



IN THE HIGH COURT OF SOUTH AFRICA,
FREE STATE DIVISION, BLOEMFONTEIN

Reportable:	YES/NO
Of Interest to other Judges:	YES/NO
Circulate to Magistrates:	YES/NO

Appeal No.: A224/2016

In the appeal between:-

L M RANTONONO

Appellant

and

THE STATE

Respondent

CORAM: MUSI, AJP *et* MBHELE, J

HEARD ON: 20 MARCH 2017

JUDGMENT BY: MUSI, AJP

DELIVERED ON: 18 MAY 2017

- [1] The appellant was convicted of robbery with aggravating circumstances, by the regional magistrate Kroonstad, and sentenced to 15 years' imprisonment. He

unsuccessfully applied for leave to appeal in the regional court. Leave to appeal against the sentence only was however granted by this court.

- [2] The factual background of the matter is as follows. On 23 September 2012, at approximately 01H00, the complainant was hiking, from Kroonstad Free State, to his workplace at the Air Force Base Hoedspruit, Limpopo Province. Whilst he was walking in Reitz Street, Kroonstad, towards the N1 he was followed by two men. The one man stood in front of him and grabbed him whilst the other grabbed him from behind. The one that was at his back hit him with a bottle on the head as a result of which he fell. He had a sling bag over his shoulder containing his clothing. The two men grabbed the bag from his shoulder. He stood up and ran away.
- [3] He approached people standing in Reitz Street who informed him that they saw what happened and they called the police. The police arrived at the scene. He got into the police vehicle and they drove in the direction in which those people ran. In Botha Street he saw the 2 people walking and one was carrying his bag. The police stopped next to them and they started running. The police chased them, caught the appellant, who was still in possession of his bag, and brought him back to the police van. He identified the appellant as one of the persons who accosted him and he also identified his bag and its contents. He however noticed that 2 pairs of shoes were missing from the bag. The total value of his goods was R4 550. The value of the shoes was R1 550. He sustained an open wound at the back of his head which was bleeding but he did not receive any medical attention.
- [4] The appellant's version which was put to the complainant was, in a nutshell, that he and his friend were drinking at a place called Night School. His friend informed him that someone took his bag. The friend requested the appellant to accompany him to retrieve his bag. He accompanied his friend and they took the bag from the complainant. He was however under the impression that the bag belonged to his friend. The appellant did not testify under oath neither did he call any witnesses.

- [5] The regional magistrate convicted him of robbery with aggravating circumstances. He found that there were no substantial and compelling circumstances that necessitated a deviation from the minimum sentence and imposed the minimum sentence of 15 years' imprisonment.
- [6] Mr van Rensburg on behalf of the appellant contended, before us, that the regional magistrate erred in not finding that there were substantial and compelling circumstances. He submitted that:
- a) the sentence is unjust because it is disproportionate to the offence committed;
 - b) the regional magistrate over emphasized the seriousness of the offence and the interests of society at the expense of the personal circumstances of the appellant;
 - c) the cumulative effect of the personal circumstances of the appellant qualifies to be classified as substantial and compelling circumstances.
- [7] The appellant was 34 years old, married and had two children. He was employed at the Department of Public Works and earned R8000 per month. He was a shop steward for NEHAWU. He passed grade 12 and was a first offender. His wife was employed and earned R1600 per month. He also received an income from tenders to do work for the Department of Public Works.
- [8] Robbery with aggravating circumstances is a very serious offence. It is usually committed with premeditation and planning. The victim is subjected to violence or threats of violence in order to subjugate him or her and thereby making the taking of his or her property easy. Many people are scared to walk in the streets of our cities, towns, townships and suburbs lest they become targets of robbers and thieves.
- [9] The regional magistrate considered all the relevant factors before reaching the conclusion that there are no substantial and compelling circumstances present. I pause to mention some of the aspects that were taken into consideration and the

regional magistrate's reasoning in respect of those aspects. He considered that most of the complainant's property was recovered, he however pointed out that it was not covered due to the appellant's cooperation but rather because the police arrested him soon after the crime was committed. He also pointed out that the appellant wanted to create the impression that he was under the influence of alcohol when the crime was committed but the arresting officer, who testified during the trial, did not notice that the appellant was under the influence of alcohol. In any event if one has regard to the appellant's actions on the day it is clear that even if one finds that he consumed alcohol, the alcohol did not play a major part in directing his actions. The manner in which they accosted the complainant, one at the front one at the back, then ran away from the scene and when the police stopped next to them they both ran away. At the police station, after his arrest, he said to the complainant that he was sorry but it was not him.

