

IN THE SUPREME COURT OF SOUTH AFRICA.
(TRANSVAAL PROVINCIAL DIVISION)

In the matter between:

THE STATE

and

ABRAM FISCHER.

SENTENCE.

BOSHOFF, J:

Meting out punishment is always a difficult task. The Court has to assess the measure of punishment which would be sufficient to meet the deterrent, preventive, reformative and retributive ends of criminal justice. Matters which are relevant in making such an assessment usually include such matters as the nature of the offences of which the accused has been convicted, the circumstances in which they were committed, the degree of his participation and the circumstances personal to the accused.

In considering the nature of the offences, the Court should no doubt have regard to the greatness or smallness of the evil which results or is likely to result from acts of their class. All the acts committed by the accused can be attributed to the fact that he is a devoted Communist and as such subscribes to the principles of Marxism-Leninism. He recognises only one loyalty and that is loyalty to the cause of the Communist Party. The acts he committed were

either committed personally or as a member of the Central Committee of the South African Communist Party, the body which wields the highest authority in the Party in the Republic of South Africa. The South African Communist Party is part of the world communist movement, participates in meetings of fraternal communist and worker's parties and abides loyally by their decisions. It is integrated in this world organisation and relies on it for support for its contribution in the world-wide revolution against capitalism. It sees the present time as an epoch of struggle between two opposing social systems, an epoch of socialist and national liberation revolutions, of the breakdown of imperialism and the abolition of the colonial system; an epoch of the transition of more and more peoples to the socialist path and the triumph of socialism and communism on a world-wide scale. Believing that it is attuned to history as it is bound to evolve, it evidently claims a right and a mission to direct mankind along the inevitable course which involves essentially the abolition of private ownership of the means of production and placing them under public ownership; the replacement of the dictatorship of the capitalists with that of the working class. It is not expected that the change will come about of its own account or by persuading the capitalist ruling class that change is reasonable and desirable; change can only come about through the struggle of the masses of the people. Its onslaught against capitalism in this country is on the basis that capitalism cultivates and plays upon race and national antagonisms and is entrenched in White rule; White capitalists own and

control the mines, factories, banks and most of commerce, and hold a monopoly of political rights and economic opportunities, all of which lead to a ruthless oppression and exploitation of the non-Whites. In order to liberate the non-Whites, it is necessary to overthrow White rule. This overthrow is to be achieved by mass political action. The Communist Party has evidently experienced some difficulty in bringing communism to the masses and has resorted to the expedient of assisting with the formation of separate organisations of the different population groups, and recruited leading members of such groups into its own ranks to ensure that the leaders of those groups and the leaders of the South African Communist Party were to a large extent the same people. These organisations were together to form a united front for national liberation against white supremacy and, because each had the word "Congress" included in its name, they were generally referred to as the Congress Alliance. It is the task of these organisations to organise their respective population groups to assist with the developing of mass political action through campaigns of organisation and agitation to achieve national democratic liberation. They all form the national liberation movement and their expressed objective is a national democratic revolution which, for the purposes of the South African Communist Party, is an intermediate step and key to socialism. It is expected from each organisation to exploit to the full any situation which presents itself as affecting its group, to stimulate hatred of and opposition to the government in every possible sphere with a view to rousing them into action and uniting them in the liberation

movement. In this way the Congresses as an alliance concern themselves with matters of common interest such as demands for the franchise, for a national convention and other major overriding political issues; the African National Congress with pass laws, Bantu authorities, high rents, etc.; the South African Indian Congress with anti-Indian discrimination; the South African Congress of Trade Unions with detailed demands for more pay, shorter hours, better working conditions for workers, etc.

It is stated in the programme of the South African Communist Party that these conflicts, which derive from the capitalist system, cannot be resolved within the framework of that system and that it can only be resolved by a revolutionary change in the system. It is therefore difficult to see in what way relief or concessions on any of the matters raised by the different organisations will satisfy the South African Communist Party and bring social peace unless, of course, there is a change to a socialist system.

