

**IN THE HIGH COURT OF SOUTH AFRICA  
KWAZULU NATAL DIVISION, PIETERMARITZBURG**

**CASE NO.: AR53/2022**

In the matter between:

**GOODMAN SANDILE DLAMINI**

**APPELLANT**

and

**THE STATE**

**RESPONDENT**

This judgment was handed electronically by transmission to the parties' representatives by email. The date and time for hand down is deemed to be at 12:00 noon on the 26<sup>th</sup> May 2023

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**ORDER**

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**On appeal from:** the Durban Regional Court:

The appellant's appeal against his conviction and sentence is dismissed.

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**JUDGMENT**

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**Chithi AJ (Chetty J concurring)**

[1] On 7 October 2021 the appellant was convicted of two counts of corruption in the Regional Court, Durban in contravention of the Prevention and Combating of Corrupt

Activities Act.<sup>1</sup> On 11 October 2021 the appellant was sentenced to four years' imprisonment, half of which was suspended for a period of five years. Both counts of corruption were taken as one for the purposes of sentence. The appellant was granted leave to appeal against his conviction and sentence.

[2] The charges against the appellant is that on or about 11 September 2020 at the Lusaka Informal Settlement, Chatsworth, KwaZulu-Natal, the appellant who was a police sergeant with the South African Police Service Band KZN stationed at SAPS College in Chatsworth solicited payments in the sum of R450 and R400 in cash from the complainants, Ms Nomusa Ngqulumba and Mr Mbongeni James Mahlaba in exchange for him not to arrest them for selling liquor without a licence.

[3] Following his conviction, the appellant contended in his grounds of appeal that:

- (a) The learned magistrate misdirected herself in finding that the prosecution had proven its case against him beyond a reasonable doubt.
- (b) The magistrate erred by not considering that there was no entry into the SAP13 register of a R50 note which comprised the money which was recovered from the appellant upon his arrest.
- (c) In imposing a sentence which was unduly harsh and disproportionate to the crime.
- (d) The magistrate misdirected herself in not obtaining a pre-sentence report before imposing a sentence.

[4] The evidence that was presented at trial was common cause between the appellant and the State except in relation to the critical issue of whether the appellant

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<sup>1</sup> Act 12 of 2004.

solicited money from the complainants for him not to arrest them for selling liquor without a licence.

[5] The facts are briefly that on 11 September 2020 Warrant Officer K.C. Dlamini and the appellant, who were both stationed at the SAPS Band at Chatsworth College, asked, and were granted permission by Lt Col Logarsperan their commander, to leave their work premises to go to a nearby tuckshop. After a few minutes Dlamini reported to their commander that they were back. Each of them went to their respective workstations. At a later stage Lt. Col Logarsperan left the office. The appellant again left the police premises to go to the tuckshop to buy a different pack of cigarettes as the one he initially bought was not the brand he customarily smoked. According to him along the way he met a young man who was badly injured and who pleaded for his assistance to recover his cellphone from two men who had forcibly taken it from him. He assisted the man under protest as crime prevention was not part of his usual duties. According to the appellant he searched for these men in houses in which liquor was sold as he believed these men moved from place-to-place drinking.

[6] The complainants, who both resided in Lusaka Informal Settlement, sold alcohol from their homes without a licence. They both testified that when the appellant came into their respective houses, he produced his appointment card reflecting that he was a member of the SAPS. Upon entering their respective houses, he instructed each of them to open their fridge. When he found that there were beers in the fridge, he threatened to arrest them for selling liquor without a licence unless they paid him a bribe. Ms Nqgulumba paid the appellant R450 in order to prevent her arrest while Mr Mahlaba paid him R400. Thandeka Mkhabela ('Ms Mkhabela'), a ward committee member, was alerted to the presence of the appellant at her residence when she received a message that someone was looking for her. She together with another ward committee member attended to the appellant as he was reportedly looking for people that were selling liquor.

