IN THE HIGH COURT OF SOUTH AFRICA

(WESTERN CAPE HIGH COURT, CAPE TOWN)

CASE NO: A262/2010

DATE: 15 OCTOBER 2010

In the matter between:

LUTHONELO VOKWANA Appellant

and

THE STATE Respondent

J U D G M E N T

GRIESEL, J:

The appellant appeared in the Regional Court sitting at Bellville on charges of murder and assault with intent to do grievous bodily harm. He was legally represented and pleaded not guilty to the charge of murder, but guilty to assault GBH. He was eventually convicted as charged on both counts and was thereupon sentenced to ten years imprisonment on the murder charge and eighteen months on the assault charge, both sentences to run concurrently.

With leave of this Court granted on petition, the appellant has noted an appeal against his sentence.

The events giving rise to the prosecution took place at Special

Quarters, Langa, on Boxing Day 26 December 2006. On the facts stated in the appellant's written plea explanation in terms of section 112(2) of the Criminal Procedure Act, accepted by the State, the appellant and some of his friends were listening to music and having some drinks, as it was put, on the evening in question. A scuffle ensued involving the appellant's ex-girlfriend. It ended up with the appellant producing a knife and stabbing the complainant, one Malgas, once in the back. He also stabbed the deceased, according to him, only twice, again once in the back. According to the *post mortem* report, the deceased died of multiple stab wounds. The version of the appellant, namely, that he did not cause the death of the deceased was rightly rejected by the trial court.

After conviction, the appellant's attorney addressed the Court in mitigation of sentence and pointed out that the appellant had no previous convictions. She also told the Court that the appellant was 18 years old at that stage, having turned 17 a couple of days prior to the fatal incident. He was still living with his parents and was in Grade 10 at school. He was the father of a 1½ year old son.

The appellant's attorney suggested, as part of her address in mitigation of sentence, that a correctional report be obtained, alternatively, a sentence of imprisonment in terms of section

276(1)(i) of the Criminal Procedure Act be considered.

The magistrate, however, would have nothing of this, stating emphatically that the offence was far too serious to consider this option.

In my view, the learned magistrate misdirected himself in sentencing the appellant to a lengthy period of imprisonment without the benefit of any pre-sentence report. The mere fact that the magistrate might have thought that the matter was too serious to allow for a sentence of correctional supervision, does not mean that the court should not call for a pre-sentence report.

As has been emphasised by our courts on innumerable occasions, no juvenile offender should be imprisoned without proper pre-sentence reports and evidence regarding his personality, personal circumstances and background. I refer in this regard, by way of example, to S v Petersen and Another 2001(1) SACR 16 (SCA) para [20] and the other cases cited therein. See also S S Terblanche, Guide to Sentencing in South Africa, 2nd Edition page 320.

The purpose of the pre-sentence report is to individualise sentence, not so that a light sentence is imposed but to ensure

that a sentence is found that is fair both to the young offender and to society or, as it was put by Steyn J in this division in S v Adams 1971(4) SA 125 (C) at 127F-G –

> "...sodat vonnis in die lig en nie in die duisternis opgelê sal word nie."

In the present instance the Court had the barest minimum before it for purposes of sentence. In my view, the circumstances called out for further information before sentence was imposed. In the circumstances, I am of the view that the matter should be remitted to the trial court for reconsideration of sentence after having considered a pre-sentence report and such other evidence relating to sentence as the parties may wish to place before the court or as the court may wish to obtain.

It should be clearly understood that I am not suggesting that imprisonment is an inappropriate sentence or that a period of ten years is excessive in the circumstances of this case. What I do wish to emphasise, however, is that there was insufficient evidence before the court so as to determine an appropriate sentence; hence there is insufficient evidence before this court to enable it properly to consider this appeal.

In the circumstances, I would issue the following order:

1. The sentences imposed by the trial court are set aside.
2. The matter is remitted to the trial court for reconsideration of the question of sentence after consideration of a presentence report and such other evidence relating to sentence as the parties may wish to place before court or as the court may wish to obtain.
3. Pending finalisation of this matter, the appellant is to remain in custody.

ROGERS, AJ: I agree.

Griesel

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P.P. ROGERS, AJ

GRIESEL, J: It is so ordered.

Griesel

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GRIESEL, J

/IM