

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

CASE NUMBER:

A259/2012

DATE:

24 AUGUST 2012

5 In the matter between:

NORMAN CARELSE

Appellant

and

THE STATE

Respondent

10

J U D G M E N T

GOLIATH, J

The appellant appeared before the regional court at Mitchell's
15 Plain on the 19th November 2010 on a charge of murder. On 6
April 2011 he was convicted and sentenced to 17 years
imprisonment.

The appellant applied for leave to appeal against conviction
20 and sentence which was dismissed by the court *a quo*. The
appellant subsequently petitioned the judge president of this
division and leave to appeal against sentence was granted.
The appellant now appeals against his sentence.

25 On 25th December 2007, at Bandhoek Street, Mitchell's Plain
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the appellant was involved in an altercation with his wife's ex-husband. It appears from the evidence accepted by the court that the deceased came to the appellant's house in connection with his daughter who was living with appellant and his ex-
5 wife.

Jason Beasly, the son of the deceased, testified that he accompanied his father to see his sister who suffered from a disability. He observed his sister speaking to his father, that
10 is the deceased, and shortly thereafter both appellant and deceased displayed anger toward each other. The appellant and the deceased confronted each other and the appellant hit the deceased over the head with an axe.

15 The appellant admitted that he hit the deceased once with the axe. The magistrate rejected the appellant's version that the deceased was armed with a gun during the confrontation. The deceased sustained three wounds to the head and his brain matter was exposed.

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The court *a quo* found no substantial and compelling circumstances to deviate from the prescribed minimum sentence of 15 years imprisonment for a first offender. In terms of the provisions of Section 51(2) of the Criminal Law
25 Amendment Act 105/1997 the magistrate in the exercise of her /RV

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discretion increased the minimum sentence and imposed a term of 17 years imprisonment. The court concluded that the appellant's conduct warranted a longer sentence of imprisonment namely 17 years instead of the prescribed 15
5 years imprisonment.

Counsel on behalf of the appellant contends that the magistrate misdirected herself in over-emphasising the seriousness of the offence at the expense of appellant's
10 personal circumstances.

Counsel on behalf of the state contends that due to the violent nature of the crime the sentence is indeed appropriate in view of the fact that the Act permits a maximum sentence of 20
15 years for a first offender.

However, counsel on behalf of the state conceded that the minimum sentence of 15 years imprisonment would indeed have been appropriate in the circumstances.
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It is trite that a court of appeal will only interfere with the sentence of a trial court in certain limited circumstances. Interference will only take place if the sentence imposed is shockingly severe or if a misdirection had been committed by
25 the trial court.

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It must be borne in mind that this unfortunate incident occurred within the context of a domestic dispute. The incident happened at the appellant's residence and it is not disputed that both appellant and deceased displayed anger during the
5 incident. There was therefore an element of provocation prior to the incident.

The appellant is a first offender and in all likelihood, this could be a once off incident. I will therefore be hesitant to conclude
10 that the appellant is a danger to society at large.

The appellant was 40 years old; married with three children; and gainfully employed at the time of sentencing. He was the breadwinner of his family. The appellant indicated some form
15 of remorse for his action during his testimony.

In my view the above factors should have been taken into account in considering whether there are substantial and compelling circumstances.

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The cumulative effect of the above factors justify a departure from the prescribed minimum sentence. Furthermore, there is a marked disparity between the sentence imposed by the trial court and that which this court would have imposed, sufficient
25 to warrant interference.

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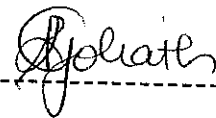
In my view, the imposition of a sentence of 17 years imprisonment under these circumstances bring about an injustice to the appellant.

- 5 I am however of the view that direct imprisonment is the only appropriate sentence for this type of offence. In the result the following order is made:

The appeal succeeds and the sentence imposed by the trial
10 court is set aside and substituted with the following sentence:

The accused is sentence to a period of **10 YEARS**
IMPRISONMENT.

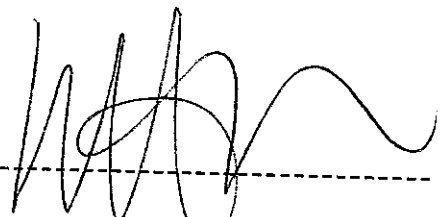
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GOLIATH, J

I agree and it is so ordered.

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VAN STADEN, AJ