G.P.-S. J. 445.

In the Supreme Court of South Africa
In die Hooggeregshof van Suid-Afrika

(Appellate DIVISION).
AFDELING).

APPEAL IN CRIMINAL CASE.
APPÈL IN STRAFSAAK.

SAMUEL STEPHEN WHITEHEAD
Appellant.

versus/teen

THE STATE
Respondent.

Appellant's Attorney Lovius, B.M.& C. *Respondent's Attorney*
Prokureur van Appellant *Prokureur van Respondent*

Appellant's Advocate *Respondent's Advocate*
Advokaat van Appellant *Advokaat van Respondent*

Set down for hearing on 17-8-70
Op die rol geplaas vir verhoor op 2.4.10

(E.C.D.)

The appeal succeeds to the extent that six years of the sentence of seven years' imprisonment imposed by the trial Court on the second count(assault with intent to murder) are ordered to run concurrently with the sentence of fifteen years' imprisonment imposed by the trial Court in respect of the first (murder) count.

REGISTRAR.
31.8.1970

IN THE SUPREME COURT OF SOUTH AFRICA
(APPELLATE DIVISION)

In the matter of:

SAMUEL STEVEN WHITEHEAD ..... appellant,

versus

THE STATE ..... respondent.

Coram: OGILVIE THOMPSON, HOLMES, JJ.A. et MULLER, A.J.A.

Heard: 17th August 1970. Delivered: 31st August 1970.

J U D G M E N T

OGILVIE THOMPSON, J.A.:

Appellant was tried by Munnik, J., sitting with assessors in the Port Elizabeth Circuit Local Division, on a charge of murder and a further charge of assault with intent to murder. He was convicted as charged. Extenuating circumstances having been found in relation to the murder, the sentence imposed on that count was 15 years' imprisonment. The sentence on the count of assault with intent to murder was 7 years' imprisonment. It was directed that the sentences should not run concurrently.

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An application for leave to appeal against the verdict on the second count (viz: that of assault with intent to murder) and against the sentences on both counts having been refused by the learned trial judge, the appellant presented a petition to this Court for that relief. Pursuant to the provisions of sec. 363 (8) of the Code, leave to appeal against the said conviction was refused, but was granted in respect of the sentences.

The crimes in issue were both committed during the night of 18th December 1968 in the residence of appellant's father, Ronald Alexander Whitehead, at 6 Hallack Place, Port Elizabeth. His victims were, respectively, his stepmother Velma Grace Whitehead - aged 36, and to whom I shall refer as the deceased - and her husband, the aforementioned Ronald Alexander Whitehead.

Although the present appeal is restricted to the question of sentence and the facts are very fully set out in the judgment of the court a quo, the case presents some somewhat unusual aspects and, for a proper appreciation of the problem before us, it is

necessary.../

necessary to make, as briefly as the circumstances permit, some preliminary mention of the extended background against which these two crimes were committed, and of their salient features as reflected in the evidence.

Appellant's mother, who divorced Whitehead in 1957 - that is to say, when appellant was nearly 7 years old - moved to Cape Town from Port Elizabeth, where she and Whitehead had lived during their married life together. In terms of the order of divorce, appellant's mother was awarded custody of appellant who, at the end of 1957, joined her in Cape Town where she later married one John Parker. In Cape Town appellant lived first with his mother and, after her remarriage in June 1959, in the Parker household. He went to school in Cape Town and each year spent a substantial portion of his holidays in Port Elizabeth with his father, Whitehead, who married the deceased in April 1958 and by whom he, in due course, had two children.

It was a vital part of the defence case in the court below that, primarily because of his being

a...../

a child of a broken marriage who nevertheless hero-worshipped his father, appellant, although admittedly of above average intelligence, was emotionally immature and a disturbed personality; and that the crimes in issue were committed in the course of an emotional storm or explosive episode triggered off as deposed to by appellant in his evidence and more fully described later in this judgment. In consequence, much of the protracted trial - and, indeed, also of the argument before this Court - was taken up in describing appellant's general conduct and behaviour between the time of the divorce and the tragedy of 18th December 1968 and with the evidence of the two expert witnesses called by the defence, namely, Dr. Cooper, a Consultant Psychiatrist, and Mr. Van Zyl, a Clinical Psychologist. Quarrels during the subsistence of the marriage of appellant's parents, his allegedly literally having been the subject of a physical tug-of-war between his parents when his mother came to fetch him in Port Elizabeth during January 1958, and appellant's avowed persistent love for, and hero-worship of, his father were advanced by the defence in explanation of appellant's allegedly coming

to regard his mother - who apparently always lavished affection upon him - as an hysterical and nagging person who was primarily responsible for the divorce. Dr. Cooper said at the trial that in his opinion appellant hero-worshipped his father to a marked degree, and that appellant's aforementioned attitude towards his mother was a form of identifying himself with his father. At the trial appellant deposed that, because of his affection for his father, he throughout wanted to be in Port Elizabeth, preferably living with his father, but even, if need be, at boarding school. Because this was denied him, he felt rejected. This alleged rejection, together with Whitehead's somewhat inconsistent treatment of appellant, was claimed by the defence, both in the court below and before us, to have been largely responsible for appellant's disturbed personality and recalcitrant behaviour. During April 1963 Whitehead was severely injured in a motor accident and was confined to hospital for an extended period. This is contended by the defence to have accentuated appellant's emotional tensions. It was during 1963 that appellant's

mother first consulted Dr. Cooper about appellant.

