



**IN THE HIGH COURT OF SOUTH AFRICA
EASTERN CAPE LOCAL DIVISION, BHISHO**

CASE NO.: CC 12/2022

REPORTABLE

In the matter between: -

THE STATE

and

FIKILE MSINDWANA

Accused No. 1

CAMAGU ZIMELA

Accused No. 2

SIPHELO MASE

Accused No. 3

SIYAMTHANDA MKHANGELI

Accused No. 4

NOVEKI MAQUNGENI

Accused No. 5

ZOLEKA NTSIZI

Accused No. 6

JUDGMENT ON SENTENCE

STRETCH J.:

[1] Sentencing is about achieving the right balance. In order to achieve that balance, I have to give due and proper consideration to the three major elements at play. They are the nature of the crimes committed, the expectations and the needs of society, and the accuseds' personal circumstances.

[2] In doing so, I must also give due and proper consideration to the purpose of punishment, which, in the matter before me would embrace deterrence and prevention (both general and specific)¹, placating the outrage of society (otherwise referred to as retribution or denunciation)², and last but not the least, reformation (ie correction and rehabilitation).³ I am mindful that when considering these aspects I should be careful not to sacrifice the accused on the altar of deterrence,⁴ nor should I slavishly give effect to public opinion.

[3] At the end of the day, it is the sentencing court which is in the position of loco parentis to determine the answer on behalf of society.⁵ There exists no sentencing catalogue. This court is duty bound to deal with and consider the facts and the circumstances of each particular case.⁶

¹ See *S v Khumalo* 1984 3 SA 327A

² See *S v Gardener and Another* 2011 1 SACR 570 SCA

³ See the judgment of Heher JA in *S v Ro and Another* 2010 2 SACR 248 SCA

⁴ See the judgment of Petse AJA in *S v Furlong* 2012 2 SACR 620 SCA at par 14

⁵ See *S v Maseola* 2010 2 SACR 311 SCA; *S v Gardener* above

⁶ See the judgment of Hefer JA in *S v Nkosi* 1993 1 SACR 709A

The offences and the views of society

[4] Between 10 December 2018 and 1 July 2019 (a period of less than seven months), some or all of the accused embarked upon a planned robbery rampage of businesses and taverns in Mdantsane and Berlin (which is practically an extension of Mdantsane) as well as a concerted and practically completed heist of cash in transit vehicles in Langeni Forest which lies between Mthatha and Ugie. In executing these planned robberies, some of the accused brandished a cache of deadly, illegal semi-automatic firearms, and wreaked havoc amongst members of the public, randomly discharging the firearms and injuring innocent bystanders and business employees. None of the businesses robbed managed complete financial recovery.

[5] These accused were brazen enough on one occasion to ram their getaway vehicle into that of a shop owner who was pursuing them, all the while firing shots at the shop owner's car which was also occupied by his wife and child. An innocent pedestrian was struck in the head by a stray bullet as a result of which he lost the vision in one of his eyes.

[6] The premises of private homes were invaded and the occupants of these homes were terrorised, their property destroyed and their motor vehicles damaged. More than five years down the line, many of the witnesses were reduced to tears before me as they were constrained to relive these events, because of all of the accused having denied their complicity in this reign of terror, forcing the witnesses to testify in order for the prosecution to prove its case. Indeed, none of the accused were prepared to take this court into their confidence, extending the life of the trial with sporadic appearances over a period of more than two years.

[7] Planning and premeditation have long been recognised as aggravating factors for many crimes, especially murders and armed robberies. It also goes without saying that this type of conduct has a domino effect on the economy, with members of society being too afraid to participate in simple daily events such as shopping, visiting friends or socialising at the local taverns. This is particularly so in that the robberies were concentrated over a relatively small area and over a short space of time.

