

FREE STATE HIGH COURT, BLOEMFONTEIN
REPUBLIC OF SOUTH AFRICA

Appeal No. : A64/2013

In the matter between:-

LOBIANA PHILLIMON MOTOKO

Appellant

and

THE STATE

Respondent

CORAM: MOCUMIE *et* MOLEMELA, JJ

HEARD ON: 29 JULY 2013

DELIVERED ON: 01 AUGUST 2013

JUDGMENT

MOCUMIE, J

[1] This is an appeal against the sentence of ten years imprisonment imposed by the regional court on the appellant after convicting him of one count of robbery⁷ with aggravating circumstances as defined in section 1 of the Criminal Procedure Act, no 51 of 1977.

[2] The proven facts in this case are that the appellant and his three co-horts accosted the complainant whilst walking in a

street on 5 March 2011 at around 8h00. They threatened him with a knife and robbed him of his cellphone valued at R430, 00, a wallet valued at R30, 00 and containing R200, 00 as well as a passport.

- [3] The only issue to be determined is whether the trial court overemphasised the interests of the society above the appellant's personal circumstances and in that way imposed a sentence far heavier than it would have, had it struck a balance between these two factors.
- [4] The appellant was 20 years of age at the time of the commission of this serious offence. He was a first offender. He was employed and earned R1 200,00 per month. He went up to Grade 10 at school.
- [5] Mr Van der Merwe submitted that the complainant was not seriously injured and that he, the complainant had retrieved the cellular phone that the appellant robbed him of. He submitted further that the trial court failed to give due consideration to the young age of the appellant and that the appellant was evidently acting under group or peer pressure. There was no pre-planning.
- [6] It is trite that sentencing is primarily the responsibility of the sentencing court. The essential enquiry on appeal is not whether the sentence was right or wrong but whether the court imposing it exercised its discretion properly and judicially. The failure to exercise its discretion properly and

judicially must be of such a nature, degree or seriousness that it shows, directly or inferentially that the court did not exercise its discretion at all or exercised it improperly or unreasonably.

[7] Although in his heads of argument Mr Van der Merwe submitted that the sentence was severe in the circumstances of this case, at the hearing of the appeal he however conceded that this was a serious offence; that it was one of the offences that is prevalent in this Division; that the appellant was gainfully employed and had no reason to rob the complainant if not out of greed and criminality; and that the trial court actually deviated from the prescribed sentence of fifteen years.

[8] The trial court indeed did not misdirect itself in any manner. The record is clear. Mr Van der Merwe could not point to any material misdirection on the part of the trial court. The sentence imposed is appropriate and balanced taking into account the seriousness of this offence. It fits the seriousness of the crime, the accused's personal circumstances and takes into account the interests of society. There is no justification to temper with the sentence imposed by the trial court.

[9] In the event, the following order is made.

ORDER

1. The conviction and sentence imposed by the court *a quo* are confirmed;
2. The appeal against the sentence is dismissed.

B. C. MOCUMIE, J

I concur.

M. B. MOLEMELA, J

On behalf of the appellant: P. L. van der Merwe
Instructed by:
Justice Centre
BLOEMFONTEIN

On behalf of the respondent: Adv. L. Zweni
Instructed by:
The Director: Public Prosecutions
BLOEMFONTEIN

/eb