[7] At that stage a group of people started gathering in the vicinity. When Ms Mkhabela and her fellow ward committee member asked the appellant which police station he came from, and who was the person who instructed him to look for people who were selling liquor, the appellant mentioned the name of an Indian gentleman as the person who had instructed him. When they further asked the appellant about what was in the diary that was in his possession the appellant threatened to arrest them if they continued asking him questions. Ms Mkhabela then snatched the diary that was in the appellant's possession and took it to her house. While she was in her house she heard a noise outside, and she then noticed that the appellant was being attacked by a group of people. When the appellant ran away, he was pursued by the group. The appellant was fortunate to be rescued by Lt Col. I Mzimela from the KwaDukuza SAPS who coincidentally happened to have been passing nearby when he saw the appellant being chased. After ascertaining the reason why, the appellant was being pursued by the community members, Lt Col. Mzimela took the appellant to the Chatsworth Police Station where he was later placed under arrest.

[8] Lt Col Thwala confirmed that the appellant was brought to the Chatsworth Police Station by Lt Col Mzimela. He further confirmed that he arrested the appellant after Ms Nqgulumba came to the police station and reported that the appellant had solicited a bribe from her to prevent her arrest for selling liquor without a licence.

[9] The appellant denied ever demanding money from any of the complainants. He stated that while he was waiting for the owner of the house with big windows in which liquor was reportedly being sold, he was approached by members of the community who enquired if he was a police officer. When he answered in the affirmative and produced his appointment card, they accused him of going around and taking peoples monies. When he denied this, two men from the group that approached him were not prepared to listen to him and they then dragged him to a dusty area.

[10] During that conversation Ms Mkhabela took the appellant's diary. He was then assaulted by the members of the community. Once he realised that explaining his

situation was not going to help him, he then ran away. He was assisted by the intervention Lt Col Mzimela who took him to the Chatsworth Police Station, where he was arrested.

[11] In light of these facts, the court a quo was confronted with two mutually destructive versions. The approach to resolving factual disputes in the face of two irreconcilable versions was enunciated by the Supreme Court of Appeal in *S v M*.<sup>2</sup>

[12] The magistrate was alive to these mutually destructive versions and she specifically adverted that in order to answer the question of whether the guilt of the appellant was proved beyond a reasonable doubt she had to have regard to the credibility of the witnesses, the probabilities and the authorities concerning matters of this nature. She further concluded that the appellant contradicted himself and his version was laden with improbabilities. I agree with the magistrate that the appellant's version was not only contradictory but it was also improbable. There were several material contradictions and improbabilities in the evidence of the appellant, some of which were adverted to by the magistrate in her judgment. I highlight some of the improbabilities and contradictions hereunder.

[13] The appellant's version that he was stopped by a young man while he was on his way to the tuckshop, whose salutations were 'greetings Mr Police,' is not only improbable but is also demonstrably contrived and false. It is common cause that the appellant was not dressed in police uniform on 11 September 2020 but was wearing civilian clothing. It is therefore highly improbable that this young man would have known that the appellant was a police officer when he was not attired in the SAPS uniform. Even if it is accepted for a moment that this young man knew the appellant prior to the day in question, as the appellant put it that this young man used to see him when he was passing the gate of the SAPS Band KZN in uniform, what compounds the appellant's difficulties is that the appellant does not know the name of this young man that he was so prepared to help. The appellant never made any effort to establish who

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<sup>2</sup> *S v M 2006 (1) SACR 135 (SCA) para 189.*

this young man was. He did not even try to establish how the young man came about to be injured. Moreover, notwithstanding the appellant's contention that when he went to the houses of the complainants and Ms Mkhabela, none of them saw this young man or attested to his presence during their interaction with the appellant.

[14] Lt Col Logarsperan testified that the appellant and Dlamini came back within ten minutes after they had left for the tuckshop, and that they reported to her that they were back. At no point did the appellant take issue with this testimony and suggest that, to the contrary, when they came back, the office of Lt Col Logarsperan was closed, nor did he suggest that he and Dlamini had never reported to her that they were back. When the appellant was confronted about not reporting that he was going out again to Dlamini, who was superior to him in rank, he retorted by saying that Dlamini did not like being disturbed when he had started his practice sessions. However, when the issue of why did he not tell Dlamini that he was going to leave again to go to the tuckshop was raised later, the appellant changed his tune to say that he told Dlamini that he was going outside to the tuckshop. What is significant about this change of evidence is that the appellant never testified to this during his evidence-in-chief, nor was this version put to Dlamini when he testified.

