

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

|     |                                 |
|-----|---------------------------------|
| (1) | REPORTABLE: NO                  |
| (2) | OF INTEREST TO OTHER JUDGES: NO |
| (3) | REVISED: NO                     |

Appeal No: A150/2022

DPP Ref No: 10/2/5/1-(2022/84)

Date of Appeal: 17 April 2023

In the matter between:

**LIGUNYA, ZUKISO**

**APPELLANT**

and

**THE STATE**

**RESPONDENT**

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**JUDGMENT**

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**Karam AJ:**

**A. INTRODUCTION**

1. On 27 January 2021 and pursuant to a guilty plea, the Appellant was convicted in the

Germiston Regional Court on:

1.1 count 1 – unlawful possession of a 9mm semi-automatic pistol with serial number obliterated, read with the provisions of Section 51(2) of Act 105 of 1997 (hereinafter referred to as “the minimum sentence provisions”); and

1.2 count 2 – unlawful possession of 8 rounds of 9mm ammunition.

2. On 9 February 2021 he was sentenced as follows:

2.1 count 1 – 15 years imprisonment in terms of the minimum sentence provisions; and

2.2 count 2 – 5 years imprisonment.

The sentence on count 2 was ordered to run concurrently with that on count 1, resulting in an effective sentence of 15 years imprisonment.

3. On 9 September 2022 he was granted leave to appeal the sentence imposed.

## **B. AD SENTENCE**

4. The Court, having considered the submissions of counsel at the hearing hereof, was of the prima facie view that there was no merit in the appeal, regard being had to Appellant's multiple previous convictions, including and in particular the previous conviction for unlawful possession of a firearm, which sentence of 5 years imprisonment imposed in respect thereof

was ordered to run concurrently with the 7 year sentence imposed for the robbery.

5. However, there was a reference in the Appellant's hand written notice of appeal, to a conviction for attempted murder, which was not reflected in the SAP 69. Furthermore, it was apparent that the Appellant was serving a sentence at the time that he was sentenced in the current matter. There was further the question as to the period of incarceration awaiting finalization of the current matter.

Accordingly, and in the interests of justice, the Court requested counsel to investigate same, agree on same, and to furnish the Court with a memorandum relating to these issues.

6. After the Court's subsequent reminder to counsel that it was still awaiting the information required, the Appellant's counsel furnished the Court with a memorandum and supplementary heads of argument.

The Court sent a further two reminders to the State counsel to comment on the Appellant's counsel's memorandum and supplementary heads, and inviting him to furnish supplementary heads, to no avail.

7. In terms of the memorandum aforesaid, which counsel for the Appellant states that he discussed with counsel for the Respondent, it is apparent that the Appellant was indeed convicted for attempted murder and sentenced to 8 years imprisonment on 19 November 2019.

It is further apparent that the Appellant was incarcerated for parole violation in respect of his

previous conviction/s and was in custody for 2 weeks in the current prior to finalization of same.

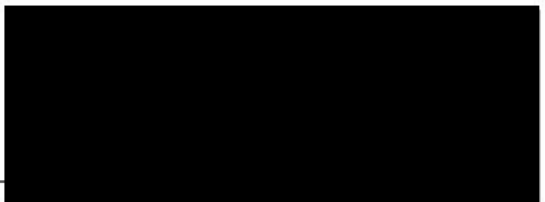
8. In the supplementary heads of argument it is submitted that the sentence imposed in the current matter be ordered to run concurrently with the 8 year sentence aforesaid.
9. It is abundantly clear that at the time of sentencing in the current matter, the learned Magistrate was not made aware of the fact that the Appellant was serving the 8 year sentence for the conviction of attempted murder. Accordingly, this important factor was not considered in the imposition of sentence, to the prejudice of the Appellant.
- 10 It is trite that a court, in imposing sentence, is required to consider the cumulative effect of the sentence imposed and the failure to so do, amounts to an irregularity or misdirection. This extends also to the fact that a presiding officer be made aware than an accused is serving a sentence at the time the presiding officer imposes sentence. Regrettably, and due to the incomplete SAP 69 and the fault of the Appellant's legal representative at the trial in not properly consulting with him, the learned Magistrate was not aware thereof.
11. As a result, this Court is entitled to interfere with the sentence imposed.
12. In light of the Appellant's multiple previous convictions which also include two counts of robbery and unlawful possession of a firearm, and the fact that the periods of imprisonment previously imposed have evidently had no deterrent effect, I am of the view that there is no merit in the submission that the entire sentence imposed in this matter be ordered to run concurrently with the sentence imposed for the attempted murder conviction.

13. In the circumstances I propose the following Order:

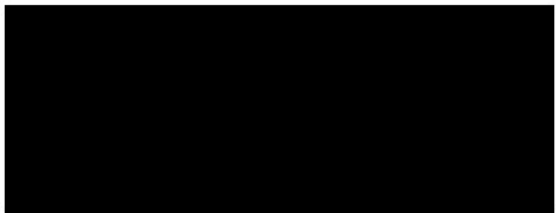
13.1 The appeal against sentence is upheld.

13.2 5 (five) years of the 15 (fifteen) year sentence imposed is ordered to run concurrently with the 8 year sentence imposed upon the Appellant for attempted murder.

13.3 Accordingly, the effective sentence is reduced to 10 years imprisonment.

  
W KARAM  
ACTING JUDGE OF THE HIGH COURT

I AGREE

  
T THUPAATLASE  
ACTING JUDGE OF THE HIGH COURT

Appearances:

APPELLANT: Adv E Guarneri

Legal Aid SA

RESPONDENT: Adv S K Mthiyane  
Director of Public Prosecutions  
Gauteng Local Division