The personal circumstances of the accused

ACCUSED ONE

[8] Accused 1 is 57 years old, having been born on 14 October 1968. He has a matric education and has partially completed studies in mechanical engineering. He has five children from different mothers. His own mother is still alive, but his father passed away in 2020. His mother transferred the directorship of a family business to him which he successfully ran until he was arrested. The core business of the company was grass cutting, fencing, renovating buildings, catering, cleaning services, road construction as well as level one security services.⁷ It employed about ten personnel, who all lost their jobs when he was arrested. Before his arrest he lived in Lusikisiki and in Durban.

⁷ Level one security officers are entitled to carry batons but not firearms.

ACCUSED TWO

[9] Accused 2 is 50 years old and unmarried. At the time of his arrest he was staying with his girlfriend and their three-month-old child, as well as his mother, his aunt and his niece. He studied technical engineering subjects to matric level whereafter he obtained an N5 in civil engineering. He has also done a building course and has studied quantity surveying. Before his arrest he was employed in Queenstown as a builder earning R3 800 per month. At the age of 14 he left South Africa to be a soldier in Lesotho and Tanzania.

[10] He returned in 1994 at the age of 20 and joined the South African Defence Force (SADF). He left the SADF in 1996 when he was arrested in connection with another offence. He is a military veteran, and his name is on the list of a project to provide housing for such veterans. A site for his house has been allocated in zone 18, Mdantsane.

[11] He has two other children aged nine and six with two different mothers. His firstborn child is unemployed, and the younger one is a nurse. The mother of his three-month-old child does temporary work selling seedlings. At the time of his arrest he was financially providing for his children. After his arrest his girlfriend, who is a Zimbabwean national, and their baby were evicted from his home by his sister and they are presently renting premises in Mdantsane. Sadly, they are unable to benefit from the house which has been allocated for him in zone 18 of Mdantsane as his girlfriend is not a South African citizen.

[12] In February 2025 he suffered two strokes. He receives medical treatment in prison, occupational- and physio-therapy from Grey Hospital and speech

therapy at Middledrift. This is because his speech as well as his body (particularly the right-hand side) have been adversely affected by the strokes.

[13] I am advised by his counsel that his current health has deteriorated drastically, and he has not made optimum recovery despite the therapy. Indeed, he can barely be understood when he tries to speak and has difficulty breathing. He cannot take care of his personal hygiene himself because of this disability. He has had to pay someone in prison to assist him with his personal hygiene and to wash his clothes. He struggles to eat and drink without assistance. He also struggles to write. He was for example, unable to affix his signature to his SAP 69 form.

[14] His mother passed away in 2022 while he was in prison and his aunt who lived with him before, died the following year. He believes that he can still manage to do a job such as costing of building material as he is able to hold a telephone and has the use of some of his fingers. This was the position when his counsel addressed me on sentence some time ago. Whether this is still the position, I do not know. He is presently before me confined to a wheelchair. He has been in custody since his arrest six years ago in September 2019.

ACCUSED THREE

[15] Accused 3 is 37 years old. He was born and raised in Mdantsane by a single mother. He grew up without a father figure. Prior to his arrest he was married but his spouse divorced him in 2022 while he was in prison. He has a six-year-old boy in grade one. He was arrested in September 2019 when his child was eight months old. The child lives with the accused's former wife who survives doing temporary jobs. Presently his son depends on the accused's mother for financial

support, who herself, is not gainfully employed, but does odd jobs hawking fruit and vegetables.

[16] He is estranged from his child as he decided that he did not want his son to be traumatised by visiting him in prison. It is his heart's desire to get to know his son one day and to develop a relationship with him. He also has another child who is 11 years old. This child lived with him from the age of four months until his arrest when this child was six years old and had already developed a bond with the accused. After his arrest, the child was taken by his mother to stay with the child's maternal grandmother in Idutywa. She is unemployed and survives on a pensioner's social grant. The mother of the child has since then married someone else and lives with her new family in Cape Town. It is the accused's desire to be reunited with this child.

[17] Before his arrest he owned two sedan taxis referred to by the local community as "amaphela". The employee who drove one of these taxis lost his job as a result of the accused's arrest.