By the end of 1965 appellant, then 15 years old and a pupil at St. George's Grammar School in Cape Town, was maintaining that his teachers were persecuting him and expressed a wish to go to school in Port Elizabeth. At all material times, however, Whitehead was opposed to this and advocated boarding school for appellant. The latter, however, consistently resisted any suggestion of boarding school. When, in July 1966, appellant was placed as a boarder at St. George's School, he ran away after only a single night and hid in an hotel for a few days. After being put back at St. George's as a day-scholar, he remained only for two weeks and then ran away again. During 1966 the headmaster of St. George's requested that appellant leave the school. He then attended Benva College - a now defunct institution in Cape Town which, apparently, had deceptive academic standards - and was thereafter, as from January 1968, enrolled at a cram-school known as the

Cape...../

Cape Tutorial College, where he remained, an ever more feckless pupil, for the rest of that year. It is common cause that, prior to appellant's being enrolled at the Cape Tutorial College, the deceased took him to interview the headmaster of Graeme College - a school in Grahamstown, which is some 80 miles away from Port Elizabeth - with a view to appellant's becoming a boarder at that school, and that the headmaster declined to accept appellant as a pupil when the latter refused to give his promise not to run away from the school. The trial court disbelieved appellant's evidence that he was prepared to go to boarding school in Port Elizabeth. The trial court was of opinion that the reason why the appellant wanted to go and live in Port Elizabeth was, not to be with his father, but to be near Miss Rothenberg - a girl whom he had met during the 1967 Christmas holidays and of whom he apparently was at ~~one stage very fond -- and, further, that appellant's protes-~~ tations that he wanted to be in Port Elizabeth because he desired to be near his father were "clearly false".

As...../

As the above summary of appellant's scholastic career would suggest, the evidence of record reveals that, despite his mother's undoubted, albeit possibly at times somewhat over-indulgent, affection and Parker's loyal endeavours, appellant through the years became increasingly recalcitrant about applying himself to his studies, either at school or cram-school, and progressively unamenable to discipline, whether scholastic or domestic. Parker's patience with appellant ultimately became exhausted; so much so that he at one stage actually left his wife and her son and went to live elsewhere. From time to time appellant's mother found it necessary to appeal to Whitehead for assistance in coping with appellant. Whitehead's view was that boarding school was the only practicable solution. Whitehead's attitude towards his son appears to have been an alternating mixture of harshness and indulgence. For instance, the record contains mention of a harsh and abusive letter written by Whitehead to appellant which, however, his mother fortunately kept from his eyes. Again, in January 1968 all four parents met to discuss the problem

presented by appellant's behaviour. During this discussion, Whitehead lost his temper with appellant, sent him to his room and there proceeded verbally to abuse and physically to assault him. The record indicates that this was not the only occasion when Whitehead struck the appellant; but, as is perhaps only to be expected, there is a considerable disparity in the accounts of these assaults respectively given by Whitehead and the appellant. On behalf of the defence it was argued that, despite these - admittedly infrequent - assaults, appellant showed little or no animosity towards Whitehead, and that this affords further proof of his affection for his father. In material ways Whitehead was certainly generous to appellant. Indeed, in some respects - excessive pocket money and the like - he was probably at times injudiciously indulgent. Here again the defence case is that it was paternal proximity and affection, rather than material things, which appellant craved and of which he felt deprived. However that may be, the considerable material inducements (on one occasion the promise of a Honda motor-cycle; on another, the giving to appellant of a post-dated cheque

for.../

for R1000 payable against production of his matriculation certificate) held out by Whitehead to appellant for the latter to apply himself to his studies proved entirely unsuccessful. Indeed, from about June 1968 - the Parkers had on 29th May 1968 proceeded on a visit overseas, leaving appellant with friends in Tokai - appellant would appear to have become very interested in motor-cars and night clubs to the further detriment and neglect of his studies. By September 1968 appellant had become even more undisciplined, defying his stepfather, and often staying out very late at night. In an endeavour to improve the situation, appellant's mother placed him in an hotel for the month of October. She also, with the approval of her husband, took a flat into which she moved, together with appellant, on the 1st December. During 1968 appellant became greatly enamoured of, if not, indeed, wholly infatuated with, Miss Molly Cooper. The latter (no relation of Dr. Cooper) was not called as a witness at the trial, but the record contains nothing to suggest that her reputation is anything other than it should be. Restrictions subsequently imposed upon his

communicating with Miss Cooper are claimed by the defence to have contributed to appellant's emotional stress; and, as will more fully appear below, it is appellant's case that a derogatory remark made by the deceased concerning Miss Cooper triggered off his fatal attack upon her.

