

Summary

The appellant, is a constable in the South African Police Service. The appellant was convicted in the Regional Court Pretoria for soliciting and accepting a bribe in terms of section 4 (1) (a) (i) (aa) and 26(1)(a) of the Prevention and Combating of Corrupt Activities Act, 12 of 2004 (the “Act”), and was sentenced to 7 (seven) years imprisonment, of which 2 (two) years were conditionally suspended for 5 (five) years. The appellant unsuccessfully appealed against this sentence to the Pretoria High Court. The SCA granted special leave to appeal against sentence.

On 16 July 2010 the appellant arrested a student at the University of Pretoria for allegedly drinking in public (the “complainant”). The appellant put the complainant in the back of his police van and drove to the Brooklyn Police Station. After a while, the appellant came to the complainant and demanded payment in the amount of R2000.00 (two thousand rand) from the complainant in order to avoid going to jail. The appellant drove the complainant to the nearest ATM to withdraw the money, but the complainant was only able to withdraw R900.00 (nine hundred Rand), which the appellant accepted and released him. Later that day the complainant proffered charges of bribery against the appellant, and he was consequently arrested and charged with corruption. The trial court found that the complainant had not consumed alcohol in public and that the charge against him was groundless, and found further that the appellant’s personal circumstances did not constitute mitigating factors given the seriousness of the offence.

The appellant submitted that section 26(1)(a)(ii) of the Act, limits the trial court’s sentencing discretion by prescribing, as a first option, a fine and a second one, imprisonment, and as such, the sentencing court should consider first imposing a fine rather than direct imprisonment. The SCA was tasked with interpretation the relevant sections of the Act, and in so doing, formulated the view that legislature did not intend to restrict the sentencing discretion of the trial court, and rather that the section makes it transparent that it intended for public officers convicted of corruption to be dealt with severely. In addition, it found that section 26 of the Act gives the sentencing court discretion to impose either a fine or a period of imprisonment.

It was further submitted by the appellant that the trial court misdirected itself by failing to consider other sentencing options, to wit the SCA did not agree, and as of the view that the trial court judiciously considered other sentencing options, but decided that, given the seriousness of the crime and interests of society, direct imprisonment was fitting. It was further submitted by the

appellant that the sentence was disproportionate to the crime, his personal circumstances and the interests of society. In this regard, the SCA stated that in order to ensure that the objectives of the Constitution are achieved, police officials who are in breach of their obligations under this section ought to be dealt with harshly as a deterrent and to warn other police officials that such conduct will not be tolerated.

The second issue placed before the SCA was whether the trial court exercised its judicial discretion improperly or whether the sentence it imposed was disturbingly inappropriate. In this regard, the SCA was of the opinion that the trial court placed undue emphasis on deterrence. The SCA stated that while deterrence is indeed one of the objects and purpose of criminal punishment, other aspects of sentencing (i.e. prevention, rehabilitation and retribution) are also important and that *“offenders should not be sacrificed on the altar of deterrence”*.

Since, *inter alia*, the appellant had a National Diploma in Education (Commerce), the SCA believed that he would have prospects of rehabilitation and correction, and held that the trial court had in fact misdirected itself by over-emphasizing the factor of deterrence and not giving due consideration to all other relevant considerations. In addition, the SCA held that sentence was unduly severe, and that it considered a sentence of 4 (four) years' imprisonment to be more appropriate.

Value

The Prevention and Combating of Corrupt Activities Act 12 of 2004 does not limit the penal discretion of the sentencing court

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