

Sneller Verbatim/ls

IN THE HIGH COURT OF SOUTH AFRICA(WITWATERSRAND LOCAL DIVISION)JOHANNESBURG

CASE NO: SS98/00

2000-08-08

FELONY MISFEASANCE IS NOT APPLICABLE	
(1) PROBATION	YES/NO
(2) REFERRAL TO OTHER JUDGES	YES/NO
(3) REVISED	✓
DATE 9/4/2002	SIGNATURE

In the matter between

THE STATE

and

JAKKALS MOTSHWANE

Accused

SENTENCE

WILLIS J: It is well established in this court and reflects the accumulated wisdom of the generations that sentence should fit the criminal as well as the crime, be fair to the state and to the accused and be blended with a measure of mercy. It must also reflect the interests of society.

The accused at the time of the commission of these offences, was 19 years old. His level of education extends, as far as one could gauge, to sub B. His father is deceased and he does not live with his mother although she is still alive and lives in Klerksdorp.

The accused has no previous convictions. The accused has shown no remorse although he has through his advocate indicated from the bar that he is very sorry that the deceased had been killed. The accused killed his employer for reasons of greed. The death of the deceased has clearly caused his family immense bereavement. It is clear from the evidence of the first witness for the state, Yusuf Bhyat, that he and the family of the deceased had been highly traumatised by his killing.

Offences of this kind occur with disturbing prevalence in our society. Daily the courts throughout the land are called upon to take steps to act firmly against crime and if not to eliminate entirely at least strongly reduce the incidence of its occurrence.

Sentence has also five important functions:

1. To act as a general deterrence. In other words it must deter other members of society of committing such acts or even thinking that the price for wrongdoing is worthwhile.
2. It must act as a specific deterrent. In other words it must deter this particular individual from being tempted to act in such a manner ever again.
3. It must enable the possibility of correction unless this is clearly not likely.
4. It must be protective of society. In other words society must be protected from those who can do harm.
5. It must serve society's desire for retribution. In other words society's outrage that serious wrongdoing must be placated.

Clearly in this case a lengthy period of imprisonment is

warranted in order to serve each of these five functions. We live in a society where it has become a cliché to say that violent crime has reached alarming proportions. Cliches of course become clichés because they express the truth of them very well. Violent crimes instil fear in all law-abiding citizens. Violent crime affects the culture in which our children grow up. It adversely affects confidence in our economy and in turn the capacity of our economy to create new jobs. A vicious cycle is set in motion from which there is no easy escape and for which there are no easy solutions.

Part, but certainly not all, of the solutions lies in the court having regard to the function of general deterrence. In other words lengthy prison sentences are part of the solution but we delude ourselves if we believe that this alone will solve our problems. We need jobs, we need more efficient dedicated and competent policemen and women, prosecutors, magistrates and judges. Above all we need a culture of non-violence. It is beyond my wisdom to know how we can create a culture of non-violence. Perhaps the great institutions of society such as our courts can make a contribution by reflecting these needs in their judgments.

It has to be accepted that not only do we live in a violent society but also that our society has for the past few decades undergone greater moral suffering and distress. These were the decades of the accused's life. While each of us is responsible for his or her acts, it has to be accepted that each of us is a product of his or her times and circumstances. I spoke earlier of a vicious cycle. There are others than move in parallel with the one that I mentioned

earlier. We live in a harsh and often vicious society which has experienced great social upheaval. This has inevitably fashioned the accused and all of us share some blame for the heartlessness of the accused's heart which resulted in these crimes of murder and robbery.

It was accepted by both counsel for the state and for the accused that section 51 of the Criminal Law Amendment Act 105 of 1997 is applicable namely that a minimum sentence of life imprisonment is mandatory unless the court is satisfied that substantial and compelling circumstances exist to justify the imposition of a lesser sentence. The reason for this is that in part 1 of schedule 2 in the case of murder when the death of the victim was caused by the accused in committing or attempting to commit, robbery with aggravating circumstances, the minimum sentence is required.

As I said in the case of *S v Dithlotse* 1999 2 SACR 314 (W) at 318 C:

"The purpose of sentencing a person convicted of an offence referred to in part 1 of schedule 2 of the Act, commences, it seems to me, with an enquiry that is potentially twofold:

- (i) Would it be offensive to justice for the accused to receive a sentence of life imprisonment? If not, such a sentence should be imposed.
- (ii) If the answer to this question is affirmative, a lesser but nevertheless appropriate sentence must be imposed."

Taking into account the fact that this crime of murder was

committed in the course of a robbery as I have already indicated, and was motivated by greed and was perpetrated by an employee upon his employer, I do not think it would be offensive to justice for the accused to receive a sentence of life imprisonment for the murder.

Counsel for both the state and the accused, accepted that for the robbery count a sentence of 15 years would be appropriate. Mr Bester, counsel for the accused, asked that I have regard to the cumulative effect of the sentence that I impose and that I should in the exercise of mercy order that they run concurrently.

I am satisfied that the close linkage between the murder and the robbery charges, taken together with the accused's youthfulness and the fact that *dolus eventualis* was the form of intention in respect of the murder count, justifies an order that the sentence for the robbery to run concurrently with the sentence for the murder. Mercy also requires this.

Count 1, the murder charge, the accused is sentenced to life imprisonment.

Count 2, the charge of robbery with aggravating circumstances, the accused is sentenced to 15 years' imprisonment.

It is ordered that the sentence on count 2 to run concurrently with the sentence on count 1. In other words the effective sentence is life imprisonment.