To conclude this resumé of the general background of the case, two further matters must be briefly mentioned. The first is that when, on or about 1st December 1968, appellant was arrested in Cape Town in connection with some alleged offence - unspecified in the record - in relation to a motor-car, it was Whitehead who came from Port Elizabeth to obtain his release on bail. According to Whitehead's evidence at the trial, the Magistrate in granting bail stated that he did so upon condition that appellant went to Port Elizabeth with his father. No such condition was actually incorporated in the issued bail bond; but at the trial appellant conceded that his father had conveyed this condition to him and did not question that the

condition had actually been imposed. Somewhat contrary to those portions of his evidence wherein he professed an ardent desire to be with his father in Port Elizabeth, the appellant, however, deposed that, when released on bail, he wanted to remain in Cape Town and pleaded with his father to allow him to do so. This because he "did not wish to return to Port Elizabeth" as he was "in love with Miss Cooper". After appellant was released on bail, Whitehead arranged an appointment with Mr. Van Zyl, a Clinical Psychologist, whom appellant's mother had, on 11th and 13th November 1968, consulted concerning appellant's behaviour. Mr. Van Zyl's advice - as he informed the trial court - was that appellant "should be handled with firmness, but also with love and kindness" and that his "strivings towards independence" should be respected. He expressed the view that appellant would "have to learn to adjust to the rules of society and ~~the particular household that he found himself in~~" and recommended Whitehead to consult Professor Strümpfer, a Clinical Psychologist practising in Port Elizabeth, with a view to his seeing appellant and helping the latter

"to sort out some of his psychological problems". The next day Whitehead took appellant back with him to Port Elizabeth. Appellant was due to commence his compulsory military service in February 1969, and it appears to have been the general contemplation that, until then and provided that the pending motor-car case presented no obstacle, appellant should work in his father's factory and reside in the Whitehead home. Whitehead made no attempt to consult Professor Strümpfer. After returning to Port Elizabeth, a set of "Rules" governing appellant's behaviour was, however, compiled. According to Whitehead, these rules were agreed upon and reduced to writing after discussion between himself, the deceased, and appellant, the latter retaining one of the two copies made. Appellant concedes that he was present when these rules were drawn up, but contends that he had virtually no say in their formulation. The trial court made no explicit finding on this conflict, but appellant's version would appear to be more in accord with the probabilities inasmuch as he - as he himself expressed the matter in his evidence - "had no alternative but to accept".

These...../

These rules graphically demonstrate the sorry situation which had been reached in consequence of appellant's sustained wayward behaviour. I accordingly set them out in full, viz:

"1. All mail to be opened and read.

2. No alcohol.

3. No driving of any vehicle without permission.

4. R1.00 per day to be paid as from 5th December.

5. 11.30 p.m. to be home. During week and week-ends - Unless special permission granted.

6. Whereabouts to be specified.

7. No lies.

8. Do as told.

9. Respect the fact that there are smaller children at home.

10. Our decisions are final.

11. No contact with any member of the Rothenberg family.

12. No records from Betheldo (unless paid for).

13. Nothing to be purchased on our charge accounts.

14. No personal items to be sold, pawned or disposed of.

15. No long hair.

16. R21.00 to be paid to Father for repossession of tape by Sam.

17. As from now you are not allowed to use the telephone for any reason whatsoever. Includes a public call box or any other phone.

18. No communication with Molly Cooper whatsoever."

Most of these proscriptions are self-explanatory. It should perhaps .../

perhaps be mentioned that rule 11 was apparently designed, not as a reflection upon, but to protect, the Rothenbergs. Betheldo, mentioned in rule 12, was a company dealing in gramaphone records which was owned by Whitehead, from which, according to Whitehead, appellant had in the past selected records which he had either given away or sold. Rules 17 and 18, which were added a few days later than the first 16 rules, derive from appellant's admittedly having made trunk calls from the Whitehead home in Port Elizabeth to Molly Cooper in Cape Town, which calls he initially denied having made. According to Whitehead, there were several such trunk calls, at least one of which lasted 25 minutes. It must here be mentioned that after appellant had, reversing his earlier denial, confessed to these phone calls, Whitehead admittedly struck the appellant. The latter's version - denied by Whitehead and upon ~~which the trial court gave no positive finding - is of an~~ appreciably more serious assault, described by appellant as "hitting me all over my face, my body, kicking me until I was lying on the floor.....he picked up my record

~~player...../~~

player, threw it against the wall and smashed (it) on the floor, also damaging my amplifier". The next day rules 17 and 18 were added.

Understandably enough, considerable reliance was placed by the defence upon the aforegoing rules. In relation to rules 1 and 6 Dr. Cooper expressed the view that appellant was thereby "placed in a kind of emotional straight jacket"; and No. 10 he regarded as "a kind of Gestapo rule". The aggregate of the rules, said Dr. Cooper in the court below, was a means of "demoralizing the boy, degrading him, humiliating him and negating his entire personality". Mr. Van Zyl associated himself with the opinions thus expressed by Dr. Cooper. Making all due allowance for the position in which, owing to appellant's persistent intransigence, Whitehead and the deceased found themselves, the totality of these rules was indeed stringent; and, while I am disposed to regard the passage from Dr. Cooper's evidence last-quoted above as something of an hyperbole, I see no reason for disagreeing with his opinion that the rules would inevitably have created in appellant a good deal of tension

and.../

and resentment. Such tension and resentment could but have been increased by Whitehead's abovementioned assault upon appellant - whatever the true facts of that episode may be. On 13th December 1968 appellant was involved in a collision while driving one of the factory vehicles. This delayed his return and Whitehead, who had received no communication from appellant, jumped to the conclusion that appellant had made off, probably to Molly Cooper, and reported to the police that the vehicle had been stolen. The true position was duly explained to the police, but the incident no doubt occasioned appellant further resentment.