[18] After his arrest one of his taxis was involved in an accident and was damaged beyond economic repair. He has since sold the remaining taxi. He was arrested on 13 September 2019 and has been in custody awaiting trial for six years.

[19] He dropped out of school when he failed grade 12. When he committed the offences for which he was convicted he was 31 years old. He is the youngest of four siblings who are all unemployed.

[20] Prior to his arrest he was in a position to financially assist his siblings and their families. It is submitted on his behalf that his arrest and imprisonment have

affected several people negatively in terms of financial support. He has no previous convictions.

ACCUSED FOUR

[21] Accused 4 is 37 years old and unmarried. He was arrested at the age of 31 and has also been in custody for six years. He has two female children who were seven and 11 when he was arrested. They lived with the accused and his girlfriend in a flat which he rented for them.

[22] He was raised by his maternal grandmother as his mother was living in Cape Town. He only really came to know his mother when he was 16.

[23] His grandmother died when he was 12 whereafter he lived with his aunt who reportedly ill-treated him, resulting in him deciding to find his father when he was 16. Unfortunately, his father passed away that same year.

[24] Thereafter he attended the traditional initiation school and got to know his paternal grandparents who assisted and supported him. In 2018 his maternal aunt evicted him whereafter he rented a flat with his girlfriend. In 2019, while he was in custody, his paternal grandmother died. He was not permitted to attend her funeral. Nor was he allowed to attend the funeral of his paternal grandfather who died last year. He still mourns these losses.

[25] The mother of his children takes care of them and is in receipt of a social grant for this purpose. She has terminated her relationship with him.

[26] At the time of his arrest he was an unlicensed taxi driver. I am informed that he hustled for survival. He wants to be given the opportunity to build a meaningful relationship with his children. He has no previous convictions.

ACCUSED FIVE

[27] Accused 5 was arrested when she was 36 years old. She is now 42. She is a single mother with two children, a girl born in 2007 who is in grade ten and a boy born in 2011 who is in grade nine. Her daughter was badly affected by her incarceration and had to repeat her grades between 2020 and 2024. When she was arrested, she was a final year civil engineering student at the Walter Sisulu University. At that time, she was one of accused 1's girlfriends.

[28] She was initially arrested on 19 September 2019 and released a month later when the charge against her was withdrawn. She was rearrested on 30 July 2021 on a further charge. When the case was transferred to the high court in September 2022 further unrelated charges were also added. She was only granted bail during the course of this trial on 20 December 2024. In the circumstances she was in custody for almost four years. After her release on bail at the end of last year she successfully applied to complete her studies and reregistered in January this year. She is left with only four modules to complete her four-year diploma. She was unable to finalise her studies while in custody as awaiting trial prisoners are apparently not permitted to register to study.

[29] While studying before her arrest she was a beneficiary in terms of a national student fund from the university. She applied for sponsorship again this year but was advised that she would not receive funding for six months. Her children are living with her sister who is a beneficiary of a child support grant in

Mthatha. Their father died in March 2011. She has no previous convictions and no cases pending against her.

ACCUSED SIX

[30] Accused 6 is 49 years old and the single parent of two major children aged 32 and 30. Her 30-year old daughter has been attending her trial as a show of support for her mother. The accused was born in Mqanduli in the former Transkei. She is the second of four children. Her own children are unemployed and rely on her for support. She also takes care of her five- year-old grandchild who suffers from a disability, and whose parents are both unemployed. Her mother suffers from ill health which means that the accused is the sole breadwinner of an extended family, including her siblings, one of whom is employed at Kentucky Fried Chicken but cannot afford to assist the rest of the family financially.

[31] The accused herself was and still is gainfully employed at Mbashe Municipality. Prior to her arrest she was a clerk in the VIP unit of the municipality and her duties included escorting the mayor. During the course of her employment she attended various courses to advance her competency. Before her arrest she was earning a gross salary of R18 000 per month excluding overtime and medical aid benefits. After her arrest she was demoted to the position of a general assistant which drastically affected her income, but the municipality still retained her as an employee. She presently earns a reduced salary of between R10 000 and R13 000 per month.

