

**IN THE HIGH COURT OF SOUTH AFRICA****(WESTERN CAPE HIGH COURT, CAPE TOWN)****CASE NUMBER:**

SS54/2010

**DATE:**

24 MARCH 2011

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In the matter between:

**THE STATE**

and

**KEVIN PILLAY**

Accused 1

10 **TYRONE STEWART**

Accused 2

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**S E N T E N C E**15 **JAKUJA, J:**

The two accused before court were convicted of being accessories after the fact to murder and assault in respect of accused 2. Accused 1 called his father to testify as a witness  
20 in mitigation of sentence and accused 2 called his grandmother. The deceased's cousin gave testimony describing the kind of person that the deceased was.

The defence counsel for both accused requested the court to  
25 consider a sentence of correctional supervision in terms of  
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section 276(1)(h) of the Criminal Procedure Act 51 of 1977. Correctional supervision is a sentencing option in respect of any offence, including accessory after the fact to murder, but every case has its own merits. It is clear that the accused  
5 ...(indistinct) liability does not consist of a single act, but a course of conduct which constituted a serious dereliction of duty. The merits of this case do not justify correctional supervision as a sentencing option.

10 Another issue raised is that of the minimum sentences legislation. This question was raised in the case of S Mkazi & Others 2002 (2) SACR 509 (T), where it was decided that the minimum sentences were not applicable to an offender convicted as an accessory. Further that in exercising its  
15 discretion to impose a suitable sentence upon an accessory, the court must have regard to the prescribed sentence which the legislature has provided for in respect of the offence for which the principal offender was convicted. Accessory after the fact does not appear in any of the lists of offences  
20 mentioned in the schedules to the Act, Act 105 of 1997, as amended by Act 38 of 2007, that is the Act dealing with minimum sentences.

In passing sentence the court has to take into consideration  
25 the accused's personal circumstances, the offence of which he

has been convicted and the interest of the community. That is the well know triad in the case of Zinn 1969 (2) SA 537 (A). The sentence must also be blended with an element of mercy. The accused were convicted of engaging in activities meant to  
5 assist February in trying to evade liability for killing the deceased. It is a very serious offence. Accused 2 also for an assault on Cheslin, whom he assaulted for no reason.

It is unsettling to learn that police officers can actually take  
10 the body of a person and dump it at a place that is known as a dumping ground for dead bodies. Evidence before this court is that the place where they went to dump the body, is a knowing dumping place for dead bodies. They are not very clever if they thought they could get away with this. The broke the very  
15 law that they took an oath to uphold.

How safe are the communities out there, if their security is placed in the hands of people like the accused. This is the type of thing that gives a bad name to the whole police force.  
20 It also strains relations between the police, whether Metro or SAPS and the communities they are meant to serve. Cheslin was still visibly upset about the treatment he received at the hands of accused 2. It was so uncalled for, a clear abuse of power by accused 2.

25 The court believes what accused 1's father said about him,



that he is not a bad person. His former colleague confirmed that and his commander, Sergeant Redding, could hardly hold back tears when she spoke about him. It is unfortunate that he found himself assigned to duties with colleagues in a situation  
5 in which group loyalty was more important than doing his duty. He is 35 years of age and is a first offender. He is not married and has no children. He is staying with his sickly father. He was dismissed from the Metro Police Force because of this incident. He has now started a business running a driving  
10 school.

Accused 2 is also not married and he is 29 years old. He stays with a girlfriend and they have two minor children. A third is on the way we have been told. He is currently  
15 unemployed, but has been promised employment in the security industry should he be given a sentence that will allow him to take up employment.

In confirming a sentence imposed on policemen, the Supreme  
20 Court of Appeal in the case of S v Govender 2004 SACR 381 (A), the Appellate Division had this to say:

“There had been in law a duty in the circumstances of the case on those policemen who had been  
25 present and who had witnessed, but not participate

on the attack on the deceased, to put a stop to it."

It went further and said:

5 "In advancing a contrived version, each..."

That is each of the accused:

"... had placed ...(indistinct) to his colleagues above  
10 his duties as a police officer."

Exactly what happened here. The accused witnesses what happened and they had a legal duty to stop it, instead they placed their loyalty to their colleague, February, above their  
15 duties as police officers. A message needs to be sent out to remind police officers that their loyalties lie first with their oath to uphold the law and that they are not above the law.

Our authorities agree though that the accessory after the fact  
20 does not participate in the actually crime. He is usually treated more leniently than the perpetrator. The perpetrator in this case has already sentenced himself. He gave himself the ultimate sentence, death. One secret he took with him to the grave is why he shot the deceased who was unarmed and who  
25 apparently committed no crime, and shot him in the manner

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SENTENCE

that he did when he was not posing any threat to him. The deceased was killed in a cruel and inhuman manner, but not by the two accused before court.

- 5 A sentence therefore that will take into consideration the accused's personal circumstances, fit the crime of which they have been convicted, serve the interest of the community and include the element of mercy, is the following:

- 10 1. On count 2, accused 2 is sentenced to undergo 12 (TWELVE) MONTHS IMPRISONMENT.
2. Count 4, both accused are sentenced to undergo EIGHT (8) YEARS IMPRISONMENT EACH.

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JAKUJA, J

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