The second matter meriting mention at this juncture is that the record contains no evidence of anything even approaching discord - "stepmotherly" or otherwise - having existed between appellant and deceased. According to Dr. Cooper, appellant told him that he got on well with the deceased; he added that he had discontinued his previous habit of making personal confidences to her because he had discovered that she disclosed them to his father. Save for this alleged withholding of confidences - which

was in substantially the same terms also testified to by appellant at the trial - and save for the circumstances - upon which appellant himself, however, placed no reliance at the trial - that deceased had, together with appellant and his father, participated in the compilation of the aforementioned rules, the voluminous record contains no suggestion whatever that appellant and the deceased were ever on anything but very friendly terms.

I turn now to the events of 18th December 1968. The motor-car case which had been remanded to 17th December was on that date again remanded. Whitehead and appellant drove back from Cape Town to Port Elizabeth by car, travelling through the night and arriving at the Whitehead home (No. 6 Hallack Place) early on the morning of 18th December 1968. Although they had had little or no sleep the previous night, both Whitehead and the appellant went to work that morning. Whitehead said at the trial that appellant had worked very well that day. Owing to the sudden death of an employee, Whitehead was detained at his factory and did not return home until a little after 11 p.m. Appellant got back to 6, Hallack Place at about.../

about 6.30 p.m. After bathing and changing, he went out, with the permission of the deceased, allegedly to a cafe to purchase cigarettes. According to appellant, he was not away long; but Margaret Tshefuta, the African cook whose evidence on this particular point was accepted by the trial court in preference to that of appellant, testified that the latter only returned at 8 p.m. after an absence of at least one hour and a quarter. Upon appellant's return, he and deceased at once partook of their evening meal. When Margaret left the kitchen for her outside bedroom at about 9.30 p.m. the deceased and appellant were alone in the house except for deceased's two young children who were asleep upstairs. Margaret deposed at the trial that when she last saw them together, deceased and appellant appeared to be on their usual friendly footing. This was not in any way disputed by appellant in the course of his evidence.

At some point of time between 9.30 p.m. and Whitehead's return home, however, the deceased was brutally done to death by the appellant. The medical evidence led for the State at the trial established that, in addition

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to a number of lacerated wounds and abrasions - some of them superficial - the deceased sustained grievous injuries to the head and stab wounds in the body. The principal head wounds were an irregular depressed comminuted fracture of the left occipital region and two fissured fractures of the right orbital plate extending into the middle fossa. The four main incised wounds were in the deceased's left breast; one in the upper outer quadrant, two in the lower outer quadrant, and the fourth in the lower inner quadrant. The first of these penetrated some 7 to 8 inches, passing through the upper lobe of the lung and cutting the aorta; two of the remaining three stab wounds penetrated the lung and entered the heart. The wound in the upper outer quadrant caused death almost instantaneously; and Dr. Tucker who performed the autopsy and testified at the trial, was of opinion that in any event the two wounds in the lower outer quadrant of the deceased's left breast would, independently of any other injuries, almost certainly have killed her. Some idea of the severity of the head injuries, as also the precise position of the abovementioned incised wounds, is

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to be gathered from the photographs exhibits "D", "E" and "F". In addition, the post-mortem revealed that there were seven puncture marks over the lower region of the back of deceased's chest running vertically one eighth inch in length, the centre one penetrating more deeply. What caused these punctures remains obscure on the record. Deceased's dress did not appear to have any cuts or tears corresponding with these punctures; but Dr. Tucker was unable to accede to the defence's suggestion that the punctures might have resulted from the handling of the corpse. Dr. Cooper regarded these puncture wounds as "puzzling": he said they were indicative of "confused behaviour", and possibly, of some "squeamishness about driving the knife home". Dr. Tucker expressed the opinion that the deceased was first struck on the head and thereafter fatally stabbed as she lay on her back, or, possibly, on her right side. The main blow to the head would, in his view, have immediately felled the deceased: but it is all too obvious that more than one blow was delivered to deceased's head.

It is abundantly plain that it was appellant

who killed the deceased; and the evidence led at the trial, [redacted] including that of the defence's expert witnesses, Dr. Cooper and Mr. Van Zyl, established beyond reasonable doubt the intent necessary to support the conviction for murder. The only evidence of how appellant came to commit this savage attack upon the deceased is, however, that of appellant himself. He deposed that he and the deceased were together in the living room and that, after some talk about the pending motor-car case, the deceased started to discuss appellant's friends in Cape Town and the life he had been leading there. This discussion lasted for some little while, by which time appellant, as he deposed at the trial, "was extremely tired, had a constant headache and just wanted to go to sleep". He told the deceased that he wanted to go to bed, but she started talking about Molly Cooper who, deceased declared, "would not wait" for him. The argument which ensued about this culminated in the deceased observing that "Miss Cooper is probably in bed with someone at this very moment". Appellant's account, as given by him in chief, of what followed reads:

"I..../

"I was sitting on the couch at the right of the photograph, that is photograph No. 4. My step-mother was sitting on the left couch.

Yes?-- I then jumped up and I slapped her face. She clawed at my face and she scratched me. We were both standing up at that stage and it is just a matter of seconds, somehow she was in the hallway. Well after she scratched my face we were both standing up and it is just a matter of feet to the hallway and I think she must have moved to the side and I chased her and I either slapped her or pushed her, I am not sure, and she scratched my face again. Then I just vaguely remember just hitting her and hitting her over and over again.

COURT: With what?-- I vaguely remember that it was that statue.

MR. SNITCHER: Where was that standing?-- That....

COURT: What is the exhibit number?

MR. SNITCHER: Exhibit no. 9?-- That statue would be on this photograph No. 4. There is supposed to be a table where the telephone is on, that statue would be on that table. The next thing I remember is I was standing over her with a knife.

