IN THE GAUTENG DIVISION OF THE HIGH COURT, PRETORIA

DELETE WHICH IS NOT APPLICABLE
[1] REPORTABLE: ~~YES~~ / NO
[2] OF INTEREST TO OTHER JUDGES:
~~YES~~ / NO
[3] REVISED
DATE 24/4/18 SIGNATURE

APPEAL NO: A834/2016

In the matter between:

TIAN TIAN WANG Appellant

and

THE STATE Respondent

JUDGMENT

LOUW, J

[1] The appellant was prosecuted in the Regional Court, Pretoria on the following counts:

Count 1: Contravention of section 4(1)(b) read with sections 1, 2, 24, 25 and 26 of the Prevention and Combating of Corrupt Activities Act 12 of 2004 in that she had offered to give Mr. A R Malherbe, a manager of the Financial Surveillance Department of the South African Reserve Bank, R5 million to unblock Ipocket Nedbank funds in the amount of R27 443 828 which would have enabled the appellant to illegally transfer the unblocked funds from the Republic in contravention of exchange control regulations; a further R20 million to unblock Ukuzuza ABSA funds in the amount of R31 300 602 which would have enabled the appellant to illegally transfer the unblocked funds from the Republic in contravention of exchange control regulations; and further to pay him at least R3 million per month to pre-warn the appellant of any pending blocking of accounts which she intended to use for the purposes of illegally transferring foreign exchange from the Republic by means of procuring false documentation.

Count 2: Contravention of section 49(1)(a) read with sections 1 and 9 of the Immigration Act 13 of 2002 in that, between 1 January 2004 and 27 January 2015, the appellant unlawfully and intentionally entered and remained in the Republic.

Count 3: Contravention of section 49(14) read with sections 1 and 9 of the Immigration Act 13 of 2002 in that, between 1 January 2004 and

27 January 2015, the appellant unlawfully and intentionally, with the purpose of remaining in or departing from the Republic, committed a fraudulent act or acts by making a false representation to the Department of Home Affairs when applying for a South African late registration of birth and a South African passport by stating that she was born in South Africa whilst she was born in China.

[2] The appellant pleaded guilty to all three charges. She was sentenced to eight years imprisonment on count 1, to one year imprisonment on count 2 and to two years imprisonment on count 3. The prescribed minimum sentence for a conviction on count 1 is fifteen years imprisonment. The trial court found that there were substantial and compelling circumstances which justified a lesser sentence and reduce the sentence to eight years imprisonment. The appellant applied for and was granted leave to appeal in respect of the sentences on counts 2 and 3 only.

[3] The basis on which leave to appeal was sought, was that the court should have ordered the sentences on counts 2 and 3 to run concurrently with the sentence on count 1. That was also the only argument presented to us on behalf of the appellant for the appeal to succeed.

[4] It was submitted by Adv. Hodes SC, who appeared for the appellant, that the trial court was incorrectly of the view that only sentences in respect

of offences which are "*related*" can be ordered to run the concurrently. That is also how I understand the explanation given in the judgment of the court *a quo* in the application for leave to appeal why the sentences on counts 2 and 3 were not ordered to run concurrently with the sentence on count 1. That approach is clearly wrong. It was also conceded by Adv. Kruger on behalf of the State that there is no requirement that concurrent sentences should be restricted to offenses that are related to the same incident.

[5] Counsel who appeared for the appellant at the trial did not argue that the sentences on counts 2 and 3 should run concurrently with any sentence on count 1. What was suggested, is that the court take counts 2 and 3 together for purposes of sentence. It was, however, submitted by the prosecution that the sentences on counts 2 and 3 three should run concurrently with the sentence on count 1. The trial court was, of course, not bound by the State's suggestion. See *S v Nortje 2007 JDR 1146* par 24.

[6] The court, after considering the arguments placed before it, imposed the sentences which it did. The question is whether, having regard to the court's incorrect approach referred to above, the sentences imposed, which resulted in a cumulative sentence of 11 years imprisonment, can be said to be shockingly inappropriate in all the circumstances or that it induces a sense of shock. I think not. The court properly took the appellant's personal circumstances into account as well as that she had no previous convictions

and that she had shown remorse. Even if it is accepted that the court's reason for not ordering the sentences on counts 2 and 3 to run concurrently with the sentence on count 1, it cannot be said that the absence of such an order results in a cumulative sentence which is shockingly inappropriate. Absent such a conclusion, this court is not entitled to interfere with the sentences which were imposed.

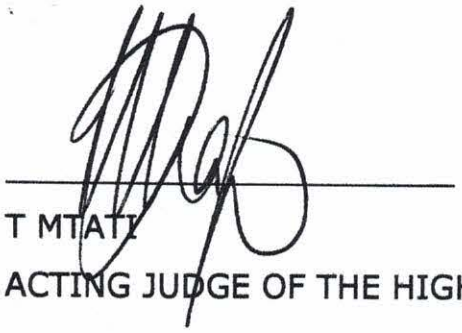
[7] It was further submitted on behalf of the appellant that the sentences on counts 2 and 3 should have been ordered to run concurrently with the sentence on count 1 because the appellant will be deported. It was argued that she should be allowed to leave the country after eight years so as not to be a burden on the country. This argument has been rejected by our courts. In *R v Bhana*[1] it was held that the liability to be deported under s 22 of Act 22 of 1913, was not a factor which a judicial officer ought to take into consideration in sentencing a person. See also *S v Morris.*[2]

[8] In the result, it is ordered that the appeal is dismissed.

J W LOUW
JUDGE OF THE HIGH COURT

I agree

If [1] 1954 (1) SA 45 (A) at 53E-F
[2] 1972



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ACTING JUDGE OF THE HIGH COURT

For the appellant: Adv. M M Hodes SC.
Instructed by: Robert H Kanarek Attorneys.

For the State: Adv. C J H Kruger