IN THE HIGH COURT OF SOUTH AFRICA

(WESTERN CAPE HIGH COURT, CAPE TOWN)

CASE NUMBER: A196/2012

DATE: 24 AUGUST 2012

In the matter between:

ZUKO SILENGE Appellant

and

THE STATE Respondent

J U D G M E N T

MANTAME, AJ

On 16 February 2011 appellant pleaded not guilty to a range of charges in the regional court Somerset West. On 23 January 2012 the court *a quo* found the appellant guilty of robbery with aggravating circumstances (count 1 and 3) and attempted murder (counts 5 to 8). He was sentenced as follows:

Count 1 and 3 – to undergo 15 years imprisonment on each of the counts and the two sentences were ordered to run concurrently by the magistrate.

Count 5 to 8 – to undergo four years imprisonment on each of the four counts of which three years imprisonment is to be

suspended for a period of five years on condition that the accused is not convicted of attempted murder being committed during the period of suspension.

The magistrate ordered that one year imprisonment run concurrently with the sentences imposed on counts 1 and 3. The effective sentence thus which the court *a quo* imposed was 18 years direct imprisonment.

The appellant has only appealed against sentence.

Mr Solomon on behalf of the appellant submitted that sentencing by a trial court is a matter of discretion. He submitted that the court *a quo* disregarded the traditional triad principle. That is the crime, the offender and the interest of society. In so doing, the magistrate emphasised the public interest and general deterrence, while overlooking personal deterrence, rehabilitation and reformation.

Mr Solomon submitted further that though the appellant was legally represented the court *a quo* had a duty to call for a correctional report to enable it to exercise a proper judicial discretion.

The role that the appellant played was minimal. The

submission necessitates a brief review of the facts.

Four men who included the appellant had robbed the Sunrise Liquor Store on 18 July 2009. They then sought to escape police who had been alerted to the crime and gave chase. The vehicle in which the accused tried to escape was driven by the appellant. Accused 2 had been the person who shot at the police. The magistrate found that appellant had not only driven the vehicle, but shared a common purpose with the other three in the robbery and armed attack on the police.

Mr Solomon thus contended that the appellant was only the driver of the vehicle and never benefitted from the proceeds of the crime. The magistrate also failed to take into account that the appellant was in custody for a considerable period.

While the magistrate emphasised the prevalence of the crime, she ignored the fact that the appellant was a first offender. On this basis Mr Solomon submitted that the appeal against sentence should succeed.

Mr Els for the respondent submitted that the question to be answered in this appeal is not whether the sentence was correct or incorrect but rather whether the magistrate had exercised her discretion correctly and judicially.

A court of appeal should be slow to interfere with the discretion of the trial court and should be careful not to erode such discretion. See S v Rabie 1975(4) SA 855(A) at 857(d – e). He submitted further that the power of a court of appeal to interfere with the sentence imposed by the trial court is limited. It may do so only when the exercise of the trial court discretion is vitiated by misdirection or the sentence imposed is so inappropriate as to indicate that the discretion was not properly exercised. See S v Van Eck 2003(2) SACR 563 (SCA).

A mere misdirection is not by itself sufficient to enable the appeal court to interfere with the sentence. It must be of such a nature, degree or seriousness that it shows directly or inferentially that the court did not exercise its discretion at all or exercised it improperly or unreasonably.

Further the respondent argued that as the appellant was legally represented the appellant was informed of the provisions of Section 51 of the Criminal Law Amendment Act 105/1997, the Minimum Sentences legislation.

Although the appellant was charged with 10 counts and acquitted on two the crimes committed by the appellant was

serious in nature as they involved aggravating circumstances. When sentencing the accused it is a well established principle that the trial court has to look at the triad principle that was established in S v Zinn 1969(2) SA 537(A) at 540(g), that is, the crime itself, the offender and the interest of society should be taken into account.

On my analysis of the sentencing proceedings there is no doubt that the magistrate has taken due regard of the triad principle, and as such I cannot find fault with the way she imposed sentence to the appellant.

Regards should be had to the fact that Criminal Law Amendment Act 105/1997 is applicable to the offences with which the appellant was charged.

It is therefore inconceivable that, after the appellant has been found guilty of these serious crimes he never anticipated the imposition of the most serious sanction.

In her decision to sentence, I am of the view that the magistrate in the court *a quo* considered all the relevant aspects of sentencing.

In my judgment the term of imprisonment imposed by the

magistrate was as a result of a thorough consideration of all the necessary and relevant factors to sentencing.

In the result I the appeal against sentence is dismissed.

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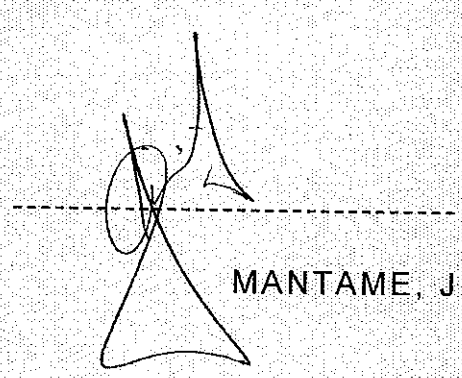

MANTAME, J

10 I agree

DAVIS, J

/RV