REPORTABLE

IN THE HIGH COURT OF SOUTH AFRICA

(EASTERN CAPE, GRAHAMSTOWN)

In the matter between: Case No: **CA & R 51/2010**

LARIGAN TERBLANCHE **Appellant**

And

THE STATE **Respondent**

Coram: **Chetty, Alkema and Beshe JJ**

Date Heard: **16 August 2010**

Date Delivered: **18 August 2010**

Summary: Criminal Law – Sentence – Appeal against – Appellant convicted as an accessory after the fact –Appellant's role confined to assisting the co-accused to drag the deceased's body away from scene of shooting – Sentence of eight years imprisonment set aside - Appellant's role not warranting such sentence – Appellant sentenced to five years imprisonment

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JUDGMENT

Chetty, J

[1] The appellant and his co-accused, *Steven Booysen* (*Booysen*), were arraigned for trial before Pillay, J, on charges of robbery with aggravating

circumstances, (count 1), murder, (count 2) and the unlawful possession of a firearm and ammunition, (counts 3 and 4). *Booysen* was duly convicted on counts 2, 3 and 4 but acquitted on count 1. The appellant was convicted as an accessory after the fact on the murder count and sentenced to imprisonment for eight years. The appeal against sentence comes before us with leave of the Supreme Court of Appeal.

[2] In an appeal against sentence interference is justified only on limited and circumscribed grounds viz., where the trial court's reasoning is vitiated by misdirection or where the sentence can be said to be startlingly inappropriate or to induce a sense of shock or the sentence is so disparate to that which a court of appeal, sitting as a court of first instance would have imposed. Ultimately the true enquiry is to determine whether there was a proper and reasonable exercise of the discretion bestowed upon the court imposing sentence. If it was, *caedit questio*. If it was not, then interference is warranted. The argument advanced on behalf of the appellant for an amelioration of the sentence is confined to the submission that the sentence is startlingly inappropriate. That submission requires some analysis.

[3] The court below convicted the appellant as an accessory after the fact, not on the basis that he associated himself with the crime after its commission by helping to conceal the deceased's body, but by assisting *Booysen* to evade

apprehension and thereby to defeat and obstruct the course of justice. This much is clear from the judgment where the learned judge states as follows –

> "Volgens die reg wat uiteengesit is in al die sake wat ek nou na verwys het, is dit duidelik dat beskuldigde nr. 2 gehelp het om nr. 1 van die reg weg te hou. Hy het probeer om die liggaam sover as van Fritos se huis te kry. Daar kan nie 'n ander rede wees as om nr. 1 te help van die reg te ontwyk en derhalwe het hy homself skuldig gemaak as 'n begunstiger op die aanklag van moord."

[4] It is undoubtedly so that the act of being an accessory is an intentional one but in the assessment of an appropriate sentence to be imposed upon an accessory after the fact the nature of the assistance rendered to the perpetrator requires to be examined. The uncontroverted evidence established that the appellant arrived at Mr. *Freddie Valentine* (a.k.a *Fritos*) home and complained that *Booysen* had earlier fired a shot at him. *Valentine* urged the appellant not to retaliate and whilst the appellant stood in the yard three persons, amongst them the deceased, arrived and purchased half a mandrax tablet from *Valentine*. The latter entered the house to fetch the mandrax tablet and, on exiting his home, encountered *Booysen* outside the house and overheard him asking the appellant and his friends for R10, 00. *Valentine* observed that *Booysen* not only was intoxicated but troublesome as well, and requested him not to antagonize his patrons.

[5] *Booysen* however suddenly and without any provocation drew a firearm, cocked it and fired a shot whereupon, of the three persons who had arrived at his

home after the appellant, two persons fled and the other fell to the ground. That person was the deceased. The appellant however remained rooted to the spot at the bottom of the stairs. *Booysen* then requested the appellant to assist in removing the body of the deceased from the scene and he acquiesced by helping to drag the cadaver from *Valentine's* yard. Although *Valentine* did not see the direction in which the deceased had been dragged, it is apparent from the blood trail depicted on photographs 1, 2, 4, and 5 in the photo album, Exhibit "C", that the deceased was initially dragged through a lane between *Valentine's* neighbour's home and the adjacent house. Constable *Bukani*, a forensic analyst attached to the local criminal record centre visited the scene the same evening and took the photographs and at a later stage made certain measurements. His uncontroverted evidence was that the deceased's body was found 1 972 metres away from where he had been shot.

[6] The evidence adduced further established that the appellant and *Booysen* were together when they were apprehended by the police in front of *Booysen's* home later that evening attempting to gain entry into the house. Although the appellant disputed the distance he assisted *Booysen* in dragging the body of the deceased, the nature of the gunshot injury and his evidence that the deceased died on the scene indicates quite unequivocally that the deceased must have been dragged to where it was ultimately uncovered. Allied to this is the fact that the appellant and Booysen were apprehended at Booysen's home situate at 199 Reynecke street in close proximity to where the deceased had been shot. This

tittle of evidence establishes that the assistance rendered to *Booysen* was substantial and, as the court below found, directed at preventing the apprehension and concomitant prosecution of *Booysen* for the murder of the deceased.

[7] The question which thus arises for decision is whether, given the factual matrix surrounding the appellant's conviction, the sentence imposed warrants interference. In my view it does. In **S v Nkosi and Another**[1] the appellant's conviction of murder by the court below was set aside and he was found guilty of being an accessory after the fact to murder. The assistance rendered to the perpetrator consisted in him rifling the deceased's pockets after he had been shot and taking possession of and concealing the murder weapon at his home with the object of preventing the apprehension and bringing to justice of the perpetrator. The then Appellant Division imposed a sentence of 6 years imprisonment. It is generally accepted that as the accessory after the fact did not participate in the actual crime he/she is sentenced more leniently than the perpetrator. Although the assistance rendered by the appellant does not equate to that rendered to the co-accused in **Nkosi** (*supra*), a custodial sentence is nonetheless imperatively called for, given, not only the full extent of the appellant's assistance, but also his unenviable list of previous convictions and lack of remorse.

[1] 1991 (2) SACR 194 (C)

[8] In the result the following order will issue –

The appeal against sentence is allowed and the sentence is set aside and replaced by the following:-

1. **The accused is sentenced to five years imprisonment.**
2. **The sentence is antedated to 5 March 2009.**

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D. CHETTY
JUDGE OF THE HIGH COURT

Alkema J

I agree.

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S. ALKEMA
JUDGE OF THE HIGH COURT

Beshe, J

I agree.

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N.G BESHE
JUDGE OF THE HIGH COURT

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