[32] She has a grade 12 education whereafter she completed a computer course. She has been employed by the municipality since 2016 for an uninterrupted

period of almost ten years. She has been working in a position which requires a level of trustworthiness and has never let her employer down. She too, has no previous convictions and no other cases pending against her.

[33] She was arrested on 6 June 2022 and released on bail on 22 July 2022. She deposed to various statements as a State witness before she was arrested. I am informed that she has always cooperated with the police. She has attended her trial consistently and without fail. She has pleaded for a non-custodial sentence to retain her employment and continue supporting her extended family. The family members rely on her as their sole form of financial support.

Discussion regarding appropriate sentences

[34] I will now deal with appropriate sentences, taking into account the four purposes of punishment, which I referred to at the beginning of this judgment, being deterrence, prevention, retribution and reformation. I will also bear in mind that although the rule of thumb is that the court should endeavour to achieve as little disparity as possible between the sentences imposed on the six accused, disparity between sentences imposed on participants in the same offence, is not necessarily a misdirection and may differ from one scenario to the next.⁸⁸ The question whether any disparity is disturbingly inappropriate is answered by comparing the proposed sentence and any lesser sentence imposed on convicted accused who:

- a. played equal parts in the commission of the crimes;

⁸⁸ See the judgment of Holmes JA in *S v Giannoulis* 1975 4 SA 867 A at 873F

- b. by taking into account the personal circumstances of the respective accused;
- c. by considering whether there is a striking difference between the sentences proposed and those imposed;
- d. by considering, where the acts committed are of such a nature that disproportionately heavy sentences in respect of some of the accused are clearly appropriate.⁹

I will start with accused one.

ACCUSED ONE

[35] Accused 1 has a shocking list of previous convictions, with his career in crime commencing at the age of around 26 when he committed kidnapping, murder and robbery with aggravating circumstances on 22 May 1992. He was sentenced in Mthatha on 26 January 1996 to eight years' imprisonment for the kidnapping, ten years for the robbery and 20 years for the murder. The sentences were ordered to be served concurrently. This information forms part of a document from the Department of Correctional Services, which was submitted (without opposition) as exhibit "X" by the prosecution during its address on sentence, and to which I will refer more fully later in this judgment. The offences which I have mentioned are simply referred to in his admitted incomplete official criminal record as "the sentences imposed in the Transkei on 26 January 1996."

[36] On 1 March 1996 he was convicted in Port Shepstone for murder and robbery with aggravating circumstances committed on 6 August 1994. He was sentenced to 15 years imprisonment for the robbery with aggravating

⁹ See the judgment of Smallberger JA in *S v Marx* 1989 1 SA 222 A at 225H – 226B

circumstances and to life imprisonment for the murder. Insofar as it may have been necessary, it was ordered that the effective sentence of life imprisonment should run concurrently with the 15 years for robbery and with the effective sentence of 20 years imprisonment imposed two months before.¹⁰ To sum up, by then accused one had been sentenced for two murders, two robberies with aggravating circumstances and on a charge of kidnapping.

[37] On 16 March 2007, having served 11 years of these sentences amounting to effective life imprisonment, he escaped from prison in Gqeberha. On the same day he was brandishing a firearm for which he did not possess a licence and committed three counts of robbery, two counts of kidnapping and seven counts of attempted murder. He was convicted in respect of these offences on 10 September 2010. He was sentenced in the regional court to five years' imprisonment for escaping, two years for each count of kidnapping, 15 years on each of the robbery counts and five years for the attempted murders. There is no indication of whether he was sentenced for the possession of the firearm. The effective sentence would have been 59 years in prison, but it was ordered that the sentences run concurrently in such a manner that a total of 25 years' imprisonment is served, which means that he ought only to have been released in 2035.

