REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

(1) REPORTABLE: ~~YES~~/NO
(2) OF INTEREST TO OTHER JUDGES: YES/NO
(3) REVISED
16/09/2020

CASE NO: A281/2019

In the matter between:

PIETER WILLIAM STEYN **APPELLANT**

And

THE STATE **RESPONDENT**

JUDGMENT

LEDWABA AJ

Introduction

[1] The appellant is appealing to the Full Bench against the sentence

imposed by the District Court Magistrate Mr HC Raath sitting as the court of first instance at Oberholzer on the 25th March 2019.

[2] The appellant pleaded guilty and was convicted of the contravention of section 65(2)(a) of the National Road Traffic Act 93 of 1996(the Act). The section prohibits the driving of a motor vehicle on the public road while the concentration of alcohol in any specimen of blood taken from any part of the driver's body is not less than 0,05 gram per 100 millilitres in the blood. The charge was that on or about the 20th July 2018 and on Van Zyl public road, in the District Division of Merafong, the appellant unlawfully drove a motor vehicle, to wit, an Opel Astra with registration number [….] whilst his concentration of alcohol in any specimen of blood taken from any part of his body was not less than 0,05 gram per 100 millilitres , to wit 0.29 gram per 100 millilitres. This is the drunken driving charge.

[3] In the statement made in terms of section 112 of the Criminal Procedure Act 51 of 1977(the CPA), the appellant stated that he had consumed three cans of Castle Lite beers and that his blood was drawn within two hours. He further admitted that the blood samples were sealed in his presence and taken to the laboratory. He accepted the blood report.

[4] The court accepted that the appellant understood the charge put him and that he admitted all the elements of crime and found him guilty as charged.

[5] The appellant has previous conviction. In 2010, he contravened the same section 65(2)(a) of the Act and drove recklessly and negligently. The offences were taken together for the purpose of sentence . He was sentenced to R4 000.00 or four months imprisonment on the 15th August 2016. On the 4th October 2016 the appellant was again convicted of the same drunken driving offence and was sentenced to R3000.00 or three months imprisonment. In 2015, he committed the same offence and was sentenced on the 23rd February 2017 to R3000 or three months imprisonment. This means he committed the same offence of drunken driving in 2010, 2015 and 2016 and was sentenced to between R3000 or three months and R4000 and four months imprisonment.

[6] For the current offence, the appellant was sentenced to three years imprisonment without an option of a fine and his driving licence was suspended for eighteen months. Section 89(2) of the Act prescribes the maximum sentence of six months.

[7] The appellant was legally represented by Mr Thipe during the trial. His leave to appeal application was launched by Mr Pieterse.

[8] The leave to appeal was declined by the court of first instance. It was granted by the full bench of this court on the 16th August 2019.

[9] In essence, the appellant's complaint is that the court of first instance erred in failing to consider the interest of his minor children and in not considering correctional supervision referred to in section 276(1)(h) read

with section 276A of the CPA.

[10] On behalf of the appellant, the submission is to the effect that although the interest of the appellant's minor children and correctional supervision were not raised by the appellant's legal representative, section 274 of the CPA requires that before passing a sentence, a sentencing court must receive such evidence as it thinks fit in order to inform itself as to the proper sentence to be passed. The submission is that the court of first instance limited its sentencing options to a fine or direct imprisonment and did not consider other options such as correctional supervision. As authority, reliance is placed on S v Mokgara[1], S v Mathole & Another[2] and S v Siebert[3].

[11] None of the parties between the State and the defence raised correctional supervision as an alternative sentence and there is no indication in the proceedings record that the court of first instance considered and rejected it. The record reflects that custodial and fine sentences were considered and not the correctional supervision as well.

[12] The cited case of S v M[4] deals with the proper approach of a sentencing court where the convicted person is the primary caregiver of minor children. It does not deal with wider class of breadwinners. A primary caregiver is defined as the person with whom the child lives and who performs everyday tasks like ensuring that the child is fed, is looked after

[1] 2015(1) SACR 634 GP.
[2] 2002(2) SACR 484(T)
[3] 1998(1) SACR 554(SCA) at 558j
[4] 2007(2) SACR 539(CC) at paragraph 28

and regularly attends school. In this case the evidence is that the appellant is divorced and is separated from the mother of their three children who, at the time of the sentencing were aged 6, 11 and 15. The mother of the children is the primary caregiver and in mitigation of sentence, the appellant was stated to be unemployed. In terms of the guidelines set out in Sv M[5], a probation officer report's is not needed to determine the interest of the children's right in the sentencing of a primary care giver. Even at this appeal stage, there is no indication how this incarceration of unemployed appellant who is not a primary caregiver is affecting the children beyond being their father. In SvM[6] the court stated that the purpose of emphasising the duty of the sentencing court to acknowledge the interest of the children is not to permit errant parents unreasonably to avoid appropriate punishment.

[13] The appeal court's powers to interfere with a sentence on appeal are circumscribed in that it may only do so if the sentence is vitiated by misdirection. The question is not merely whether such an error amounts to a misdirection, but whether the misdirection was such a nature, degree, or seriousness that it showed , directly or inferentially, that the sentencing court did not exercise its discretion at all or exercised it improperly or unreasonably. In such a case the dictates of justice would entitle the court to consider the sentence afresh.[7]

[5] Paragraph 36(b)
[6] Paragraph 35
[7] S v Pillay 1977(4)SA 531(A) and S v Petkar 1998(3) 571(A)

[14] Given the appellant's reoffending and the nature of the previous convictions, it was misdirection for the court of first instance not to consider receiving a probation officer or correctional official's report. The report will provide evidence which will place it in the position to decide the proper sentence to be passed, including whether three years imprisonment without an option of a fine is the appropriate sentence.

[15] Fairness dictates that this matter be referred back to the sentencing magistrate for a reconsideration of an appropriate sentence after the receipt and consideration of further evidence regarding sentence, which evidence must include probation officer's or correctional official's report referred to in section 276A(1)(a) of the CPA.

ORDER

[16] In the premises, the following order is proposed:

(a) The sentence imposed by the magistrate Mr Raath is set aside.
(b) The matter is referred back to the sentencing magistrate for a re-considreation of an appropriate sentence after the receipt and consideration of further evidence, which shall include the evidence of either a probation officer or a correctional official.
(c) This matter be heard and disposed off without any unreasonable delay, regard being to the fact that the appellant has now being in custody for more than a year.

L.G.P. LEDWABA

ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

I, agree.

N. JANSE VAN NIEUWENHUIZEN

JUDGE OF THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

APPEARANCES

Heard on:	3rd August 2020
Judgement delivered on:	
For the Appellants:	J.J Strijdom SC
Instructed by:	Messrs Gass Pieterse Inc
	OBERHOLTZER
For the State:	L.A More
Instructed by:	Director of Public Prosecutor
	PRETORIA