against conviction.

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Sentence:

10. The power of this court to interfere with a sentence

¹ R v Sole 2004(2) SACR 599 (LHC), at 636f-644h, especially paragraph 4 on page 643h-644h. Law of Evidence, CWH Schmidt paragraph 15 3 6 on pages 15-16 to 15-17.

imposed by a lower court is limited.² The court can only interfere if the sentence imposed is vitiated by a misdirection or irregularity or is one to which no reasonable court could have come.

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11. I agree with Mr Stephen that the sentence is on the lenient side, considering the aggravating circumstances, more particularly the following:

10 11.1 The payment of maintenance is often clouded in acrimony.

11.2 The receipt of maintenance may be of vital importance for the survival of recipients.

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11.3 The appellant, an official, the Department of Justice, stole money from poor and vulnerable members of the public approaching her for assistance.

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11.4 The correctional supervision officer reported that the appellant appears to be unrepentant and as not appreciating the seriousness of the crimes of which she had been convicted.

² S v Kubido 1989(2) SACR 213 SCA at 216g-h

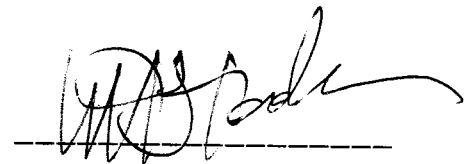
12. Reference was made to the fact that leave to appeal
against sentence was granted despite the fact that the
appellant did not apply for such leave. I am not
5 surprised that the appellant preferred not to do so.

13. I therefore conclude that the appeal against sentence
should also be dismissed.

10 Conclusion:

14. In all the circumstances I would dismiss the appeal
against both conviction and sentence.

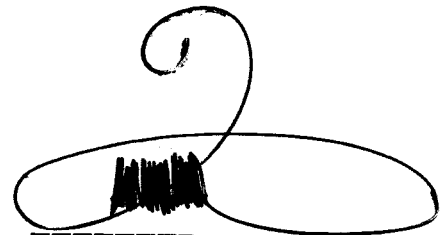
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VAN STADEN, AJ

I agree. It is so ordered:

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DLODLO, J