[38] It goes without saying that this did not happen. On 29 March 2018, after having served but seven and a half years of this 25-year sentence, the Department of Correctional Services released him on parole for "the duration of his natural life." According to exhibit "X" he defaulted in terms of his parole conditions by leaving the magisterial district of Durban without consent.

¹⁰ I say insofar as it may be necessary, because s 39(2)(a)(i) of the Correctional Services Act 111 of 1998 states the obvious. It says that any determinate sentence of incarceration runs concurrently with life sentences. This was also referred to in *S v Mashava* 2014 1 SACR 541 SCA where Saldulker AJ stated the following: 'There is really no need to order such sentences to run concurrently. They do so by operation of law, and stating it in an order may well be superfluous ...'

[39] Thereafter, he committed the offences which form the subject matter of this case no less than nine months after having been released on parole. He was arrested again on 3 July 2019.

[40] In addition to having fully addressed me on sentence, I requested the practitioners representing the prosecution and accused one, to also submit written argument on the applicability of s 276B of the Criminal Procedure Act 51 of 1977 to accused 1's proposed sentencing regime.

[41] I digress slightly to mention that in terms of the minimum sentencing legislation reflected in the Criminal Law Amendment Act 105 of 1997 which came into operation on 1 May 1998, the following discretionary minimum sentences are relevant to this case, and this court is constrained to impose such sentences unless substantial and compelling circumstances exist for a downward deviation:

- a. first conviction for robbery with aggravating circumstances: 15 years' imprisonment;
- b. second conviction: 20 years' imprisonment.
- c. third or subsequent conviction: 25 years' imprisonment;
- d. unlawful possession of a prohibited firearm: 15 years' imprisonment¹¹ as mandated by s 51(2) of the Criminal Law Amendment Act.¹²

¹¹ As mandated by s 51(2) read with part II of schedule 2 of the Criminal Law Amendment Act 105 of 1997.

¹² It must be noted that the indictment does not refer to the minimum sentence provision with respect to possession of a prohibited firearm, but to s 121 of the Firearms Control Act 60 of 2000 which refers to a *maximum* sentence of 25 years' imprisonment for a contravention of s 4(1) of the Firearms Control Act, which deals with possession of prohibited firearms, and a discretionary maximum sentence of 15 years imprisonment for a contravention of section 90 of the Act (possession of ammunition without a licence or permit).

[42] In the matter before me, accused 1 has been convicted of two counts of robbery with aggravating circumstances, one count of attempted robbery with aggravating circumstances, six counts of attempted murder, one count of malicious injury to property, one count of the reckless discharge of a firearm and two counts of possession of prohibited firearms and ammunition.

[43] It has been contended on his behalf that I should consider his age (he is 57) as a blanket type substantial and compelling circumstance to cover the multitude of sins which I have just referred to, and to deviate from the minimum sentence provisions. There is no reason for me to do so, and no reasons have been advanced. I take into account that he has been in custody for these offences for just over six years. On the other hand he would have been in any event in respect of the offences committed previously, and his parole default status. Simply stated, he is not an awaiting trial prisoner.

[44] It is submitted in mitigation on his behalf that the AK47 was not used to murder anyone. It is further submitted that 15 years' imprisonment for possession of each of the firearms would be appropriate. No submissions have been made on whether these sentences should run concurrently. It is further submitted on his behalf (rather curiously in the circumstances) that none of the robberies were premeditated, but were all committed "on the spur of the moment", and that this constitutes substantial and compelling circumstances to deviate from the minimum sentence legislation. This is simply wrong. There is nothing before me to suggest that any of these offences were committed on the spur of the moment. The suggestion that they were is totally improbable and not supported by the facts which I was at pains to traverse in my 220-page judgment on conviction. Finally, it is submitted on his behalf that this court should impose an effective sentence

that will be subsumed in the sentence he is already serving, even though it is impossible to work out exactly what he is or should be serving at present.¹³

