

**THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG**



CASE NUMBER: 172/2015

DATE OF HEARING: 30 NOVEMBER 2015

DATE OF JUDGMENT: 30 NOVEMBER 2015

In the matter between:

(1) REPORTABLE: YES / NO
(2) OF INTEREST TO OTHER JUDGES: YES/NO
(3) REVISED.

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DATE

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SIGNATURE

TSHUPANE BENEDICT MOEKETSI

Appellant

and

THE STATE

Respondent

CORAM: Mphahlele J and Avvakoumides AJ

J U D G M E N T

AVVAKOUMIDES, AJ

- [1] The Appellant was charged along with two other accused of robbery with aggravating circumstances. He pleaded not guilty to the charge but was convicted and sentenced to 15 years' imprisonment on 7 February 2013. The facts are briefly that the Appellant and his co accused held up and hi-jacked a male person in a Toyota Yaris motor vehicle, whilst using toy guns. All three were arrested within hours of the hi-jacking, whilst being in the motor vehicle.
- [2] The appeal is based on mistaken identity by the complainant who could not identify the Appellant and his co-accused because of the darkness. The policeman however who arrested the three males noted their names in his pocket book, in the register and in the SAP 14 form. This was not disputed by the Appellant. The complainant and the owner of the vehicle were able to identify the vehicle the next day.
- [3] I find that the trial court exercised its discretion properly and judicially under the circumstances and the conviction must subsequently stand. All the relevant circumstances were taken into account by the trial court and in my view there is nothing that warrants the attention of this court to the extent that we need to interfere with the conviction.
- [4] On the sentence the Appellant submitted that the crime is not of the worst kind and the fact that the Appellant and his co accused used toy guns should count in their favour because the complainant was the only one who believed that the guns were real. I find this submission to be without any legal or other foundation and non-sensical. The sentence imposed is in accordance with the

provisions of section 51 (2) of the Minimum Sentences Amendment Act 105 of 1977, and in the absence of substantial and compelling reasons to deviate from the prescribed minimum sentence, I find that there is no reason to interfere with the sentence as well.

[5] In the premises the appeal is dismissed.

G. T. AVVAKOUMIDES

ACTING JUDGE OF THE HIGH COURT

GAUTENG LOCAL DIVISION, JOHANNESBURG

I agree:

S. S. MPHAHLELE

JUDGE OF THE HIGH COURT

GAUTENG LOCAL DIVISION, JOHANNESBURG

Representation for Appellant:

Counsel: J. L. Kgokane

Instructed by: Legal Aid SA Johannesburg

Representation for the Respondent:

Counsel: S. D. Mgimeti

Instructed by: Director of Public Prosecutions