IN THE HIGH COURT OF SOUTH AFRICA,

FREE STATE DIVISION, BLOEMFONTEIN

Reportable:	**YES/NO**
Of Interest to other Judges:	**YES/NO**
Circulate to Magistrates:	**YES/NO**

Case Number: A146/2022

In the matter between:

GEORGE PAPA BOOYSEN 1st Appellant

XOLANI WILLIAM SOLOMON 2nd Appellant

MZWAKHE NXOKAZI 3rd Appellant

and

THE STATE Respondent

CORAM: REINDERS, J *et* BUYS, AJ

JUDGMENT BY: REINDERS, J

HEARD ON: 29 JANUARY 2024

DELIVERED ON: 9 FEBRUARY 2024

---

[1] Mr Kgotso Bohope (the complainant) was the victim of an assault by a group of people that took place on 20 April 2021 when he was hit with a sjambok, fists and open hands. The following day on 21 April 2021 the complainant was

dragged from his home to an open field by a group of people and once again viciously assaulted by a group of people with sjamboks, golf sticks, knobkierries, open hands and fists.

[2] The three appellants were arraigned in the Regional Court at Bloemfontein on charges of assault with the intent to do grievous bodily harm (Count1), kidnapping (Count 2) and attempted murder (Count 3).

[3] The appellants pleaded not guilty to all the charges.

3.1 Having heard the evidence of the single state witness (the complainant) and the three appellants, the trial court on 17 November 2021 convicted the first and third appellants on Count 1, all three appellants on Count 2 and found all three appellants guilty of assault with the intent to do grievous bodily harm on Count 3.

3.2 The first and third appellants were sentenced as follow:
Counts 1, 2 and 3 were taken together for purposes of sentence and appellants were sentenced to 7 years' imprisonment of which 18 months is suspended for 4 years on condition that they are not convicted of assault with intent to do grievous bodily harm, murder, attempted murder or kidnapping committed during the period of suspension.

3.3 The second appellant was sentenced as follows:
Counts 2 and 3 were taken together for purposes of sentence and appellant was sentenced to 5 years' imprisonment of which 1 year was suspended for 4 years on condition that he is not convicted of assault with intent to do grievous bodily harm, murder, attempted murder or kidnapping committed during the period of suspension.

[4] This appeal lies against both conviction and sentence with leave having been granted by the court *a quo.*

[5] The upshot of the appellants' grounds of appeal against their respective convictions relates to whether the state had succeeded in proving its case beyond a reasonable doubt and more specifically whether the trial court erred in the application of the cautionary rule in respect of the evidence of a single witness.

[6] From a reading of the record it is evident that the learned magistrate was well appraised thereof that the state has to prove the guilt of an accused person beyond reasonable doubt whereas an accuseds' version need only be reasonably possibly true to lead to an acquittal. It is also evident that the magistrate appreciated that the complainant was a single witness in testifying what had occurred on 20 and 21 April 2021.[1]

[7] In evaluating the evidence before her, the magistrate alluded to the following issues as being common cause between the state and the defence:

7.1 "It is common cause between the state and the defence that the complainant was confronted on 20 April by a group of people accusing him of stealing a bicycle. It is common cause that the complainant and his brother were again confronted by a group of people on 21 April 2021. It is common cause that they were taken away from their house to an open space or a so called park and that they were there seriously assaulted. It is common cause that the three accused were all present on 21 April 2021 when the complainant was assaulted and it is common cause that accused, at least accused 2 and 3 were also part of the group that confronted him on 20 April".[2]

7.2 "It is common cause that accused 1 was well known to the complainant and it is common cause that accused 1 did go to the house of the complainant and his brother."[3]

---

[1] ***Michael Jantjies v The State*** (Case no 532/2022) [2023] ZASCA 3 (15 January 2024), see also

s208 of Criminal Procedure Act 51 of 1977.

[2] See record: p 157 line 18 - p 158 line 3.

[3] See record: p 158 line 13 – 15.