Where do you think you got that knife from?-- I have no idea where I got the knife. I don't remember getting it, I just remember suddenly just standing over her with a knife in my hand.

Where?-- That was in the hall.

And do you remember doing anything to her with the knife?-- I don't remember doing anything. I just remember standing there with the knife.

And did you notice anything?-- There was just blood everywhere.

Now just carry on. What did you do then?-- I walked outside. I went outside. I just had to clear my thoughts and I came back. I knew at that stage I just thought I must just escape, I don't know what I have done, but I must just escape - not escape, just get away. And I think I took the telephone

from the hall and plugged it in upstairs.

Why did you do that?-- I had to contact Miss Cooper.

No, but why did you take it upstairs, that is what I want to know?-- Because I can't stand the sight of blood and there was just this blood everywhere. I took the telephone upstairs and I 'phoned Miss Cooper.

How many times did you 'phone her, or don't you remember?-- To my recollection I 'phoned her twice. I know that I said something to her and I got upset and I slammed down the 'phone. I 'phoned her again and I told her I just had to see her, it would possibly be for the last time ever."

The trial court, while not affirmatively accepting the above version, was unable to say that it might not reasonably be true. The appeal accordingly falls to be decided on that premise. I forbear from making any comment regarding the partial amnesia - which was "seriously doubted" by the trial court - professed by the appellant in the above account; but it may appositely here be mentioned that upon the hypothesis most favourable to appellant, he must, after battering the deceased's head, have proceeded from the living room to the dining room in order to fetch the carving knife (exhibit 5) with which, as established by the evidence, he administered the abovementioned fatal breast wounds described above to the deceased as she lay on the floor of the living room at approximately point J on the plan.

After.../

After thus killing the deceased, appellant, utilising a blanket which he had fetched from upstairs, dragged the corpse into the bathroom where he left it (at point O on the plan) on the floor in the position reflected in the photograph exhibit "S". The appellant's explanation for thus moving the corpse is that he did not wish the children to see it. The abovementioned bathroom could only be reached through the dressingroom which, in turn led off the main bedroom. The only door to this latter was subsequently found to be locked and the key to be missing. It is an irresistible inference that appellant locked the door and removed the key in order to, temporarily at least, isolate the corpse. His alleged sole object of preventing the children from seeing their dead mother fails to carry conviction. However that may be, appellant, on his own version, also made some further attempt to conceal the murder by dragging a mat over the blood lying on the living-room floor at and around point J and - although appellant professes to have no recollection of this - by washing certain

blood stained articles, inter alia various knives and the telephone, in the kitchen sink.

Regarding the second count - the assault upon Whitehead with intent to commit murder - it is common cause that, when Whitehead returned home that night, he was stabbed in the back by appellant in the sunroom at a spot approximately between points B and C on the plan. The accounts as to how this assault occurred respectively given by Whitehead and appellant at the trial were materially conflicting. The essence of appellant's version is that, upon hearing his father's return, he endeavoured to make his escape through the side door and that, as he was about to go through the doorway, Whitehead entered and said something (he could not be sure of the precise words used) like "What is wrong?". The appellant's account continues:

> "And then the next thing I remember I just attacked him and we were grappling on the ground and I know I had a knife in my hand and my father said to me, "Sam, please, don't'. And as he said those words I seemed to realise what I was doing and I threw the knife to the ground and I got up and I ran. I ran out of the side door."

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The trial court, after, for a variety of stated reasons, considering Whitehead's evidence "with great circumspection", had no hesitation in accepting his version and rejecting that of appellant whom it in this context designated as a "lying witness" and whom it had, in another context, described as "untruthful, evasive and generally unreliable". Whitehead's version is supported by certain extraneous circumstances - notably by the otherwise wholly unexplained presence of appellant's blood-stained shoes near the spot where Whitehead usually parked his car, by appellant's possession, when he encountered Whitehead, of the carving knife (exhibit 5), and by the almost irresistible inference that it was appellant who had the previously missing key of the locked door of the sunroom - and is inherently more probable than that of the appellant. I entertain no doubt that the trial court was correct in accepting Whitehead's version ~~of appellant's assault upon him. This was, briefly, to~~ the effect set out in the following paragraph.

Upon returning home and attempting to

open...../

open the front door with his latch key, Whitehead found that both the safety chains on the door had been put in position. To attract his wife's attention, he then rapped upon the window of the main bedroom. Receiving no response, he rang the front door bell. Soon after doing this, he heard appellant's voice behind him (i.e. outside the house) saying: "Hi Dad". Appellant did not reply to Whitehead's enquiry as to why he had not opened the front door, but suggested that his father enter the house by the side, sunroom, door. Upon reaching this last-mentioned door, appellant opened it and said "After you, Dad". Once inside, Whitehead felt a blow on his back - this proved to be a stab wound - and heard appellant exclaiming "There, how does that feel?". Whitehead turned round to find appellant attacking him with a knife (this was subsequently identified as the aforementioned carving knife, exhibit 5). A stern struggle then ensued in the course of which the fingers of Whitehead's left hand were cut and he himself was knocked to the ground. As Whitehead lay upon his back, appellant

got...../

got astride him and endeavoured to stab him in the heart - proclaiming the while: "I will kill you. I will kill you too." Appellant, who held the knife in his right hand, also endeavoured with his left hand first to gouge Whitehead's eyes and then to hit him over the head with a small wrought iron table. However, Whitehead, apparently a powerful man, survived these attacks and managed, by holding appellant's right wrist, to keep the knife from reaching his chest. He finally succeeded in wresting the knife from appellant, who thereupon ran upstairs and, almost immediately, made off in deceased's car with, as was subsequently ascertained, money which he had, apparently previously, extracted, together with the car keys, from deceased's handbag. Appellant did not proceed towards Cape Town. At the trial he said that, although he so earnestly wished to see Molly Cooper, he lost his way. Later that night he abandoned the car in the vicinity of Port Alfred - nowhere near the recognised route from Port Elizabeth to Cape Town - and was, somewhat amateurishly disguised and passing under an assumed name, ultimately arrested in Durban some three days after the murder.