[45] On the flip side, the prosecution has submitted that accused 1 is at least a third offender in respect of the charges of robbery with aggravating circumstances, which places him in the category of 25 years' imprisonment in respect of each count. His conduct with regard to all the offences is described as brazen, fearless and arrogant, and it is argued that there are no substantial and compelling circumstances justifying the imposition of lesser sentences. I agree. I also agree with the submission that the facts and circumstances of the attempted heist in Langeni Forest also attracts a sentence of at least 25 years' imprisonment, for the simple reason that this was a horrific attack. The fact that the accused did not manage to get away with any loot in order to complete the crime, was clearly not for lack of trying on his part. The passage of the cash in transit vehicles was actively block. The vehicles and their occupants were bombarded with a hail of high calibre bullets. It is a miracle that anyone survived this callous and carefully planned attack.

[46] The prosecution has further contended that this court must impose sentences which fit the crimes even if the minimum sentence in respect of the firearms was not mentioned in the indictment. It is aggravating that the firearms were not merely possessed. Both the AK47 and the R5 were used in the attack in Langeni Forest. The R5 was used in the Ace Gas robbery and in the second attack on Juice Tavern. Furthermore, it is submitted that the accused was reckless and callous by simply leaving the AK47 lying totally exposed with a student at public student accommodation. These firearms, so it is contended, were specifically kept for nefarious purposes. I agree.

¹³ In this respect I requested that a witness from Correctional Services should explain to me exactly where the accused presently stands with respect to his track record. Instead I was sent exhibit "X" via the prosecution.

[47] It is also so that this is not the accused's first conviction for the unlawful possession of firearms, despite having been previously declared unfit to possess firearms. The prosecution has argued that accused one should be sentenced to 25 years on each of the robberies with aggravating circumstances and for the attempted robbery with aggravating circumstances, which would have the cumulative effect of 75 years' imprisonment, on account of the facts which I have already mentioned taken together with the facts that the robberies are clearly separated in time and space, and they were carefully planned. Indeed, they were individually and separately planned, separately executed and had diverse and distinguishable results. It is contended for the prosecution that the cumulative effect of all the sentences should be 50 years' imprisonment.

[48] The prosecution also referred in this regard to exhibit "X". In my view exhibit "X" is a very important document. It was issued by the National Commissioner of Correctional Services and in particular by the acting director for pre-release resettlement. It reflects the following recommendation signed by the chairperson for the national council for correctional services (Judge Desai) on 22 February 2020, and I quote:

‘The Council, having considered the revocation of the aforesaid offender, resolved to recommend that parole be revoked pending the outcome of the court process. The outcome of the court case¹⁴ should be communicated to the National Council for Correctional Services (NCCS) as soon as it is received.’

[49] This decision, insofar as it can be described as one, was approved by the Minister of Justice and Correctional Services, Mr Lamola, on 29 May 2020. The

¹⁴ Referring to the matter before me.

approval is dated 26 June 2020 and headed “Decision by the Minister of Correctional Services on Parole Revocation of offenders sentenced to life imprisonment: EC region.” Therein, accused 1 is described as a “lifer” who falls into a high supervisory category. The motivated decision by the head of community corrections was that the accused’s parole was to be revoked due to absconding and non-compliance, which decision was approved by the correctional supervision parole board, which in turn had the following to say about accused 1:

‘The offender was placed out on parole on 29 March 2018 for the rest of his life. He reportedly left the magisterial district without permission (Durban) and is currently detained in Mdantsane Correctional Centre.¹⁵ His next court appearance is 17 September 2019. Due to the above-mentioned factors, the offender is no longer monitorable. CSPB¹⁶ therefore provisionally approves revocation of parole pending the Minister’s decision.’

