THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

JUDGMENT

Not reportable

Case no: 959/2016

In the matter between:

MARTHA SUSANNA BROODRYK **APPELLANT**

and

THE STATE **RESPONDENT**

Neutral citation: *Broodryk v The State* (959/2016) [2017] ZASCA 62 (29 May 2017)

Coram: Tshiqi, Saldulker, Zondi and Van Der Merwe JJA and Schippers AJA

Heard: 03 May 2017

Delivered: 29 May 2017

Summary: Sentence - imposition of - factors to be taken into account: appellant convicted on a charge of theft: previous conviction one of the factors taken into account: sentence of five years' imprisonment not shockingly inappropriate: sentence confirmed.

ORDER

On appeal from: Gauteng Division of the High Court, Pretoria (Tlhapi J and Vukeya AJ sitting as court of appeal):

The appeal against sentence is dismissed.

JUDGMENT

Saldulker JA (Tshiqi, Zondi and Van Der Merwe JJA and Schippers AJA concurring):

[1] This appeal is against sentence only. The appellant, Ms Martha Susanna Broodryk was convicted by the regional court, Lydenburg on a charge of theft in the amount of R63 300 after she had pleaded guilty to that charge in terms of s 112(2) of the Criminal Procedure Act 51 of 1977 (the Act). She was sentenced to five years' imprisonment. The trial court further ordered that four of the five years were to be served concurrently with a suspended sentence of six years' imprisonment for theft of R 200 000 from her erstwhile employer, imposed on 10 October 2005 by the regional court, Nelspruit (the suspended sentence), in the event of the suspended sentence being put into operation. The appellant was granted leave to appeal against sentence by the trial court to the Gauteng Division, Pretoria, which

subsequently dismissed the appeal against sentence. The appellant appeals to this court with its special leave.

[2] The events leading up to commission of the offence appear largely from the appellant's written statement in terms of s 112(2) of the Act. The appellant was employed as a rental agent at Homenet, an estate agency in Lydenburg. Her responsibilities included renting out properties on behalf of the owners for commission, and liaising between the tenants and landlords on behalf of Homenet. Payments received from tenants had to be deposited into Homenet's banking account held at Standard Bank. The appellant, however got the tenants to pay the rentals into her personal bank account held at Absa Bank.

[3] In October 2007, Homenet rented out three houses on behalf of a client, Mr Winterbach, for R5 300 per month per house. When the lease of one of these houses expired, the tenant asked for an extension of the lease. The appellant agreed and gave the tenant her personal banking account details at Absa Bank and instructed the tenant to deposit the rental into that account. The tenant deposited R4 800 into the appellant's personal account in April 2010, and thereafter made two further deposits of R6 500 each for the months of June and July 2010. Thus began the appellant's 'taking ways'.[1]

[4] The appellant followed the same modus operandi in March 2010 when a new tenant leased one of Mr Winterbach's houses. She provided the tenant

[1] *S v Sinden* 1995 (2) SACR 704 (SCA) at 709.

with her bank account details and the amount of R5 000 was deposited into her account at Absa Bank. In May 2010 the appellant gave another new tenant a deposit slip with her banking details, and R11 000 was deposited into her bank account. That tenant deposited a further amount of R5 500 into the appellant's account in July 2010.

[5] Mr Winterbach entered into a further agreement with Homenet to lease out two more houses. Mr Zwane rented one of those houses, and when he requested Homenet's bank details to deposit rental, the appellant gave her personal banking account details. Mr Zwane then deposited R5 500 into the appellant's account. Between May 2010 and July 2010, he deposited further amounts totalling R18 500 into the appellant's personal bank account.

[6] The appellant withdrew all the amounts deposited into her personal bank account by the clients of Homenet and misappropriated the funds for her own personal benefit. Because of her conduct, Homenet suffered a loss of R63 300.

[7] After the conviction, the trial court, in a carefully reasoned judgment, dealt with all the factors relevant to the purposes of sentencing, and imposed a custodial sentence on the appellant. The trial court referred to *Sinden*,[2] in which this court held that a sentence does more than deal with a particular offender in respect of the crime of which she has been convicted; it also sends a message to society. The trial court said that if it imposed too light a

[2] *S v Sinden* 1995 (2) SACR 704 (SCA).

sentence, or correctional supervision, this would send out the wrong message to society – that crime might pay after all. The trial court took into account, the personal circumstances of the appellant that she was 47 years old and married with no dependants. The trial court found it particularly aggravating that the appellant committed this offence within the period of suspension for the theft from her erstwhile employer in the amount of R200 000. That sentence was suspended for five years on condition that the appellant was not found guilty of theft or fraud committed during the period of suspension. The trial court held, correctly in my view, that the seriousness of the offence, committed during the period when the suspended sentence was hanging over her head, and the interests of society, clearly outweighed the personal circumstances of the appellant, and deserved a custodial sentence.

[8] It is regrettable that the previous conviction did not have any deterrent effect on the appellant. The appellant abused the trust that her employer had placed in her by deliberately providing clients with her own personal bank account details into which rental was deposited for her own personal gain. Clearly the appellant was unrepentant for her past conduct. She committed this theft not out of need, but greed. The appellant showed no remorse for her actions. Courts take a serious view of white-collar crimes and its corrosive impact upon society.[3]

[9] It is trite law that sentencing is a matter pre-eminently in the discretion of the trial court and a court of appeal will only interfere with the exercise of

[3] *S v Sadler* 2000 (1) SACR 331 (SCA) para 13.

such discretion on limited grounds.[4] In *S v De Jager & another* 1965 (2) SA 616 (A) at 628H-629, Holmes JA made the following observation:

'It would not appear to be sufficiently recognised that a Court of appeal does not have a general discretion to ameliorate the sentences of trial Courts. The matter is governed by principle. It is the trial Court which has the discretion, and a Court of appeal cannot interfere unless the discretion was not judicially exercised, that is to say unless the sentence is vitiated by irregularity or misdirection or is so severe that no reasonable court could have imposed it. In this latter regard an accepted test is whether the sentence induces a sense of shock, that is to say if there is a striking disparity between the sentence passed and that which the Court of appeal would have imposed. It should therefore be recognised that appellate jurisdiction to interfere with punishment is not discretionary but, on the contrary, is very limited.'

[10] In the circumstances, the trial court cannot be faulted for discounting other sentencing options. Taking into account that the appellant was a repeat offender, the sentence imposed was not shockingly inappropriate. Therefore, the appeal against sentence falls to be dismissed.

[11] I therefore make the following order:

The appeal against sentence is dismissed.

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H K Saldulker

Judge of Appeal

[4] *S v Sadler* 2000 (1) SACR 331 (SCA) at 334-335.

APPEARANCES:

For the Appellant:	De Necker Instructed by: Johannesburg Justice Centre C/O Symington & De Kock Attorneys, Bloemfontein
For the Respondent:	P Vorster Instructed by: Director of Public Prosecutions, Johannesburg Director of Public Prosecutions, Bloemfontein