The...../

The aforementioned stab wound sustained by Whitehead was between the shoulder blades to the left of the midline; it penetrated 3 inches and extended into the pleural cavity of the right side of the chest. Although the wound was described by Dr. Finnemore, who attended Whitehead, as being "potentially dangerous", no complications ensued. Whitehead was released from hospital on 21st December, and by the end of that month had completely recovered. Despite this happy outcome, it is nevertheless apparent from the above resumé that, armed with the carving knife with which he had previously fatally stabbed his stepmother, appellant made a wholly unprovoked, determined, and premeditated attack upon his father with the intention of killing him and that he was, therefore, rightly convicted on the second count.

The foregoing bald account makes it abundantly plain that, if the age and personality of the appellant - and, indeed, also a possible death sentence - be for the moment excluded from consideration, these crimes called for severe sentences.

Before this Court the essence of the defence's submissions on behalf of appellant was that he is a markedly disturbed personality upon whom the cumulative effect of the various circumstances I have outlined above was such as to diminish his moral blameworthiness to a degree rendering the sentences imposed upon him by the learned Judge unduly severe. It was submitted that both the sentences should be reduced and that, so reduced, they should be ordered to run concurrently.

In his judgment setting out the trial court's reasons for convicting the appellant as charged, Munnik, J., dealt very fully with the facts. Immediately after the verdict of guilty had been entered, the trial court was addressed at some length by counsel for the defence, and also, more briefly, by counsel for the State, on the issue of extenuating circumstances. In the course of these addresses, appellant's youth, as also his history and a variety of factors stemming from, or related to, his disturbed personality and emotional immaturity, were urged upon the court. In concluding a relatively brief judgment announcing the finding of extenuating

circumstances on the first count, the learned Judge said:

> "We are satisfied that in the circumstances of this case, which I do not propose to detail as they are fresh in the mind of this Court, that the youth of the accused is an extenuating circumstance.
>
> In the light of this conclusion to which we have come, it is not necessary for me to deal with the other points raised by Mr. Snitcher as constituting extenuating circumstances."

Counsel for the defence then at once advanced submissions in mitigation of sentence. At an early stage of those submissions the learned Judge intimated that he did not intend to impose the death sentence. Counsel for the defence thereupon referred to appellant's high degree of intelligence and potential as testified to by Dr. Cooper, and submitted what amounted to a plea that the learned Judge should give full effect to the reformative aspect of punishment. Thereafter Munnik, J., proceeded to sentence appellant. I shall refer later to certain passages which appear in the learned Judge's observations to appellant when imposing sentence - which, in all, occupy more than three typed pages of the record - but, for the moment, I am merely concerned to emphasise that the above indicated se-

quence from verdict to sentence was uninterrupted. All the details of the case and of the defence submissions were, therefore, fresh in the mind of the learned Judge. This, in my opinion, must be borne in mind when examining the validity or otherwise of the defence submission that in passing sentence Munnik, J., omitted to take all relevant factors into account, and when assessing the weight to be attached to the learned Judge's remark, occurring early in his observations on sentence, that "I have listened carefully to the evidence in this case, I have listened to what your counsel has had to say, and it seems to me that taking all these factors into account there is a further factor.....".

Recognising the relatively restricted ambit wherein this Court will interfere with a competent sentence passed by a trial court (S. v. Berliner, 1967 (2) S.A. 193 (A.D.) at 200; S. v. Ivanisevic & Another, 1967 (4) S.A. 572 (A.D.) at 575), Mr. Steyn, in his argument for appellant, first sought to found a misdirection on the part of the trial court in the concluding portion of a passage in the judgment convicting appellant wherein, after

stating that the defence witnesses, Dr. Cooper and Mr. Van Zyl, had expressed the view that appellant felt his father could do no wrong and that he consistently wanted to please his father, the learned Judge said:

> "The accused's conduct in the witness box and the evidence of his history vis-a-vis his father, leads us to believe that these two witnesses have been led up the garden path by the accused in this regard. Whatever his attitude may have been when Dr. Cooper first saw him in 1963, when Dr. Cooper originally formed his view about the accused's father-adoration attitude, the evidence shows that he did absolutely nothing to please his father thereafter."

