

**IN THE HIGH COURT OF SOUTH AFRICA
(EASTERN CAPE, PORT ELIZABETH)**

**Case No: CC11/12
Date heard: 18/10/13
Date delivered: 18/10/13
Not reportable**

In the matter between:

THE STATE

and

MASIXOLE SONTI

Accused

JUDGMENT: SENTENCE

PLASKET, J:

[1] I convicted the accused of two offences, namely theft of a cell-phone and of being an accessory after the fact to robbery with aggravating circumstances. I acquitted his co-accused of all of the charges that had been levelled against him. I must now impose sentence on the accused.

[2] The background, in brief, is that in the early hours of the morning of 31 October 2010, the accused was in the company of his co-accused and one Luvuyo, who is now deceased. When they were asked what they were doing by the occupants of a car that drove up to them, Luvuyo drew a firearm and opened fire on the occupants of the car. He killed one person, rendered a second a paraplegic and inflicted a flesh wound on a third before searching his victims and robbing them of a wallet containing cash and bank cards and three cell-phones.

[3] While neither of the accused took part in these events or associated themselves with the actions of Luvuyo, when they left the scene they went together to the accused's house where Luvuyo gave two cell-phones to the accused, instructing him to unblock one that required a security code but giving him the second cell-phone, which the accused accepted. That is the basis of the theft conviction. Luvuyo instructed the accused to throw away the bank cards that had been taken from the stolen wallet, which the accused did. That is the basis for the conviction for being an accessory after the fact to robbery with aggravating circumstances.

[4] As is customary, I shall in the determination of sentences for these offences consider (and attempt to balance appropriately) the personal circumstances of the accused, the nature of the offences he committed and the interests of society.

[5] The accused is now 23 years old. He was 20 years old when the offences were committed. He has a standard six education. He left school in 2009 without completing standard seven. He left school because of financial hardship. His mother had died in 2007 and his father died in 2010. At the time of his arrest, he had part-time work packing shelves in a shop. He earned R100 per day for the days on which he worked. He lived with his brother.

[6] He is a first offender. He has been in custody awaiting trial since he was arrested on 2 December 2010. I was informed by Mr Mgenge, who appeared for the State, that, although he cannot say why the accused spent so long as an awaiting trial prisoner, he can say that it was not as a result of the accused delaying the completion of his trial.

[7] The offences of which the accused were convicted are serious in their own right. He witnessed a most brutal and unprovoked murder of an innocent person followed by the gunning down of a second person and the wounding of a third. This was in turn followed by the robbery of property from the dead, the injured and those who as a matter of luck remained uninjured. He said in his evidence that he was shocked when Luvuyo drew a firearm and began to shoot at the occupants of the car.

[8] Despite this, immediately on arriving home, he took a share of the spoils, knowing full well that they were obtained in the manner that I have described, and he also tried to cover Luvuyo's tracks by disposing of the cards that Luvuyo had no need for. This conduct speaks of a grave degree of callousness on the part of the accused and complete indifference to the brutality with which the cell-phone and cards were obtained. These are aggravating factors.

[9] The interests of society loom large in a case such as this. I am sure the conduct of the accused in taking advantage of the misfortunes of Luvuyo's victims would fill right-thinking people with revulsion – and correctly so. Society, it has been said many times by our courts, is sick and tired of the type of extreme violence that occurred in this matter. Decent, law-abiding people would expect not only that the perpetrators of violent crimes be severely punished but that those who, like the accused, take advantage of such violent crimes should also feel the full weight of the law. Society's natural indignation must be accorded appropriate recognition.

[10] The personal circumstances of the accused are favourable and the period of just short of three years that he has spent in custody must also be recognised in his favour. That said, the circumstances of both offences render them serious: when people take advantage of violent crime rather than sharing their knowledge as to who is responsible with the police, the administration of justice suffers and the plague of criminality in the country will continue unchecked.

[11] I intend to impose separate sentences for the two offences. They were separate and distinct acts with different aims and purposes. In order to give recognition to the period of time the accused has spent in prison so far, I shall order that the sentences run concurrently.

[12] I have considered the judgment of the Supreme Court of Appeal in *S v Scott-Crossley* 2008 (1) SACR 223 (SCA) and I agree with Ms Theron who appeared for the accused that the conduct in that case was more serious than the accused's conduct in this case. Scott-Crossley had, after employees of his had killed the deceased, assisted them to dispose of his body by throwing it into an enclosure in

which lions were kept. He was sentenced to five years' imprisonment after a conviction of murder was altered on appeal to one of being an accessory after the fact to murder. He too was a first offender with favourable personal circumstances.

[13] In my view, the conduct of the accused is serious enough to warrant a sentence in excess of the time that he has spent in custody. It would, however, be unfair to sentence him to what would ordinarily be an appropriate sentence as that would not recognise the long period that he has been in prison awaiting trial.

[14] I would have sentenced the accused to three years' imprisonment on each count and I would not have ordered any of the sentences to run concurrently. I believe that, even giving full recognition to his relative youthfulness at the time the offences were committed and his clean record, a sentence of six years' imprisonment would have been warranted. As I believe I must give recognition to the nearly 35 months that the accused has spent in custody, I shall order the sentences of three years' imprisonment to run concurrently with each other. (I have opted for this approach because I am not able, as a trial court, to ante-date a sentence.)

[15] The accused 2 is sentenced as follows:

- (a) In respect of the conviction of theft, he is sentenced to three years' imprisonment.
- (b) In respect of the conviction of being an accessory after the fact to robbery with aggravating circumstances, he is sentenced to three years' imprisonment.
- (c) The sentences imposed above shall run concurrently.

C Plasket

Judge of the High Court

APPEARANCES

The State: S Mgenge of the office of the Director of Public Prosecutions, Port Elizabeth

Accused 2: E Theron instructed by Legal Aid South Africa