

IN THE HIGH COURT OF SOUTH AFRICA
(ORANGE FREE STATE PROVINCIAL DIVISION)

Appeal No.: A63/2005

In the case between:

TAELO PHILLIMON KOLOBE

Appellant

and

THE STATE

Respondent

CORAM:

BECKLEY, J *et* M.A. MATHEBULA, AJ

HEARD ON:

6 FEBRUARY 2006

JUDGEMENT:

MATHEBULA, AJ

DELIVERED ON:

16 FEBRUARY 2006

[1] The appellant's appeal before this Court is against sentence. The appellant pleaded guilty before the regional magistrate, Phuthaditjhaba, on a charge of robbery with aggravating circumstances. He was sentenced to fifteen (15) years imprisonment. It was further ordered that he be declared unfit to possess a firearm in terms of section 12(1) of the Arms and Ammunition Act 75 of 1969 as amended.

[2] The appellant was sentenced in terms of section 51(2)(a)(i) of the Criminal Law Amendment Act 105 of 1997 read with Part II of Schedule II which obliges a regional magistrate to sentence a first offender to 15 years imprisonment if such person is convicted of robbery with aggravating circumstances. The sentence can only be lesser if there exists substantial and compelling circumstances. In this matter the court *a quo* found that there were no substantial and compelling circumstances and imposed a sentence of 15 years imprisonment.

[3] The facts are briefly as follows:
On the 22nd January 2001, the appellant together with Joseph Toola, Themba Gift Sithole, Jan Phillips and Mohale Malefane robbed Katlehong Bottle Store at Phuthaditjhaba. They made off with goods valued at R44 501,25 in possession of Molefe Aaron Likhojane. Later goods in the sum of R8 673,50 were returned to the aforementioned Molefe Aaron Likhojane.

[4] Although a 9mm pistol was used to scare Molefe Aaron Likhojane and his employees no shots were fired. During the robbery Molefe Aaron Likhojane suffered some bruises as he was shoved into submission.

[5] It was submitted by Mr. K. Pretorius, on behalf of the appellant that the court *a quo* erred in finding that there were no substantial and compelling circumstances in accordance with **STATE v MALGAS** 2001 (1) SALR 469 (SCA) at 482. Thus the sentence imposed was inappropriate. The submission was that the court *a quo* erred by not taking into account that the appellant was a first offender and that he pleaded guilty. We were referred to **RAMMOKO v DIRECTOR OF PUBLIC PROSECUTIONS** 2003 (1) SALR 200 (SCA) pages 204 – 205 wherein the Court emphasised that the objective gravity of the crime plays an important role. Mr. K. Pretorius therefore submitted that the amount of violence used was minimal. Furthermore it was submitted that appellant was 28 years old with one dependent.

[6] On behalf of the respondent Mr. D. Pretorius submitted that the personal circumstances of the appellant should yield to

the seriousness of the offence as per **S v WARNE** 1979 (1) SALR 820 (AD) at 823 C – E. It was further submitted that according to **S v MOHASE** 1998 (1) SALR 185 (O) at 193 the Court held that it was important that a clear message must be sent out to potential offenders of *zero tolerance* (my emphasis) by the courts.

- [7] I now turn to the totality of the evidence before this Court. The appellant and his accomplices staged a planned armed robbery against the complainant and his employees. The complainant was slightly injured during the armed robbery. They also made off with substantial amount of cash and other valuable items. Only a small portion was accounted for and the rest is still missing.
- [8] This armed robbery, according to the appellant, was motivated among others by a quest to have more money as per his Notice of Appeal. This is nothing but greed because the appellant was working at the time receiving a salary to maintain himself and his dependants.

[9] Evaluating the matter, I am not convinced that the court *a quo* erred in not finding substantial and compelling circumstances hence the imposition of the sentence appealed against by the appellant. In my view the court *a quo* was even lenient in this regard. Armed robbery is the scourge of our society and every effort must be garnered to root it out. The society is looking at the courts to act as the last line of defence against this rampant offence. The sentence is by no means shockingly inappropriate and there is no reason to interfere with it. The appeal ought to be dismissed.

[10] In the circumstances the following order is made:-

The appeal against sentence is dismissed.

M.A. MATHEBULA, AJ

I concur.

A.P. BECKLEY, J

On behalf of the appellant:

Attorney K. Pretorius
Instructed by:
Legal Aid Board
BLOEMFONTEIN

On behalf of the respondent:

Adv. D.J. Pretorius
Instructed by:
Director of Public Prosecutions
BLOEMFONTEIN

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