[15] Moreover, the appellant never challenged the evidence of his commander, Lt Col Logarsperan when she testified that members of her team were not allowed to be involved in crime prevention duties except upon the specific request from the provincial office. It was only in the case of an emergency that a member of the Band would give assistance in crime prevention duties, but only after consultation with his/her commander. The members were not allowed to go out on their own and without permission. However, during his cross-examination the appellant sought to contest his commander's version.

[16] Further, when the appellant was confronted as to the reason why he did not go and look for the different pack of cigarettes at the other shops while he was still in company of Dlamini, he could not advance any cogent or satisfactory answer to this

question. He was evasive and referred to the fact that he had left his cell phone charging at his office. It was only when the appellant was pressed on this question that he said that the issue of going to the other shops did not come to his mind. The appellant was equally evasive when he was confronted about the reason why he looked at the houses where alcohol was sold instead of looking for the suspects who had taken the cellphone from the young man, and as to why he enquired about alcohol and not about the suspects. The only reason he could muster was that he was hopeful that he might find the suspects in those places. The appellant did not help his version when it was put to him that he had threatened the complainants that he would arrest them if they did not give him the money, to which he responded by saying that he was alone and not even in his uniform, and therefore he would not have been able to arrest two or three people. This begs the question as to how the appellant was going to be able to arrest the two men who had allegedly taken the cell phone of the young man who had solicited his assistance.

[17] On the issue of the cell phone, the appellant kept vacillating between saying the young man who solicited his assistance had his cell phone taken while he was drinking with the two men and, on other occasions he said that the young man was robbed of his cell phone. What became the most significant contradiction in the appellant's evidence was when he was asked by his counsel whether he took money from anyone without their permission and his answer was that the only amount of money he had was money which he had withdrawn on that day. The appellant's counsel tried to undo the damage by asking a leading question to this effect 'was this amount withdrawn or given by Mr Mtshali'. It is only at that stage that the appellant tried to correct himself by saying he was given the money by Mr Mtshali on 9 September 2020 because he withdrew that money from Capitec Bank. At that stage the damage had already been done to his case and this damage was incapable of being undone. A question that must be asked is, if the money was put into the account of Mr Mtshali and for Mr Mtshali to withdraw it and later hand it to the appellant, what was the money still doing in the appellant's possession two days later after it was given to him?

[18] From this synopsis, in my view the magistrate was correct to conclude that the appellant's version was riddled with inconsistencies and inherent improbabilities. In the circumstances, it was completely unnecessary for the magistrate to make any adverse demeanour findings against the appellant to justify her rejection of his version which was palpably and patently false.

[19] The appellant's contention that there was no entry of a R50 note into the SAP13 exhibit register which would have comprised part of the R450 he solicited from Ms Ngqulumba as amounting to a material deficiency entitling the court a quo to reject the State's evidence, is without merit. This is because of the intervening period between the time that the appellant left the house of Ms Ngqulumba and the time that he was arrested. Anything could have happened in between that period. Further, the appellant's contention pre-supposes that his arrest involved a trap as contemplated in s 252A of the Criminal Procedure Act<sup>3</sup> involving the use of money which was marked. This is not such a case. Moreover, there was never any stage where the appellant was searched by Lt Col Thwala as counsel for the State correctly pointed out during argument. In my view, there has not been any misdirection on the part of the magistrate, she correctly evaluated the evidence and her conclusions are based on sound reasoning.

[20] The appellant's attempt to assail his conviction on the basis that the magistrate failed to approach the complainants' evidence with caution is not borne out by the testimony which was given by the witnesses. The evidence which was tendered by Ms Ngqulumba, Mr Mahlaba and Ms Mkhabela can hardly be said to constitute evidence of a single witness. These witnesses corroborated each other and therefore their evidence did not constitute evidence of a single witness. To the extent that the exchange of money between the appellant and each of the two complainants may well have certain features of being evidence of a single witness, when this evidence is considered in totality it cannot correctly be categorised as the evidence of a single witness especially when it comes to the appellant's modus operandi.

