

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

CASE NUMBER:

A541/2012

5 DATE:

16 NOVEMBER 2012

In the matter between:

KAREL ADAMS

Appellant

and

10 **THE STATE**

Respondent

J U D G M E N T

15 **SAMELA, J:**

The appellant appeared in Worcester Regional Court on a charge of murder. He pleaded not guilty to the charge. After evidence was led, he was found guilty on the charge. He was
20 sentenced to 14 years imprisonment. The appellant noted an appeal against the sentence only.

Ms Kloppers argued on appellant's behalf that the court *a quo* misdirected itself by not taking into account, or giving
25 sufficient weight to the following facts:

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1. By overemphasising the interests of the community and underemphasising the appellant's personal circumstances.
- 5 2. Due regard not taken into account^{to} the circumstances under which the offence took place.
3. The appellant acted on the spur of the moment and did not premeditate the murder.
4. Not paying particular attention to the appellant's personal
10 circumstances, namely:
 - (a) The appellant's youthful age.
 - (b) The appellant is a candidate for rehabilitation.
 - (c) He was a first offender.
 - (d) The appellant's highest educational standard was
15 Standard 6 or Grade 8.
 - (e) He was the sole breadwinner at home, actively employed and earning R1 200,00 per month.
 - (f) Alcohol also played a part in the commission of the offence.

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Ms Sipoyo, for the state, submitted that the court *a quo* took into account all the relevant factors mentioned by Ms Kloppers. She submitted that there was no misdirection by the court *a quo* and requested this court to dismiss the appeal.

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From the record, the following is important:

1. The appellant was not provoked by the deceased, as the latter simply pushed him out of his yard.
- 5 2. There was no imminent danger to the appellant, as the deceased himself was not armed.
3. The appellant inflicted wounds on the deceased's body, the fatal one, according to the *post-mortem* report, being on the chest.
- 10 4. After stabbing the deceased, the appellant threw a bottle into the deceased's house, which hit the deceased.
5. The appellant went about bragging after stabbing the deceased.
6. The appellant has not shown any remorse, as he pleaded
15 not guilty and has never apologised to the deceased's family.

The imposition of an appropriate sentence falls entirely within the discretion of the trial court. Unless the trial court has
20 misdirected itself, which misdirection should appear *ex facie* the record, a court of appeal would not likely interfere with the sentence imposed by the trial court. See R v Dhlumayo 1948(2) SA 677 (A). In the present case there is no basis on which this court can interfere. The offence the appellant
25 committed was a very serious crime and the interests of


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society needs to be protected against such offenders. Simultaneously, the interests of society needs to be balanced against that of an offender and the seriousness of the offence.

5 The court *a quo* gave due consideration to the necessary factors when it found that substantial and compelling circumstances do exist and accordingly deviated from the prescribed minimum sentence. In my view, there is no misdirection and the sentence is not shockingly, startlingly or
10 disturbingly inappropriate. I propose the following order:

1. The appeal is dismissed.
2. The conviction and sentence are confirmed.

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SAMELA, J

I agree. It is so ordered:

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VELDHUIZEN, J