The submission that a misdirection had occurred was supported by detailed reference to the evidence of the abovementioned two witnesses and to that of appellant himself. While the evidence thus relied upon by counsel may be said to be in conflict with a literal reading of the words "absolutely nothing" where they occur in the above-cited passage from the judgment, the passage in question must not be read in isolation. In the very next sentence following upon that passage, the learned Judge said that appellant "would not go to boarding school or apply himself to his studies in spite of the fact that he was aware of what . . /

what great store his father set by a matriculation certificate. The learned Judge went on to refer, as illustrations of "how little he (appellant) did to please his father", to the incidents of the Honda motor-cycle and the R1000 cheque which I have mentioned earlier in this judgment. Read in the full context of the trial court's judgment, it is clear that in the passage complained of the learned Judge was alluding to the major issues upon which, as the evidence amply reveals, the appellant, despite his avowed adoration of his father, consistently refused to comply with the latter's wishes that he should address himself to his studies and go to boarding school. In my judgment, the alleged misdirection is not made out. Nor, in my view, did the learned Judge place any unacceptable construction upon the evidence when, in sentencing appellant, he, in a passage which Mr. Steyn sought to correlate with the aforementioned alleged misdirection, said: "You are not the product of a home in which there was no affection. It is possible and very probable that what you are is a product of a home in which you were spoilt and you played off the one parent against

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the other".

In the absence of any misdirection in the court below, the remaining question for decision is whether there exists such a striking disparity between the sentences passed by the learned trial Judge and the sentences which this Court would have passed (Berliner's case, supra, at p. 200) - or, to pose the inquiry in the phraseology employed in other cases, whether the sentences appealed against appear to this Court to be so startingly (S. v. Ivanisevic & Another, supra, at 575) or disturbingly (S. v. Letsolo, 1970 (3) S.A. 476 at 477) inappropriate - as to warrant interference with the exercise of the learned Judge's discretion regarding sentence.

In assessing an appropriate sentence, it is necessary to have regard, not only to the main purposes of punishment - viz: deterent, preventive, reformative and retributive: see S. v. Swanepoel, 1945 A.D. 444 at 455 - but also both to the individual concerned and the circumstances of his crime. Appellant's crimes were heinous indeed. That is an aspect to which this Court must inevi-

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tobly accord due weight. See what was said, more specifically in relation to the cognate question of extenuating circumstances, in S. v. Petrus, 1969 (4) S.A. 85 (A.D.). As regards appellant himself, the most relevant factors are his youth and his personality. Youth is always an element which, depending upon the circumstances of the case, tends to mitigate the severity of punishment (S. v. Mohlobane, 1969 (1) 562 (A.D.) and S. v. Petrus, supra). As previously mentioned, appellant was only two months past his eighteenth birthday when he committed the crimes in issue, and he has no previous convictions. Indeed, as Mr. Steyn pointed out, appellant, with all his waywardness, had not previously given indications of being prone to excessive violence. Nevertheless in killing his stepmother and attempting to kill his father - thereby both committing and attempting one of the gravest crimes known to the law - appellant did what anybody half his age would have well understood to be grossly wrong. As to appellant's personality, it was deposed at the trial by Dr. Cooper that, as far back as 31st August 1966, he wrote to appellant's father a letter

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- receipt of which was denied by Whitehead, but a copy whereof was produced at the trial - in which, after mentioning that he had been seeing appellant professionally, he went on to say:

> "While this boy is certainly not suffering from any major mental abnormality, I do wish to make it clear to you that he is emotionally disturbed, and it is because he is emotionally disturbed that he at times tends to behave in what seems nothing more than a highly irresponsible manner. He certainly requires discipline, but at the same time he needs understanding and most careful handling."

At the trial Dr. Cooper testified that he was still of this opinion. He described appellant's personality to the trial court in the following terms, viz:

> "I have never found this boy to be showing any evidence of being mentally disordered in terms of the Mental Disorders Act, but I do consider him to be a markedly disturbed personality, and I believe that he is a disturbed personality because he has been subjected to this unstable type of family environment. .....This situation,..... I am satisfied, has resulted in his being today a disturbed personality. He is emotionally immature, childish in a way. Unable to tolerate frustration, rebellious, insistent on having his own needs fulfilled. Unable to form mature judgments."

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In the course of a long judgment giving the court's reasons - notwithstanding its rejection in relation to the murder charge, of the State's contention of premeditation - for convicting the appellant, Munnik, J., fully reviewed all the evidence relating to appellant's background. In the light of the evidence accepted by it and of its own observations of appellant in the witness box, the trial court was disposed to agree - subject to the minor qualification that "childish" meant no more than a lack of emotional maturity - with Dr. Cooper's above-stated assessment of appellant. While finding appellant to be "very intelligent" the trial court also accepted Dr. Cooper and Mr. Van Zyl's evidence that such intelligence does not necessarily connote emotional maturity. Nevertheless, after according full weight to appellant's youth and to his personality, and making due allowance for an alleged emotional explosion triggered off in the manner claimed by appellant, this Court cannot but regard appellant's attack upon deceased in anything but a very serious light. All the circumstances of the crime - in particular, its second phase commencing with the obtaining of the knife, which Dr.

Cooper.../

Cooper himself designated as "purposeful behaviour" - call for a severe sentence. Nor am I able to accede to the submission advanced on behalf of the defence that Munnik, J., overlooked any material factor in deciding, in the excercise of his discretion, upon a sentence of 15 years for this murder. As I have mentioned earlier, all the details of the evidence were very fresh in the learned Judge's mind; and, bearing in mind the full ventilation, both in the evidence and in defence counsel's addresses after the verdict, and the sequence of events from verdict to sentence which I have outlined above, there was no occasion for the learned Judge, when sentencing appellant, to make express mention of each and every factor which might conceivably be invoked as tending to reduce appellant's moral blameworthiness.

