

IN THE HIGH COURT OF SWAZILAND

HELD AT MBABANE

CRIMINAL TRIAL NO 242/07

In the matter between:

REX

VS

JABULANI MASANGO

CORAM

MONAGENG, J

FOR CROWN

MR. PHATHAPATHA MDLULI

FOR ACCUSED MR. MLUNGISI SIMELANE

ACCUSED

PRESENT

JUDGMENT
24th APRIL 2008

[1] In this matter the accused person pleaded guilty to the criminal offence of culpable homicide, it being alleged that on the 20th April 2006, he killed a police officer, Elmon Nkalanga who was arresting him following a house breaking and theft in Mangweni Village.

[2] In mitigation, his attorney, Mr. Mlungisi Simelane said the following: "The accused originates from an impoverished community where the means of livelihood are difficult and he finds himself having committed this offence. Poverty therefore contributed to him finding himself in this situation. When he was arrested, he was 26 years old and in his middle age. He is still young. I ask for the mercy of the Court and ask the Court to take into consideration that he still has a chance to reform and also ask the Court to give him a chance to be reformed. He has 2 minor children who have not been with him ever since he was arrested.

[3] They depend on him to put food on their table. Even though he was not employed then, he scratched here and there to ensure that they survived. We ask the Court to give him an opportunity to take care of those children again. We implore the Court to take into consideration that he has pleaded guilty to the charge and has not wasted the Court's time.

[4] May it also weigh to his advantage that he has not committed any offence in this jurisdiction. It has been the practice, and we know that the Court is normally inclined to pass custodial sentences in such cases, but ask the Court to pass a minimal sentence. We implore the Court to adopt a reformatory not a retributive approach, so that even if the Court would suspend part of the sentence, this would be acceptable in the reformatory approach.

[5] We apply for a partially suspended sentence that will make him learn and also reform him. In terms of Swazi custom, his relatives have been sent to apologize to the family of the deceased, and that should indicate that the accused person is remorseful.

[6] SENTENCE

The accused person has pleaded guilty to culpable homicide. His plea of guilty might be said to show some remorse. He is a first offender and is relatively young, so that youth could also have contributed to his recklessness when committing this offence. What is worth noting, however, in this matter is the following:

1. The viciousness of the stabbing as articulated in the post mortem report.

2. The fact that the deceased was a police officer in the process of executing his duty cannot be viewed simply.

[7] Having noted these two factors and taking all his mitigation into account, I sentence him as follows:

1. 10 years imprisonment.

2. 3 years shall be suspended for a period of 3 years on condition that he is not convicted of any offence of which violence, especially

accompanied by the use of a lethal weapon, is not an element.

3. The sentence shall take effect from 18th May 2006 when he was first arrested.

4. Right of appeal against sentence only.

SM MONAGENG

JUDGE