The South African Communist Party inspired the formation of Umkonto We Sizwe as the military wing of the liberation movement. It was to serve important purposes, namely, as a valuable weapon to supplement the work of mass agitation; as a valuable field for the training of militant fighters in the technique of armed struggle and the establishment of a people's liberation army, should such a step become necessary in the future, to ensure that the liberation movement would have ready at hand its own peoples armed force to take on the defence of the country when power was wrested from the White State and its armed forces were disbanded. Its initial purpose

was to practise sabotage against carefully selected targets targets which could be attacked without endangering life or limb but which, because of their nature, would demonstrate the supposed hatred of the masses of apartheid. For this purpose targets were to be government installations and property and preferably those which, if successfully attacked, would disrupt the process of governing. Acts of sabotage were committed in the sense stated, and in addition a number of persons were recruited for instruction and training outside the Republic in the preparation, manufacture and use of explosives, for the purpose of committing acts of violence and destruction in the Republic and in the art of warfare, including guerilla warfare and military training generally, for the purpose of causing a violent revolution in the Republic. A number of persons in fact had such instruction and training. A stage was reached when the South African Communist Party decided that Umkonto We Sizwe should go into a so-called "second phase" which meant a preparation for guerilla warfare with a view to an ultimate armed overthrow of the White State. Positive steps were taken in this connection. It is clear that reliance was placed on armed intervention from outside the borders of the country and on outside assistance to isolate the country with sanctions and boycotts.

Umkonto We Sizwe received financial and other assistance from the South African Communist Party and acted under its political leadership, and the Court has found that the accused personally and as a member of the South African Communist Party conspired with Umkonto We Sizwe to aid, to procure the commission of and to commit the acts alleged in the 1st charge.

These acts constitute a very serious threat to the safety of the State and with them forces were set in motion which constituted a great threat to law and order.

The part which the accused played in the South African Communist Party appears from the facts found proved on charges 2 to 7. He certainly had no insignificant part. He evidently handled large sums of money and assisted in getting financial support from overseas. Judging from the contents of his writings, it is clear that he assisted in a campaign to support international actions in the form of sanctions and boycotts against the Republic.

His counsel has addressed the Court on his ability and qualities as a man. He has also referred to the fact that the accused acted according to the dictates of his conscience and should not be regarded as a criminal in the true sense of that word. He has, however, candidly conceded that his crimes were serious and a danger to the established order.

In crimes of this type the deterrent and preventive aspects of punishment call for emphasis. The offences were committed because of the moral beliefs of the accused and he himself, in Exhibit AF 5, expected other convicted Communists on their release to play their essential part in working for the cause of communism. The reformatory aspect of punishment is, therefore, of no consideration in assessing the measure of punishment. The retributive aspect also does not seem to apply.

The activities in which the accused took part as alleged in the 3rd and 4th charge can be related to the fact that he was a member of the Central Committee

of the South African Communist Party, which is really the offence charged in the 2nd charge. The 3rd and 4th charge relate to different periods; the 3rd charge to the period before his first arrest and the 4th charge to the period after he had absconded. The 5th, 6th and 7th charge relate to acts during this latter period, and there seems to be no logical reason why they were not alleged as particulars of his activities in the same way as the other acts alleged in the 4th charge. It is true that it is alleged that the acts in the 5th, 6th and 7th charge were calculated to further the achievement of the objects of Communism, but they were no more so than the activities averred in the 4th charge. They were separate acts but committed with the same intent as those committed in the 4th charge and should, therefore, in my view, be considered together with the 4th charge for purposes of sentence.

The acts committed on the alternative charges 8 to 13 and the 14th and 15th charge constitute separate offences and were committed while the accused was in hiding to conceal his identity.

Having regard to all the circumstances, the accused is sentenced on charge 1 to life imprisonment; on charge 2 to 8 years imprisonment; on charge 3 to 8 years imprisonment; on charge 4, considered in conjunction with charges 5, 6 and 7 for purposes of sentence, to 8 years imprisonment; the sentences on charges 2, 3 and 4 are to run concurrently; on the alternative charges 8 to 13, on each charge to R20 and in default of payment to one month imprisonment; on the 14th charge 2 months imprisonment and on the 15th charge one month imprisonment.

I should mention that in terms of Section 32(2) of the Prisons Act, No. 8 of 1959, all these sentences of imprisonment will be served concurrently with the sentence of life imprisonment.

JUDGE OF THE SUPREME COURT
OF SOUTH AFRICA.

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