



**IN THE HIGH COURT OF SOUTH AFRICA
KWAZULU-NATAL LOCAL DIVISION, DURBAN**

CASE NO: AR 322/2020

In the matter between:

MORRIS MDU MKHUNGO

Appellant

and

THE STATE

Respondent

ORDER

The appeal against the sentence succeeds to the extent it is directed that three years of the sentence of 15 years' imprisonment imposed by the magistrate will run concurrently with any sentence that the appellant is currently serving. The sentence is ante-dated to 19 October 2020.

This appeal was disposed of without the hearing of oral argument, in terms of s 19(a) of the Superior Courts Act 10 of 2013, and with the agreement of the parties. The judgment was handed down by electronic transmission to the parties' legal representatives and by placing the signed judgment in the court file on 11 February 2022.

JUDGMENT

Delivered on: 11 February 2021

Ploos van Amstel J (Moodley J concurring)

[1] The appellant in this matter was found guilty in a regional court of attempted extortion and sentenced to 15 years' imprisonment. The appeal before us is in respect of the sentence and is with the leave of the trial court.

[2] The case for the state was that during the period 21 December 2018 to 9 January 2019, at Umlazi, the appellant unlawfully and intentionally communicated to Mrs Ngane Victoria Cele that he had been hired to kill her and was going to do so unless she paid him a sum of R5 000 in cash.

[3] The complainant was 83 years old when she testified (in September 2020) and in a wheel chair. She said in December 2018 she received a message on her cell phone to the effect that she was going to die. She called the number but there was no response. She told her son about this and they reported the matter to the police. On 7 January 2019 she received a call from the same number. The caller told her that he had been paid a sum of R20 000 to come to her house and kill her. He said he was already packing his stuff. She was very scared as he had previously said she was going to die. She handed the phone to her care giver, Thaba Mkhwanazi. The caller told her that R5 000 'was needed'. Another of her sons was informed, and he arrived shortly thereafter. He phoned the number and gave the phone to the complainant's driver, Mpilo. The person on the phone told him that he wanted R5 000 from 'Granny'.

[4] The complainant was scared to sleep alone at home, and a security guard was hired to look after her. She received a call in the early hours of the morning from the same number. The caller said he was still waiting for the money, and he could see the people who were guarding her.

[5] Warrant Officer Gasas testified that the matter was referred to the Directorate for Priority Crimes Investigation as the complainant was the mother of Mr Bheki Cele, who was then the Minister of Police. The appellant was arrested shortly thereafter. One of the cell phones found in his possession reflected the contact between that phone and the complainant's phone. The electronic expert who testified also found the threatening messages on one of the phones. The appellant made a confession to a commissioned officer in which he admitted that he had 'intimidated' the complainant. The confession was admitted into the evidence after a trial within a

trial, in which the appellant's evidence that he had not made the confession voluntarily was rejected.

[6] He also testified in his defence, and protested his innocence. The magistrate rejected his denial as false beyond a reasonable doubt and convicted him of attempted extortion. There is no appeal against the conviction.

[7] The complainant testified that the incident affected her badly. She got nightmares and panicked whenever someone walked past her house. She sometimes phoned her children at night because she thought she had heard noises on the roof.

[8] The appellant was 47 years old when he was arrested. He has eight previous convictions for extortion, for which he was sent to prison for several years in 2009 and again in 2012. He was out on parole when he committed the offence that we are dealing with. The magistrate stated in his judgment that extortion of this kind is very prevalent in this province, and that the appellant has made a vocation out of it. He mentioned the effect the incident has had on the complainant, which affected her enjoyment of life very negatively.

[9] He sentenced the appellant to 15 years' imprisonment.

[10] The appellant testified in mitigation of sentence that he was returned to prison after his arrest, so as to serve the remainder of the sentence in respect of which he had been released on parole. That sentence will only expire in 2023. Ordinarily the sentence imposed in this matter will only start to run when the current sentence has expired, in other words in 2023. The cumulative effect seems unduly harsh to me. I think it will be appropriate to direct that three years of the sentence in this matter will run concurrently with the sentence that the appellant is already serving. That is a sufficient disparity to warrant interference by this court.

[11] The following order is made:

The appeal against the sentence succeeds to the extent that it is directed that three years of the sentence of 15 years' imprisonment imposed by the magistrate will run concurrently with any sentence that the appellant is currently serving. The sentence is ante-dated to 19 October 2020.

Ploos van Amstel J

Moodley J

Appearances:

For the Appellant : E M Chiliza
Instructed by : Legal Aid South Africa
: Durban

For the Respondent : M C T Ngcobo
Instructed by : Director of Public Prosecutions
: Durban

Date Judgment Reserved : 11 February 2022

Date of Judgment : 11 February 2022