7.3 "It is so that all three accused put themselves at the scene on both occasions. It is so that the complainant knew accused 1 and 3 very well. Accused 2 confirmed that he was part of the group on 20 April that approached the complainant and that he was watching what was happening on the 21st. All three accused are members of the Wanya tsotsies. All three of them told the court that it is their mission to combat crime in the community. All three of them told the court that they were just standing watching the complainant being seriously assaulted."[4]

The magistrate concluded as follows:

> "All three accused are members of the Wanya tsotsies who initiated this whole process and I am not convinced that they then would just stand back and let the community do what they saying the community did. I am satisfied that it has been proven that all three of them took part in the confrontation and the assault and the kidnapping of the complainant."[5]

[8] It is trite that in the absence of an irregularity or misdirection by the trial court, a court of appeal is bound by credibility findings thereof, unless it is convinced that such findings are clearly incorrect.[6]

[9] In my view the magistrate was correct in convicting the appellants as she did. There is no indication of any misdirection in respect of any relevant evidence. Much ado was made by counsel for the appellant about the complaints' initial incorrect reference to the numbering of the appellants in court at the time. In her judgment the magistrate alluded to this aspect, holding that in view of the complainants' correction thereof (having regard to the common cause facts in relation to the complainants' identification and prior acquaintance with the appellants), she was satisfied that the complainant did not err in his evidence of the appellants' roles in the brutal assaults and kidnapping. I am in agreement with the learned magistrate's finding in this regard

---

[4]See record: p 159 line 15 – 23.
[5]See record: p160 line 19 – 24.
[6] See: ***S v Francis*** 1991 (1) SACR 198 (A) at 204c; ***J v S*** [1998] 2 All SA 267 (A) at 271c.

She took a holistic view of all the evidence tendered before her, applied the legal principles in considering the matter and the appellants' guilt, and comprehensively indicated her reasoning for finding the state to have proven its case beyond a reasonable doubt. Therefore, there is no basis upon which we should interfere with the conviction. The result is that the appeal against conviction should be dismissed.

[10] As mentioned, the appellants were convicted of two charges of assault to do grievous bodily harm and a charge of kidnapping.

[11] The attack against the imposed sentences by the trail court was a mere submission that the court a *quo* "did not exercise its discretion properly and judicially by failing to consider all relevant factors".

[12] From the record it is evident that the learned magistrate was well appraised of the time honoured triad in ***Zinn***[7], the purposes of sentence and the principles to be applied in arriving at a fair and just sentence:

12.1 The personal circumstances of the appellants were fully dealt with by the magistrate. The magistrate considered all three appellants to be first offenders for purposes of sentencing.[8]

12.2 The magistrate considered the crime and the seriousness thereof, describing it as "ghastly". The magistrate alluded thereto that the complainant would bear the physical scars forever. Although the state did not present a victim impact statement by the complainant, in my view emotional scars would as a matter of logic, also not be excluded. As indicated by the magistrate, the complainant was attacked by the mob like a pack of dogs would attack its prey. The magistrate took it as an aggravating circumstance that the appellants showed no remorse for the crimes that they had committed.

---

[7] ***S v Zinn*** 1969 (2) SA 537 (A).
[8] See record: p 171 line 20 – p 172 line 21.

12.3 In considering the interest of the community, the learned magistrate pointed out that it is important that courts send out a clear message that such behaviour will not be allowed. She stressed that the appellants' actions by taking the law into their own hands can never be tolerated.

[13] It has long been established that sentencing is pre-eminently the prerogative of the trial court and a court of appeal should be careful not to erode this discretion.[9] Interference is warranted if the sentence where there has been results in a failure of justice, or when the court a *quo* misdirected itself to such an extent that its decision on sentencing is vitiated, or the sentence is so disproportionate or shocking that no court could have imposed it.[10]

[14] Mindful of the aforementioned principles, the submissions placed before us for interference with the sentence imposed by the trial court, were considered.

[15] In my view there is no merit in the submission that the trial court erred as alluded to herein above in imposing sentences. The sentences imposed by the trial court cannot be faulted. The appeal against sentence should likewise be met with the same fate as the appeal against the convictions and is accordingly dismissed.

[16] Accordingly the following order is made:

The appeal is dismissed against both the imposed convictions and sentences.

[9]See: ***S v Rabie*** 1975 (4) 855 (AD).
[10]See: ***S v Boggards*** 2013 (1) SACR (CC) at [4].

_____
C REINDERS, J

I concur.

_____
JJ BUYS, AJ

On behalf of the Appellant:	Adv T Mogwera
Instructed by:	Finger Attorneys
	BLOEMFONTEIN
On behalf of the Respondent:	Adv M Tsefutha
Instructed by:	Director of Public Prosecutions
	BLOEMFONTEIN