

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

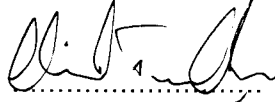
07/02/2015.
CASE NO: A573/2014

In the matter between:

SHAUDI NGAKANE

Appellant

and

(1)	<u>REPORTABLE:</u>	<u>YES / NO</u>
(2)	<u>OF INTEREST TO OTHER JUDGES:</u>	<u>YES / NO</u>
	09/02/15 DATE	 SIGNATURE

THE STATE

Respondent

JUDGMENT

Tuchten J:

- 1 The appellant was charged in a regional court with one count of housebreaking with intent to rob and robbery with aggravating circumstances, committed on 12 March 2011. The complainant, who is not a South African national, was the owner of a tuck shop. The circumstances were the following. The appellant was part of a mob of about ten persons who attacked the complainant's shop during the night. The appellant and his cousin were asleep in the shop. They heard a noise and the complainant saw members of the mob breaking

the burglar proofing of the shop. The complainant tried to stop the attack but was struck by a stone thrown by one of the attackers. The stone thrower was not identified. The mob then looted the tuck shop.

2 The appellant was identified as one of the attackers. He was convicted as I have set out and sentenced to 15 years imprisonment. He was granted leave to appeal against the sentence.

3 It is submitted on the appellant's behalf that the sentence is shocking and disproportionate. The appellant was 26 years old at the time of his arrest, single and had no dependents. He was unemployed at the time of his arrest and was in custody for at least 18 months before he was sentenced.

4 The difficulty facing the appellant is that he was a repeat offender. He had the following previous convictions committed on the dates which appear below:

4.1 2004: theft. Sentence was postponed.

4.2 2004: theft. Sentence was postponed.

- 4.3 2006: theft. Sentenced to a fine of R60 or 60 days in prison with a further 6 months imprisonment suspended.
- 4.4 2006: assault with intent to cause grievous bodily harm. Sentenced to 6 months imprisonment suspended.
- 4.5 2007: theft. Sentenced to a fine of R600 or 60 days imprisonment.
- 4.6 2009: theft. Sentenced to 3 years imprisonment of which one year was suspended.
- 5 On 27 October 2010, the appellant was released on parole. The period of parole was due to expire on 26 October 2011. This means that in addition to his bad record, the appellant was on parole when he committed the offences presently under consideration. The appellant has had the benefit of most of the softer options provided by our criminal justice system: fines, suspended sentences, a short period of imprisonment and parole. None of these has deterred the appellant from serious criminal behaviour. For that a severe sentence is demanded.

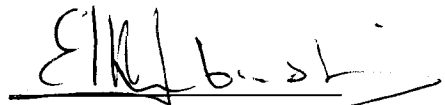
- 6 The regional magistrate took the appellant's personal circumstances and his criminal record into account but appears to have overlooked an aggravating factor, ie that the appellant was on parole when he committed the present offences.
- 7 Looting the shops of foreigners is a grave and prevalent offence in the province of Gauteng. In the heads of argument of counsel for the State, this kind of offence is described, with justification, as a disease that has spread among the community. Counsel submits that the offence demonstrates racism and xenophobia. While this latter submission may well have substance as a general proposition, there is no evidence to this effect in the case before us. It is conceivable that the appellant simply took advantage of the situation to commit his crimes and was not motivated by the race or ethnic origins of the complainant.
- 8 But there is generally no excuse for this kind of behaviour and in this case none was offered. The appellant expressed no remorse. Taking the crime, the interests of the appellant and the interests of society into account, conduct such as that of the appellant must be severely punished. I think that the sentence imposed by the regional magistrate was entirely appropriate.

- 9 I make the following order: The appeal is dismissed and the conviction and sentence are confirmed.



NB Tuchten
Judge of the High Court
9 February 2015

I agree.



EM Kubushi
Judge of the High Court
9 February 2015