

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION: PRETORIA)

03/02/2015

CASE NO: A 486/2013

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

03 February 2015

[Signature]

In the matter between

SENZO YAKA
TANKISO MOKOENA
COLLIN MOOKETSI

FIRST APPELLANT
SECONDAPELLANT
THIRD APPELLANT

and

THE STATE

RESPONDENT

J U D G M E N T

MUDAU AJ:

[1]The three appellants appeared before a regional court, Benoni, on two counts of robbery with aggravating circumstances also read with S 51 (2) of the Criminal Law Amendment Act 105 of 1997. They were all convicted in respect of only one count of

robbery. The first and the third appellants were effectively sentenced to 15 years imprisonment whereas the second appellant received a sentence of 12 years imprisonment. They were each declared unfit to possess a firearm. The appeal is against the sentence only with leave of the court below. The only issue which falls to be decided by this court is whether the trial court imposed appropriate sentences on the three appellants given the circumstances that prevailed.

[2] A brief summary of the facts regarding this matter is as follows. During the evening of 26 November 2010 the complainant and his two friends were walking down a street in Daveyton when they met with the three appellants. He knew the first appellant very well as they had attended school together. He also knew the second and the third appellants by sight. As they walked past the appellants he heard the sound of a firearm being cocked. His two friends must have heard the sound as well for they ran away leaving him behind. As he turned to look behind he was struck at the back of his head which caused an open injury. He realised that the object used to strike him was a firearm. The third appellant held it in his hand.

[3] The first and second appellants stood in front of him. They proceeded to search the jacket he had on whilst at the same time, the third appellant was busy searching his pockets (apparently trousers'). The third appellant took from the complainant's pocket a wallet that contained R2000-00 cash as well as a set of keys. After the appellants had left him, he proceeded to his home nearby and cleaned himself of the blood. Thereafter, he put on a jacket to cover his bloodied shirt and went to a nearby tuck-shop to buy some cigarettes. On his way to the tuck-shop and hardly 12 minutes later, he met them again and pleaded with them to give him his money back. The third appellant had the firearm tucked on his waist. They pleaded innocence and did not give him his money. As they were retreating to a passage he was scared to follow them but instead left to go and report the matter to the police. It is common cause that all the three appellants were arrested on 3 December 2010.

4] It is trite that the imposition of a sentence is a matter for the discretion of the trial court. In ***Fielies v The State (851/2013) [2014] ZASCA 191 (28 November 2014)*** Bosielo JA (**Majiedt JA concurring**) reiterated this salutary approach with reference to ***S v Malgas 2001 (1) SACR 469 (SCA) at 478D-E*** as follows: "...A court exercising appellate jurisdiction cannot, in the absence of material misdirection by the trial court, approach the question of sentence as if it were the trial court, and then substitute the sentence arrived at by it simply because it prefers it. To do so would be to usurp the sentencing discretion of the trial court...."

The learned judge concludes as follows at p478I-479A:

"...The tests for interference with sentences on appeal were evolved in order to avoid subverting basic principles that are fundamental in our law of criminal procedure, namely, that the imposition of sentence is the prerogative of the trial court for good reason and that it is not for appellate courts to interfere with that exercise of discretion unless it is convincingly shown that it has not been properly exercised...."
(See also ***S v Pieters 1987 (3) SA 717 (A)***; ***S v Kibido 1998 3 All SA 72 (A)***; ***S v Botha 1998 (2) SACR 206 (SCA)***; ***S v Kgosimore 1999 (2) SACR 238 (SCA)*** and ***S v Barnard 2004 (1) SACR 191 (SCA)***).

The powers of a court on appeal to interfere in a sentence imposed by a trial court are therefore circumscribed. Such powers cannot willy-nilly be usurped as all courts in the land are vested with judicial authority as prescribed in terms of s165 of our Constitution.

[5] The personal circumstances of each appellant were from the bar placed on record as follows: the first appellant was at the time of sentencing 28 years of age, unmarried and is without dependents. He was employed as an assistant fitter for an engineering company where he earned R800-00 a week. He admitted to a previous conviction of robbery in October 2003 where he was sentenced to 15 years imprisonment.

[6] The second appellant was at the time 24 years of age, unmarried but a father to (presumably young) child. He too worked as a fitter. His salary was not disclosed .To his credit he had no record of previous convictions.

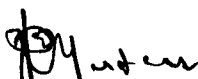
[7] This third appellant was 29 years of age at the time, unmarried, but was a father to two minor children. He worked as a carpenter and earned R800-00 to R1200-00 a week. He too admitted to a record of previous convictions. In May 2003 he was convicted of robbery as well as attempted murder in respect of which he was sentenced to undergo 15 years and five years' imprisonment respectively.

[8] The offence that the accused has been convicted of attracts the application of the **Criminal Law Amendment Act 105 of 1997** as amended. The robbery attracted a minimum sentence of 15 years imprisonment as aggravating circumstances were present in the commission of the robbery in that a firearm was in the process used. However, the trial court took into consideration that the appellant's had been in custody for approximately 18 months in dealing with the question of sentence. The trial court found substantial and compelling circumstances only in respect of the second appellant but none for the other two.

[9] In my view, the court below gave very careful consideration to the personal circumstances of each appellant, and was conscious of the need to balance these with the seriousness of the offence, and the needs of the society. The criticism that the first and the third appellant's previous convictions are more than 10 years old is under the circumstances, without any merit. Besides, the court below did not use their records of previous convictions to impose sentences in excess of 15 years. Similarly the 12 years imprisonment imposed on the second appellant was after a proper consideration of all the factors. Given the seriousness of the offence the sentences do not induce any kind of shock. The sentence imposed in respect of each appellant is in all the circumstances suitable.

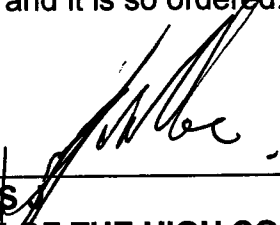
[10] In the result, the following order is proposed:

10.1 The appeal against sentence by all three appellants is dismissed.



MUDAU TP
ACTING JUDGE OF THE HIGH COURT

I agree and it is so ordered.



DE VOS
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

Date of Hearing: 3 February 2015

Date of judgment: 3 February 2015

APPEARANCES:

For the appellant: Mr R S Matlapeng
: From Pretoria Justice Centre

For the respondent: Adv K Germishuis
: NPA