

Editorial note: Certain information has been redacted from this judgment in compliance with the law.

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: SS27/2021

DATE: 19-10-2023

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: NO.

(2) OF INTEREST TO OTHER JUDGES: NO.

(3) REVISED.

DATE

SIGNATURE

In the matter between

STATE

Plaintiff

and

R[...] S[...] & M[...] B[...]

Defendant

S E N T E N C E

YACOOB J: Mr S[...] and Ms B[...] were charged with the murder of Ms B[...] 12-year-old daughter N[...]. On 27 March 2023 I convicted Mr S[...] of culpable homicide and Ms B[...] of murder. It now falls to me to impose sentences for these convictions.

It is well established that sentencing must be

proportional, taking into account the nature and severity of the crime, the circumstances of the offender, and the interest of society. *S v Zinn* 1969 (2) SA 537 (A).

The objectives of deterrence, prevention, retribution and rehabilitation must be balanced. An appropriate measure of mercy must be applied. Where appropriate a Court must consider and accommodate the principles of restorative justice. In a fractured society, restorative justice can allow healing and growth, although a Court must be careful not to create the impression that there are no consequences for offences that exacerbate the harm to society.

Reports were obtained detailing the appropriateness of correctional supervision for each person before me. At the sentencing hearing Mr Makoela, a correctional services officer, gave evidence and expanded on the reports that he had submitted. Mr S[...] and Ms B[...] both also gave evidence in mitigation.

Mr Makoela testified that the investigating officer informed him that neither Mr S[...] nor Ms B[...] showed any remorse for their actions. However, having evaluated the facts and also the admissions made during the trial, he considers that there is evidence of remorse. He considers that it is likely that if correctional supervision is imposed there will be compliance with any conditions the Court

imposes. Mr Makoela set out in each report the correctional resources available in the area in which the parties reside and the manner in which the non-custodial sentences may be implemented.

There are two children to be considered in these proceedings, a 6-year-old girl and the teenage brother of the deceased, who has learning difficulties. Should both the parents be imprisoned, arrangements have been made for Mr S[...]’s sister to take care of them. It must be noted that, although Mr S[...] is not the biological father of the boy T[...] and also the late N[...]i, he is still in *loco parentis* and considers them to be his children.

In my view both Mr S[...] and Ms Bembe[...] showed remorse for what they have done. Their distress and pain at the death of their child, and at the fact that they are the cause of that death, have been evident not just when they testified but in their demeanour throughout the trial. The fact that they take responsibility and accept the consequences of their actions, is amply demonstrated in the fact that they faithfully attended at every day of the trial, while they were on bail. They were never late, despite being subject to the vagaries of public transport, and having somehow to also make a living while attending the trial. They have moved from their previous residence because it holds bad memories for them, but they are still in touch with

the community and in fact keep them up to date on the progress of the trial.

Also relevant is that both of them admitted to having assaulted N[...], there was no prevarication, and it was only the question of any intention to kill her that was the issue in the trial.

Since Mr S[...] has been convicted of culpable homicide, his sentence is entirely in my discretion.

In addition to what I have set out above, Mr S[...] testified that he feels that they offended the two remaining children by what they did. He feels deeply his debt to them and the need to attempt to heal and rectify the damage done to the remaining children. He and Ms B[...] have made it clear to the children that one has to accept the consequences of one's actions. He has no previous convictions. He is a motor mechanic who earns approximately R2000 a month.

I am satisfied that a non-custodial sentence is appropriate for Mr S[...], in accordance with Section 276(1) (h) of the Criminal Procedure Act, 51 of 1977. Taking into account that the maximum period of correctional supervision where an offence is not a sexual offence is three years, I consider that an 18-month period of supervision is appropriate.