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<sup>3</sup> Act 51 of 1977.



[21] For all the reasons which I have alluded to above I am of the view that the magistrate correctly rejected the appellant's version as improbable and false beyond a reasonable doubt. Her conclusion that the State proved the appellant's guilt beyond a reasonable doubt can therefore not be faulted. The appellant's appeal against his conviction must therefore consequently fail.

[22] I now turn to deal with sentence. As already indicated the appellant was sentenced to four years' imprisonment with each of the two counts of corruption taken together as one for the purposes of sentence, and with half of that sentence suspended. The appellant's effective sentence was therefore a period of two years.

[23] The imposition of a sentence is pre-eminently a matter that falls within the discretion of the trial court. An appeal court is at liberty to interfere with a sentence imposed if, in imposing a sentence, the trial court committed an error or misdirection or if the sentence is so disproportionate to the nature of the crime that it induces a sense of shock or outrage.

[24] It was contended on behalf of the appellant that the sentence is unduly harsh so as to induce a sense of shock and is disproportionate to the offences for which he was convicted. The appellant's counsel unfortunately did not refer to any comparative authorities to support his contentions. The sentence which was imposed in this case is not materially different from the sentences which were imposed in other comparable cases which are set out hereunder.

[25] In *S v Mogotsi*<sup>4</sup> a sentence of four years' imprisonment, two years of which were suspended for two years, was imposed on a 30-year-old traffic officer who was a first offender and had accepted R100 from a motorist in exchange for the 'cancellation' of the summons. He then changed the motorist's registration number and the address

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<sup>4</sup> *S v Mogotsi* 1999 (1) SACR 604 (W).

details on the other copies of the summons in order to cover his tracks and ensure that the motorist could not be traced.

[26] In *S v Mahlangu and Another*<sup>5</sup> a sentence of six years' imprisonment, two years of which were conditionally suspended for a period of five years, imposed on two police officers was confirmed on appeal. The appellants, who were investigating a homicide case, demanded R600 from the complainant, a security guard who had shot and killed a suspected robber, to 'withdraw' the case.

[27] In *S v Newyear*<sup>6</sup> the investigating officer in a case of dealing in drugs against three members of the same family approached another member of the family and offered to have the case withdrawn in exchange for four tyres. He was sentenced on appeal to four years' imprisonment of which two years were suspended.

[28] The appellant was a police sergeant when he committed the offences in question. He had an obligation to protect the members of the community against crime instead of perpetrating crime against them, using his position of trust to clinically execute his criminal conduct. The offences for which the appellant was convicted were premeditated in that he first obtained the consent of his commander to go to the tuckshop. He came back to the office and a little while thereafter went back to the tuckshop without seeking the permission of his commander. The fact that the appellant was a policeman is an aggravating factor in my view. There is nothing in the sentence that was imposed on the appellant which induces a sense of shock. The sentence can hardly be said to be disproportionate to the offence for which the appellant was convicted. The appellant's sentence is consonant with other sentences in other comparative cases. If anything, the appellant was more than fortunate to have had half of his sentence of four years' imprisonment suspended. Accordingly, I therefore cannot find any misdirection on the part of the trial court and consequently this court is not at

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<sup>5</sup> *S v Mahlangu and Another* 2011 (2) SACR 164 (SCA).

<sup>6</sup> *S v Newyear* 1995 (1) SACR 626 (A).

liberty to interfere with the sentence. It therefore follows that the appeal against the sentence must also fail.

**Order**

[29] In the result, I make the following order:

- (a) The appeal is dismissed.

**Chithi AJ**

I concur, and it is so ordered.

**Chetty J**

**APPEARANCES**

Counsel for the Appellant	:	S. Edwards
Instructed by	:	R M D Legal Services
Counsel for the Respondent	:	Mr. Mzulwini
Instructed by	:	DPP: Durban
Date Hearing	:	4 February 2023
Date of Judgment	:	26 May 2023