IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)

Case number: A139/2016

Date: 20/2/2017

DELETE WHICHEVER IS NOT APPLICABLE
(1) REPORTABLE: ~~YES~~/NO
(2) OF INTEREST TO OTHERS JUDGES: ~~YES~~/NO
(3) REVISED

20/02/2017 [redacted]
DATE SIGNATURE

In the matter between:

SIFISO MLAMBO DLADLA

APPELLANT

And

THE STATE

RESPONDENT

JUDGMENT

MDALANA-MAYISELA AJ,

(1) The appellant, Mr Sifiso Mlambo Dladla was charged in the Regional Magistrate's Court, Springs with six counts of theft, and one count of

housebreaking with the intent to steal and theft. The appellant pleaded guilty on all seven counts. He was convicted of all counts and was sentenced to five (5) years' imprisonment on each count. The trial court ordered the sentences on count one and two to run concurrently, count three and four to run concurrently and count five and six to run concurrently. The appellant was sentenced to an effective term of twenty (20) years' imprisonment. The trial court granted the appellant leave to appeal against the sentence only. The appellant was legally represented throughout the trial proceedings in the Regional Magistrate's Court.

(2) The facts giving rise to the appellant's conviction and sentence are these. On 11 February 2010 the appellant stole a motor vehicle, City Golf of Moeketsi Ishmail Mosio. On 12 August 2010 the appellant broke open and entered the house of Tebogo Mafodi, and stole two DVD players, two laptops, amplifier, microwave, toaster, external hard drive, camera, kettle, USB 3G card, groceries, clothes and legal reptor 350 CC, motor cycle. On 9 September 2011 the appellant stole a motor vehicle, Ford Bantam bakkie of Njabulo Peter Mlanga. On 8 March 2012 the appellant stole a motor vehicle, Nissan Sentra of Renier Vermeulen. On 12 March 2012 the appellant stole a motor vehicle, Mazda Rustler bakkie of Douw Gertbrand Grobler. On 5 April 2012 the appellant stole a motor vehicle, VW Polo of Mornè Dry. On 5 November 2012 the appellant stole a motor vehicle, Nissan 1400 of Chanel Janse van Rensburg.

(3) The appellant did not testify in mitigation of sentence. His counsel placed the following personal circumstances on record from the bar. He was 30 years old during the sentencing. He is married. He has two children, a girl aged eight years and a boy aged nine years at the time he was sentenced. His highest academic achievement is Grade 11. He was self-employed owning a carwash and a window tinting business, and earned R300 per week. He is a first offender. He was shot and lost his leg during his arrest. He spent one year and two months in prison awaiting trial. He pleaded guilty on all counts.

(4) Before us, counsel for the appellant contended that the trial court misdirected itself in over-emphasizing the seriousness of the offence at the expense of the personal circumstances of the appellant.

(5) In considering an appropriate sentence on appeal one must not lose sight of the settled principle of law that sentencing is pre-eminently a matter for the discretion of the trial court. However, a court of appeal may interfere with the sentence imposed provided the trial court materially misdirected itself or where the sentence imposed is shockingly inappropriate[1].

[1] See S v Kruger 2012(1) SACR 369 at 372 paragraph 8

(6) In sentencing, the trial court has a wide discretion at deciding which factors should be allowed to influence the court: (a) in determining the measure of punishment; and (b) in determining the value to attach to each factor taken into account[2]. A failure to take certain factors into account or an improper determination of the value of such factors amounts to a misdirection, but only when the dictates of justice carry clear conviction that an error has been committed in this regard[3].

(7) A mere misdirection is not by itself sufficient to entitle a court of appeal 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[4].

(8) In scrutinising the trial court's judgment on sentence, it is clear that it took all the relevant factors pertaining to the circumstances under which the offences were committed and the appellant's personal circumstances fully and properly into account. In deciding on the appropriate sentences, it gave weight to all these factors. I am not convinced that it misdirected itself at all, nor that it did not properly or reasonably exercise its discretion.

---

[2] See S v Fazzie and Others 1964(4) SA 673 A at 384B
[3] See S v Fazzie *(supra)* at 684 B-C
[4] See S v Pillay 1977(4) SA 531 A at 535 E-G

(9) The appellant was 26 years old at the time of the commission of the offences and was 30 years old at the time of trial. It has been contended by his counsel that he was relatively young and further that there are prospects of rehabilitation, as he was self-employed. In S v Matyityi[5], PONNAN JA remarked:

> "In my view a person of 20 years or more must show by acceptable evidence that he was immature to such an extent that his immaturity can operate as a mitigating factor. At the age of 27 the respondent could hardly be described as a callous youth. At best for him, his chronological age was a neutral factor. Nothing it served, without more, to reduce his moral blameworthiness..."

The appellant in the present case, just like the appellant in S v Matyityi[6], chose not to go into the box, and we have been told nothing about his level of immaturity or any other influence that may have been brought to bear on him, to have caused him to act in the manner in which he did.

(10) Traditional objectives of sentencing include retribution, deterrence and rehabilitation. It does not necessarily follow that a shorter sentence will always have a greater rehabilitative effect. Furthermore, the rehabilitation of the offender is but one of the considerations when sentence is being imposed. Surely, the nature of the offence related to

[5] 2011(1) SACR 40 SCA at 48 paragraph 14 a-b
[6] *Supra*

the personality of the offender, the justifiable expectations of the community and the effect of a sentence on both the offender and society are all part of the equation[7].

(11) It was contended further that the trial court misdirected itself in not properly considering the cumulative effect of the sentences imposed and that the imposed effective sentence of twenty (20) years' imprisonment is disproportionate. The trial court factored in the cumulative effect of the ultimate number of years imposed by ordering some sentences to run concurrently. The offences were committed at different places and at different times. They were committed over a considerable length of time. There is no doubt that all the offences forming the subject matter of this appeal are serious and have to be punished seriously. Also I accept that they were not of a violent character. The offences involve theft of motor vehicles and other valuable goods and the appellant was selling the stolen goods. The appellant on count two broke into the person's house wherein the complainant believed himself to be safe. He then removed valuable goods. Clearly he committed these offences for his personal gain and financial reasons. The offences committed by the appellant are prevalent in our country and the sentences imposed are justified by the interests of the society. The personal circumstances of the appellant and the direct consequences of the sentences imposed cannot and should not be allowed to outweigh the seriousness of the offences.

[7] See DPP, Kwazulu-Natal v Ngcobo 2009(2) SACR 361 SCA at 367 paragraph 22

The effective sentence of twenty (20) years' imprisonment is not disproportionate in the circumstances of this case.

(12) It is not wrong that the natural indignation of interested persons and of the community at large should receive some recognition in the sentences that courts impose, and it is not irrelevant to bear in mind that if sentences for serious crimes are too lenient, the administration of justice may fall into disrepute and injured persons may incline to take the law into their own hands[8].

(13) I am satisfied in these circumstances that there is no legal basis to interfere with the sentences and they must stand. The following order is accordingly proposed:

The appeal is dismissed.

[redacted]

Acting Judge MP Mdalana-Mayisela

I agree. It is so ordered.

[redacted]

Judge JW Louw

[8] See R v Korg 1961(1) SA 231 A at 236b

Case number	: A139/2016
Matter heard on	: 16 February 2017
For the Appellant	: Adv F Isola
Instructed by	: Pretoria Justice Centre
For the Respondent	: Adv MJ Nethononda
Instructed by	: Director of Public Prosecutions
Date of Judgment	: 20 February 2017