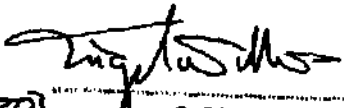


Sneller Verbatim/JduP

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

CASE NO: 112/00

2001.03.26

DELETE WHENEVER IS NOT APPLICABLE	
(1) REPORTABLE	YES/NO
(2) OF INTEREST TO OTHER JUDGES	YES/NO
(3) REVISED	✓
DATE 29/10/2001	SIGNATURE 

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In the matter between

THE STATE

and

MERVYN STANLEY JONES

First Accused

HEROLD GEORGE

Second Accused

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SENTENCE

WILLIS, J: It is well established in these courts, and reflects the accumulated wisdom of many 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.

Accused 1 was 21 years of age at the time of commission of these crimes. He has no previous convictions. Accused 2 is now 30 years of age and was 28 years of age at the time of commission of

the crime. He has a number of previous convictions but none of them are directly relevant with regard to these particular offences, and I shall disregard them. Both of the accused were unemployed at the time of commission of the crimes, and continue to be unemployed. Accused 1 has matric and accused 2 a Std.9 education.

These crimes illustrate very clearly that crime is the scourge of all law abiding citizens in our society. An honest hard-working man was gunned down in cold blood.

In addition to what I have said in the opening lines of this judgment, sentence also has five important functions:

1. It must act as a general deterrent. In other words, it must deter others of the community from committing such acts, or thinking that the price for wrongdoing is worthwhile.
2. It must act as a specific deterrent. In other words, it must deter these particular individuals from being tempted to act in such a manner ever again.
3. It must enable the possibility of correction, unless this is very clearly not likely.
4. It must be protective of society. In other words, society must be protected from those who do it harm.
5. It must serve society's desire for retribution. In other words, society's outrage at 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. I have no doubt that the community as a whole cries out aloud for a lengthy and severe sentence in a case such as this.

It is common cause that for the murder a minimum sentence of life imprisonment is prescribed in terms of section 51 of the Criminal Law Amendment Act, 105 of 1997, and for the robbery similarly a minimum sentence of 15 years' imprisonment is prescribed in terms of the same section of that Act. This section is saved by the provisions of subsection (3), which permit a lesser sentence if there are substantial and compelling circumstances which justify the imposition of a lesser sentence.

In my view, with regard to the robbery counts, there are no substantial and compelling circumstances that justify the imposition of a lesser sentence.

With regard to the murder the approach which I adopt is the same as that which I adopted in the reported case of *S v Detotsi* 1999 (2) SACR 314 (W), and this judgment followed broadly the case of *S v Blaauw* 1999 (2) SACR 295 (W), and a similar approach was adopted by Cloete J and Robinson AJ in the case of *S v Homareda* 1999 (2) SACR 319.

In (inaudible) I said at 318:

"The process 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:

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

In that case I held that the cumulative effect of various factors can operate to mitigate sentence.

With regard to accused 1 I am not influenced by the following factors:

1. He was 21 years of age at the time, he has no previous convictions and I accept, although he did not show remorse, he regrets that he killed Mr Frangos.
2. Furthermore I accept that there was not a direct intention to kill him. In other words, this is not a case where the accused knew inevitably that somebody would be killed in the course of the robbery and nevertheless went ahead and planned it. The formal legal intent was, as described by lawyers as *dolus eventualis*.
3. Accused 1 was also unemployed at the time.

With regard to accused 2 it is clear that he was not the one who carried the firearm. It is quite clear that he was not the one who shot Mr Frangos, and I accept the evidence of the state witness Lesley-Ann Phillander, that after Mr Frangos was killed he expressed considerable anger with accused 1, that he had killed the owner of the shop in question.

A further factor which weighs with me is that the accused did exercise some restraint. This awful tragedy could have been far worse. Indeed, Mr and Mrs Styles and Mr Frangos' sister-in-law could have been killed had the accused been more ruthless in their conduct.

In my view the cumulative effect of these various factors, in both instances, warrants a sentence of imprisonment that is less than

life. In my view 20 years would be appropriate for accused 1, and in this regard I wish to quote from the well-known case of *S v V* 1972 (3) SA 611 (A), where Holmes JA said as follows, at 614H:

"As to that, if there be any doubt whether a massive sentence of imprisonment of 20 years will not be a sufficient expiation for the gravely ill-misdeeds of this youth, let them cast their minds back in their own lives over that period and consider how much has happened to them in those two decades, and how long ago it has seemed. Although enlivened by domestic happiness and the free pursuit of their avocations, no such meliorations attend the slow tread of years when you are locked up."

With regard to accused 2 I also take into account the fact that he is clearly not a well man and is obviously very seriously ill. In my view in the circumstances an effective sentence of 15 years would be appropriate for him.

I have decided in the case of accused 1 that he should serve a separate sentence for the unlawful possession of a firearm. I impose a separate sentence because I wish to emphasise that the unlawful possession of a firearm is in itself a very serious offence.

Taking all the above into account the following are the sentences that I impose:

ACCUSED 1

On count 1: the count of robbery with aggravating circumstances as defined in section 1 of Act 51 of 1977, you are sentenced to 15 years imprisonment.

Count 2: the murder charge, you are sentenced to 18 years' imprisonment.

Count 3: the contravention of section 2 of Act 75 of 1969, the unlawful possession of a firearm, you are sentenced to 2 years' imprisonment.

Count 4: the contravention of section 36 of Act 75 of 1969, the unlawful possession of ammunition, you are sentenced to 6 months' imprisonment.

It is directed that the sentence on count 4 is to run concurrently with the sentence on count 3, and the sentence on count 1 is to run concurrently with the sentence on count 2. The effective sentence is therefore 20 years.

ACCUSED 2

On count 1: the count of robbery with aggravating circumstances as defined in section 1 of Act 51 of 1977, you are sentenced to 15 years' imprisonment.

On count 2: the murder charge, you are sentenced to 15 years' imprisonment.

It is ordered that the sentence on count 1 is to run concurrently with the sentence on count 2. In other words your effective sentence is 15 years' imprisonment.

ON BEHALF OF THE STATE:

ADV P SCHUTTE

ON BEHALF OF ACCUSED 1:

ADV P T LEISHER

ON BEHALF OF ACCUSED 2:

ADV C N N MATEANE