Mr S[...] is therefore sentenced to correctional

supervision for a period of 18 months, subject to the following conditions:

- [1] Mr S[...] is to be monitored by reporting, once a week on a Friday between 09:00 and 11:00am, to the Vereeniging Social Reintegration Office at 28 Market Avenue, Vereeniging;
- [3] He is to reside at number [...], Extension [...] in E[...], V[...] for the duration of the sentence. Should there be a need to move from the address he is to inform the commissioner of correctional services in writing about such a change of address;
- [4] He must perform 16 hours of community service per month, at either the South African Police Services, a Clinic or a Fire Station for the duration of his correctional supervision sentence. The relevant social worker is to facilitate this community service;
- [5] He is to subject himself to an assessment with a social worker, identified in the report as Ms Nisi Mangali to participate in any program or intervention deemed appropriate;
- [6] Mr S[...] is prohibited from taking any drugs not prescribed by a medical practitioner;
- [7] He is prohibited from committing any criminal

offence;

[8] Finally, he must comply with any reasonable instruction issued by the commissioner of correctional services, in the administration of the sentence imposed.

As far as Ms B[...] is concerned, she has been convicted of the murder of a 12-year-old child.

A conviction of murder of a person under the age of 18 years, brings into play the minimum sentencing regime set out in Act 105 of 1997. The offence is listed in part one of Schedule 2, and therefore, in terms of Section 51(1) the prescribed minimum sentence is life. It is only if I find that there are substance and compelling circumstances which justify the imposition of a lesser sentence that I may deviate from this prescribed minimum sentence. The relevant principles are set out in *S v Malgas* 2001 (2) SA 1222 (SCA).

In addition to what is set out above, Ms B[...] testified that she takes responsibility for what has happened. In her own words, she takes a lot of responsibility.

I am satisfied that in this case Ms B[...] shows deep self-reflection and introspection. She has acknowledged that, although she did not intend to cause the death of her child, what she has done was wrong and did in fact, cause

the death. She has acknowledged that she has to suffer the consequences.

I am satisfied that, on a personal level, Ms B[...] will be suffering the consequences of her actions for the rest of her life. Her acceptance of the situation, as well as the fact that she is doing her best to deal with the impact on her remaining children and her community, amount in my view to substantial and compelling circumstances which justify a departure from minimum sentence.

Against, Ms B[...]’s situation must be balanced with the interests of society. A person who has caused the death of her own child by assaulting her to the extent that was done to N[...] must be seen to have consequences imposed on her. Nobody must assume that they can do to a child S[...] what has been done to N[...] and not suffer consequences.

In addition, the fact that the deceased was a girl child being chastised for behaviour for which it is unlikely a boy child would have been chastised as severely, brings into play the question of whether this incident could be classified as gender-based violence. Certainly, there is an element of that and the Court does not in any condone the imposition of double standards of behaviour. However, on reflection and taking into account the particular circumstances of this case, I believe that to sentence Ms B[...] to a custodial sentence is to sacrifice her on the altar of deterrence, it

would be not be just in these particular circumstances.

Ms B[...] has one previous conviction for theft, for which she paid a fine. This conviction is not at all related to the violence at the heart of this case. I do not consider it relevant nor do I consider that it demonstrates that Ms B[...] is a person likely to continue to commit crimes. I do not believe that it is necessary to remove Ms B[...] from society. The maximum period for which correctional service supervision may be imposed is three years, I would otherwise have considered a slightly longer period for Ms B[...].

For these reasons, I sentence her in accordance with Section 276(1)(h) to correctional supervision for a period of three years, subject to the following conditions;

- [1] She is subject to monitoring by reporting once a week at Vereeniging Social Reintegration Officer at 28 Market Avenue, Vereeniging between 09:00 and 11:00am on a Friday;
- [2] She is to continue to reside at [...], Extension [...] in E[...] for the duration of the sentence, should there be a need to move from the address she will be expected to inform the commissioner of correctional services in writing about the change of address;
- [3] She is to perform 30 hours of community

service per month, either at the South African Police Services, a Fire Station or a Clinic in Vereeniging as determined in consultation with her social worker;

[4] She is to submit herself to an assessment with the social worker identified in the correctional officer's report, Ms Nisi Mangali, to participate in any program or intervention that will foster her rehabilitation;

[5] She is prohibited from taking any drugs not prescribe by a medical practitioner;

[6] She is prohibited from committing any criminal offence;

[7] She must comply with any reasonable instruction issue by the commissioner of correctional services, in the administration of the sentence imposed.

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YACOOB J

JUDGE OF THE HIGH COURT

DATE: