

## **Very Expensive Milk and Cookies**

### **Institute for Security Studies**

A recent report in the South African media (Rapport 24 January 2010) related the story of a 23-year old man, Morgan Matlala, who entered the premises of the Department of Agriculture in Silverton, Pretoria, in search of food. Here he was accosted by security guards while he was enjoying milk and cookies belonging to the Department. The value of the milk and cookies was estimated to be R50. For this heinous crime, Matlala was arrested, charged and taken into custody. The court set bail at an amount that Matlala could not afford and he consequently spent four months in prison awaiting trial before he pleaded guilty to housebreaking and theft and was sentenced to five years' imprisonment suspended for five years. The four months in prison cost the taxpayer an estimated R24 000 at a cost of R200 per day per prisoner. There are also other costs that should be added to this such as court time, time spent by the police to investigate the crime, the magistrate's time, legal representation and so forth. The true cost of the milk and cookies is thus substantially higher than R24 000.

The case of Morgan Matlala is cause for deep concern as it not only points out how the poor are victimised by the criminal justice system, but also how officials fail to use the mechanisms available in law to avoid unnecessary prosecution and detention. There is no doubt that Morgan Matlala must take responsibility for his actions, but he did spend four months in prison without being convicted of anything, except that he was poor and could not afford the bail set by the court. The fact that the court set bail indicated that he was not regarded as a threat to society or as a threat to witnesses or evidence. His detention was unnecessary and without purpose.

For the past 15 years there have been numerous reports in the media about prison overcrowding and that a major contributing factor to this is unaffordable bail. There is probably not a South African who is not well aware of the fact that our prisons are overcrowded. Successive Inspecting Judges of Prisons have pleaded with magistrates and other officials to avoid the unnecessary imprisonment of suspects and especially the granting of unaffordable bail. Bail over R1000 is often not within the means of arrested persons.

The law provides a range of options that could have prevented the four-month detention of Morgan Matlala, but these were apparently ignored by the court and other officials in question. In the first place the court should not have set bail at an amount that he could not afford. The court should have made proper enquiries as to what he can afford and if he was destitute, released him on warning. Secondly, assuming that the first option failed, the Head of Prison could have made an application under section 63A of the Criminal Procedure Act, requesting the court that Matlala be released on a warning to appear in court or that the amount of bail is lowered as he could not afford the bail amount set by the court. Thirdly, given that this was not a violent or a high-value property offence, his case could have been conditionally withdrawn by the

prosecution after first appearance. Such a conditional withdrawal may have required a counter performance, such as the performance of community service, as happened recently with Springbok rugby player Ricky January in connection with a drunk driving charge. January now has to perform 20 hours of community service. Fourthly, if the prosecution did want to divert the case, he could have been offered a plea and sentence agreement (plea bargain) at an early stage shortly after arrest. It is unfortunately the case that plea and sentence agreements are rarely used.

The sentence imposed also makes one wonder why the courts are so vindictive against the poor. It is not known if Matlala was a first offender, but if he were to repeat his crime, namely housebreaking and theft of milk and cookies to the value of R50, he will face five years in prison. If released on parole after two and a half years, his stint in prison will have costed the tax payer an estimated R182 600. (If the Department of Agriculture, however, puts out milk and cookies to the value of R50 every night for Morgan Matlala for the next two and half years, the cost would be a mere R27 400; a saving of R155 200 to the tax payer.)

There are also big differences between how the rich and the poor are sentenced, and this can be quantified. Let us compare Matlala's sentence of five years if he commits the same crime again, with that of former advisor to President Jacob Zuma, Schabir Shaik. The latter was convicted of fraud and corruption involving more than R500 000 and sentenced to 15 years' imprisonment. Matlala will have to spend 37 days in prison for every R1 stolen of the total of R50, whereas Mr. Shaik will spend 0.01095 days in prison for every R1 involved (of the total of R500 000). If Matlala were sentenced in the same manner as Shaik, his sentence would have been half a day in prison and as the minimum term of imprisonment is four days, he would not have been sentenced to imprisonment at all. If Shaik, on the other hand, was sentenced in accordance with Matlala's five year sentence (37 days for every R1), his sentence should have been 50 000 years. Things are clearly not proportional.

The above evidently belongs in the domain of the absurd, but it does point to serious problems. Poor people are pulling at the short end of the stick in the criminal justice system because officials do not utilise the legislated means available to them to resolve cases speedily and in a manner that upholds and protects the dignity of all. Officials also have scant regard for the cost implications of their decisions.

It is unknown what happened to Matlala while he was awaiting trial in prison, but we do know that prisons are dangerous places, where assaults and sexual assaults are common and one can only hope that he was spared such an ordeal. Matlala is also not an isolated case. According to the Inspecting Judge of Prisons 2008/9 Annual Report there are nearly 8500 people in prison who cannot afford the bail set by the courts. Recent research in three metropolitan courts found that, half of the cases against accused are either withdrawn or struck from the roll. Their custody was without meaning or purpose, but they have to endure the pains of imprisonment and attempt to reconnect their lives once released. Magistrates, prosecutors and Heads of Prison have a duty to prevent the unnecessary detention of people and to utilise the means available to them.

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