

**Case No 119/2001
REPORTABLE**

In the matter between:

STARVOS KOUTANDOS

1ST APPELLANT

MARIO JORGE CORREDEIRA

2ND APPELLANT

and

THE STATE

RESPONDENT

CORAM : VIVIER ADCJ, MARAIS et SCOTT JJA

HEARD : 22 NOVEMBER 2001

DELIVERED: 29 NOVEMBER 2001

Sentence : On plurality of counts – cumulative effect

J U D G M E N T

SCOTT JA:

SCOTT JA/.....

[1] This is an appeal against sentence only. The two appellants were charged in the Regional Court on various counts of theft and fraud relating to motor vehicles. Both appellants pleaded guilty on the second alternative to count 5 as well as on counts 6 and 7. The second appellant, in addition, pleaded guilty on counts 8 and 9. The former was sentenced to a total period of 15 years imprisonment and the latter to 27 years imprisonment. Their appeal to the Transvaal Provincial Division was unsuccessful. The present appeal is with the leave of this Court.

[2] The appellants were convicted on the strength of a written statement made in terms of s 112 (2) of the Criminal Procedure Act 51 of 1977. The factual basis upon which the plea of guilty was tendered on each count is briefly as follows.

[3] The second alternative to count 5 was one of fraud. On 20 June 1997 the appellants, acting in collusion with the owner of a BMW 540 motor

car, removed it from a pre-arranged place with a view to disposing of it so that the owner could allege it had been stolen and claim an amount of R180 000 from the vehicle's insurers. The appellants thereafter arranged to sell the vehicle for R6 000 to someone who unbeknown to them was a police informer.

[4] Count 6 related to the theft of a motor car. During June 1997 the appellants were asked by the owner of a BMW 325 motor car to give a quotation for the repair of the vehicle's computer. While it was in their possession the appellants decided to sell the vehicle for R80 000. They negotiated a price with the same police informer and eventually sold the vehicle to her for R6 000.

[5] Count 7 was similarly one of theft. On 3 July 1997 a person, who was unidentified, delivered a Ford Telstar motor car to the first appellant and informed him that the vehicle had been stolen the previous night. The

first appellant met with the second appellant and together they removed the vehicle to a place of safe-keeping where it remained for two weeks. Thereafter they sold it to the same police informer for R3 000.

[6] Counts 8 and 9 were both counts of fraud and related to the second appellant only. With regard to count 8, the second appellant on 17 October 1996, acting in collusion with the owner of a diesel delivery vehicle, removed it from the owner's possession and disposed of it so that the owner could institute a fraudulent claim against the vehicle's insurers for R60 797. In the case of count 9, the fraud followed the same pattern. On 3 June 1996 the second appellant removed a Mercedes Benz truck and trailer from the owner's possession so that the latter could fraudulently claim R250 000 from the vehicles' insurers.

[7] On counts 5, 6 and 7 each appellant was sentenced respectively to 7, 3 and 5 years imprisonment. On counts 8 and 9 the second appellant

was sentenced respectively to 3 and 9 years imprisonment. None of the sentences were ordered to run concurrently so that in the result the first appellant, as I have said, was sentenced to an effective period of 15 years imprisonment and the second appellant to 27 years imprisonment.

[8] Both appellants were in their late twenties when the crimes were committed. Neither had previous convictions. According to the social worker who gave evidence on their behalf, both came from relatively stable backgrounds and there was no reason for them to have embarked on such criminal conduct. Both were married and each had a young child. The State, in turn, adduced evidence as to the prevalence of motor vehicle theft and fraud of the kind committed by the appellants. It is clear from the evidence so presented, and indeed from the statement made by the appellants themselves, that they had made a business of motor vehicle theft and fraud, that in so doing they had involved others and encouraged them to engage in criminal

conduct and that by their conduct they had served to create a market for stolen vehicles.

[9] In this Court counsel for the appellant referred to certain passages in the judgment of the Regional Magistrate which he submitted amounted to misdirections. It is unnecessary to consider these in view of counsel's principal submission that the trial Court had failed to have proper regard to the cumulative effect of the sentences imposed on the various counts.

[10] The seriousness of motor vehicle theft and fraud of the kind committed in the present case has been repeatedly emphasised both by this Court and the Courts of the various Provincial Divisions. There is no need to repeat what has already been said time without measure. The offences were without doubt deserving of long term imprisonment. Nonetheless, when regard is had to the cumulative effect of the sentences imposed on both

appellants, the result strikes me as so excessive as to justify interference by this Court. Indeed, counsel for the respondent very fairly conceded this to be the case.

[11] In my judgment a total period of 10 years imprisonment in the case of the first appellant and 15 years in the case of the second appellant would have been appropriate in all the circumstances.

[12] In the result the appeal succeeds. The sentences imposed by the Regional Magistrate are set aside and the following are substituted –

“(1) (i) Accused 1 is sentenced on the second alternative to count 5 to 7 years imprisonment, on count 6 to 3 years imprisonment, and on count 7 to 5 years imprisonment.

(ii) It is ordered that the sentence on count 7 is to run concurrently with the sentence on the second alternative to count 5.

(2) (i) Accused 2 is sentenced on the second alternative to count 5 to 7 years imprisonment, on count 6 to 3 years imprisonment, on count 7 to 5 years imprisonment, on count 8 to 3 years imprisonment, and on count 9 to 9 years imprisonment.

- (ii) It is ordered that the sentences on counts 8 and 9 are to run concurrently with the sentence on the second alternative to count 5 and on count 7.

D G SCOTT

JUDGE OF APPEAL

CONCUR:

VIVIER ADCJ

MARAIS JA