- [10] The regional magistrate considered the fact that the appellant was a first offender. He however pointed out that Act 105 of 1997 as amended specifically states that 15 years' imprisonment is the minimum sentence that should be imposed after a first offender has been convicted of robbery with aggravating circumstances where there are no substantial and compelling circumstances present.
- [11] The regional magistrate correctly stated that although the complainant did not sustain a serious injury it was because he did not offer any sustained resistance and that hitting him with the bottle on his head was totally unnecessary in the present circumstances.
- [12] It was argued before the regional magistrate that the appellant earned a decent salary. He opined that this aspect actually counts against the appellant because the appellant was gainfully employed, earned a decent salary and could properly look after his family but still got himself involved in criminality. He also correctly found that this crime was not committed on the spur of the moment. It was therefore planned.

- [13] Mr van Rensburg contended that the appellant showed remorse. I disagree. One does not show remorse by trying to mislead a court with a fanciful version which is clearly false. An accused who tries to mislead a court should not claim the benefit of leniency based on remorse. Although the appellant was arrested a few minutes after the robbery whilst in possession of the complainant's property, he pleaded not guilty and did not take the court fully into his confidence. He did not show genuine remorse. In S v Matyityi 2011 (1) SACR 40 (SCA) at para [13] the following was said about genuine remorse:

"There is, moreover, a chasm between regret and remorse. Many accused persons might well regret their conduct but that does not without more translate to genuine remorse. Remorse is a gnawing pain of conscience for the plight of another. Thus genuine contrition can only come from an appreciation and acknowledgement of the extent of one's error. Whether the offender is sincerely remorseful and not simply feeling sorry for himself or herself at having been caught is a factual question. It is to the surrounding actions of the accused rather than what he says in court that one should rather look. In order for the remorse to be a valid consideration, the penitence must be sincere and the accused must take the court fully into his or her confidence. Until and unless that happens the genuineness of the contrition alleged to exist cannot be determined. After all, before a court can find that an accused person is genuinely remorseful, it needs to have a proper appreciation of, inter alia, what motivated the accused to commit the deed; what has since provoked his or her change of heart; and whether he or she does indeed have a true appreciation of the consequences of those actions. There is no indication that any of this, all of which was peculiarly within the respondent's knowledge, was explored in this case."

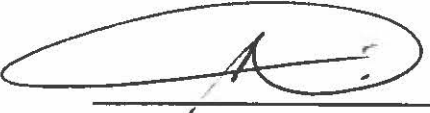
- [14] The regional magistrate expressed sympathy towards the appellant's wife and children but found that, that fact is not a substantial and compelling circumstance necessitating a deviation from the minimum sentence. After considering all the personal and surrounding circumstances the regional magistrate found that there were no substantial and compelling circumstances which necessitates a deviation from the minimum sentence.

[15] I cannot find any fault with the reasoning and finding of the regional magistrate. I therefore disagree with the contention that the regional magistrate erred by overemphasizing the seriousness of the offence and the interest of society. I am also of the view that the sentence of 15 years' imprisonment is not disproportionate to the offence committed. It is a sentence which the Legislature ordained as an appropriate sentence for robbery with aggravating circumstances. I am also satisfied that the regional magistrate considered the cumulative effect of the personal circumstances of the appellant and the impact of the sentence on his family.

[16] I am not convinced that the regional magistrate misdirected himself or exercised his sentence discretion improperly. There is no reason why we should interfere with the sentence imposed by the regional magistrate. The appeal has to fail.

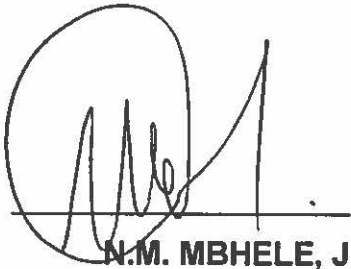
[17] I accordingly made the following order:

The appeal against the sentence is dismissed.



C.J. MUSI, AJP

I agree.



N.M. MBHELE, J

On behalf of Applicant:

Adv. T.B. van Rensburg

Instructed by

Jacques Groenewald Prokureurs

KROONSTAD

On behalf of Respondent:

Adv. R. Hoffman

Instructed by

Director Public Prosecutions

BLOEMFONTEIN