Having given full consideration to the arguments addressed to us, and throughout bearing in mind that, "even where a crime is very grievous in its effects it is not appropriate to disregard the history and circumstances of the accused and the subjective aspects of the crime" (R. v. Mzwakala, 1957 (4) S.A. 273 (A.D. at 277),

I am, in all the circumstances, unable to find any sufficient ground which would warrant this Court in reducing the sentence of 15 years' imprisonment imposed by the learned Judge a quo in respect of the murder count.

As regards the count of assault with intent to murder, the sentence of 7 years may - more particularly because it, albeit fortuitously, in the event had no particularly serious results - be regarded as somewhat severe. On the other hand, this was, as I have explained above, a deliberate and premeditated crime which, but for Whitehead's physical strength, would have resulted in the commission of a second murder - and patricide at that - within a matter of hours of the first. Considered independently of the sentence on the first count and of the features which I mention below, it would, applying the principles followed by this Court in relation to sentences passed by trial courts, thus be difficult, I consider, to justify any interference with the sentence of 7 years. Nor am I able to accede to the defence submission that

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the assault upon Whitehead should have been regarded as forming part of the earlier crime to a degree requiring both the crimes to be treated as one for purposes of sentence or, at least, that the whole of any sentence passed in respect of the second crime should have been directed to run concurrently with the sentence on the murder charge. The interval which elapsed between the two crimes, the premeditation which attended the second crime and, indeed all the circumstances of that crime, are features which, in my opinion, effectively dispose of the defence submission last-mentioned above.

Notwithstanding all the foregoing, however, the cardinal - and, in my view, dominant - fact remains that appellant was sentenced to a total period of 22 years' imprisonment. Not only is that period four years in excess of the span of appellant's life at the time when he committed these crimes, but it falls but three years short of a sentence of 25 years' imprisonment, which latter was described in R. v. Mzwakala (supra) at p. 278 as "exceptionally long according to our practice". In the minority judg-

ment in S. v. Tuhadeleni & Others, 1969 (1) S.A. 153 (A.D.) at 187 Rumpff, J.A. (with whom Van Blerk and Potgieter, JJ.A., concurred) expressed the view that in practice a maximum sentence is 25 years, "and that only in very exceptional circumstances". Without necessarily concurring in the existence of a maximum as thus suggested, I certainly share the view that a sentence of 25 years will only be appropriate in very exceptional circumstances. Even the sentence of imprisonment for life referred to in sec. 334 (1) of the Code may conceivably, under certain conditions, in practice fall appreciably short of 22 years (see S. v. Masala, 1968 (3) S.A. 212 (A.D.)). Although Munnik, J., expressly mentioned, in the course of sentencing appellant, that he had to "take into account the cumulative effect of the two sentences", it appears to me that the learned Judge paid insufficient regard to the severity of the aggregate sentence of 22 years' imprisonment upon appellant. In the course of sentencing appellant, Munnik, J., also said that "society demands that the death of one of its members be avenged" and, in the concluding stages of his remarks,

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urged appellant to apply himself, while in prison, to developing his character, to pursuing his studies as far as permitted and, generally, to reforming his ways with the object, said the learned Judge, of ultimately taking his place in the society to which he belongs "as a useful citizen". Now, as was pointed out by Schreiner, J.A., in R. v. Karg, 1961 (1) S.A. 231 (A.D.) at 236, the element of retribution in punishment, although less important than prevention and correction, is not, even in modern times, entirely excluded. For, as Schreiner, J.A., went on to say, "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". I accordingly do not consider that Munnik, J., erred in referring, in the terms set out above, to "society's demands"; nor can the learned Judge's observations regarding reformation be faulted in themselves. This youthful appellant is, however, said to be highly intelligent, and, according to

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the evidence, to have a considerable potential. In so far as is compatible with the requirements of justice, the element of appellant's reformation should therefore be accorded all possible scope in assessing the total period of imprisonment appropriate in his case. A sentence of 22 years would, in my opinion, be more likely to break than to reform appellant.

The combined effect of the various considerations I have mentioned is such as to lead me to the conclusion that, applying the principles indicated earlier in this judgment, this Court should reduce the total effective period of the sentences imposed by the trial Court. This can conveniently be done by directing that a substantial part of the sentence passed on the second count should run concurrently with the sentence passed on the first count. To direct that the whole of the sentence on the second count should run concurrently would, in effect, permit appellant to go unpunished in respect of that crime. For the reasons indicated earlier in this judgment, he should not, in my opinion, be so permitted. Furthermore,

on a conspectus of all the evidence, I am of opinion that an effective sentence of 16 years' imprisonment would be appropriate for the two crimes in issue. On balance of all considerations, I have thus come to the conclusion that a direction that 6 years of the sentence on the second count should run concurrently with the sentence of 15 years passed upon the first count will meet the justice of the case. Appellant's effective sentence will thus be 16 years' imprisonment. His legal advisers and his relatives, who have so loyally stood by him, will no doubt impress upon appellant the desirability of his endeavouring, by good conduct in prison, to earn such remission of his effective sentence as the prison authorities may ultimately accord him.

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For the aforegoing reasons, the appeal succeeds to the extent that six years of the sentence of seven years' imprisonment imposed by the trial Court on the second count (assault with intent to murder) are ordered to run concurrently with the sentence of fifteen years' imprisonment imposed by the trial Court in respect of the first (murder) count.

N.O. Gilmour Thompson

HOLMES, J.A.)
MULLER, A.J.A.) Concur.