[50] It was signed and dated by the chairperson of the Correctional Services Parole Board. Also attached to these documents is, what appears to be the covering page of an earlier decision by the Minister of Correctional Services as to the placement of the accused on parole as an offender sentenced to life imprisonment, addressed to the KwaZulu-Natal regional commissioner of the Department of Correctional Services in Pietermaritzburg. It is dated 4 July 2017. It purports to recommend that the accused be placed on day parole for six months, and on full parole with effect 2 October 2017.

[51] Section 276B of the CPA states the following:

¹⁵ This is in respect of the offences which form the subject matter of this judgment.

¹⁶ The Correctional Services Parole Board

(1) (a) If a court sentences a person convicted of an offence to imprisonment for a period of two years or longer, the court may as part of the sentence, fix a period during which the person shall not be placed on parole.

(b) Such period shall be referred to as the non-parole period, and may not exceed two thirds of the term of imprisonment or 25 years, whichever is the shorter.

(2) If a person who is convicted of two or more offences is sentenced to imprisonment and the court directs that the sentences of imprisonment shall run concurrently, the court shall, subject to subsection (1)(b), fix the non-parole period in respect of the effective period of imprisonment.

[52] Section 276B of the Criminal Procedure Act was inserted by s 22 of the Parole and Correctional Supervision Act 87 of 1997 and finally came into operation on 1 October 2004. It has been held that such an order should only be made in exceptional circumstances which, can only be established by investigation and a consideration of salient facts, legal argument and perhaps further evidence upon which the decision rests.¹⁷ The fixing of a non-parole period entails the exercise of discretion vested in a court and must be exercised judicially and in accordance with principles of fairness and justice.¹⁸

[53] I have been fully addressed by the practitioners representing the accused and the prosecution on the issue of exceptional circumstances. It is submitted on behalf of the accused that he committed the offences in question during the period of serving life imprisonment and that the State must prove that the offences which he committed had the hallmark of aggravating circumstances. In the matter before me, the accused has been convicted of at least three offences bearing the hallmark of aggravating circumstances, being two counts of robbery with aggravating

¹⁷ See *S v Strydom* [2015] ZASCA 29 (unreported, SCA case no 20215/2014, 23 March 2015) at [16], *S v Jimmale and another* 2016 (2) SACR 691 (CC) at [13] and *S v Klassen* 2017 (2) SACR 119 (SCA) at [11].

¹⁸ See *S v Mhlongo* 2016 (2) SACR 611 (SCA)

circumstances as well as attempted robbery with aggravating circumstances. I need say no more on that issue. It is submitted that with respect to the current circumstances of the accused, the accused should adduce evidence that the commission of such offences had mitigating factors. As I have said, the judgment of this court on conviction comprises 220 pages. I have been fully addressed on whether any mitigating factors exist. None were mentioned and none come to mind.

[54] It is further submitted on the accused's behalf that courts should generally not impose excessive sentences that are longer than the period the offender could reasonably be expected to live. In this regard the accused's representative relies on the judgment of Vivier ADCJ in *S v Bull and Another; S v Chavulla and Others* 2001 (2) SACR 681 (SCA). That matter dealt with the declaration of certain persons as dangerous criminals and imprisonment for an indefinite period as provided for in sections 286A and 286B read with the provisions of s 80(1) of the Criminal Procedure Act, which states that a prisoner serving a sentence in terms of s 286A may not be granted a special remission of sentence. The case is clearly distinguishable and does not apply to the accused before me. The fact that the accused has managed to reach the age of 57 despite his dangerous criminal antics is not a factor over which this court has or could have any control.

[55] I must emphasise that it is not the intention of this court to exceed its powers and to cause tension between the judiciary and the executive. Section 276B is part of the criminal legislation which this court is entitled to invoke after careful consideration. I am not aware of any authority which states that the fixing of a non-parole period is more appropriate for a younger offender as opposed to an older one. It is abundantly clear from the evidence before me, that instead of learning from his previous mistakes, the accused's criminal capacity has evolved and intensified at an alarming rate and over a very short period. In the matter

before me the evidence is also crystal clear that accused 1 has, at all material times, been the main protagonist, and a powerful ring leader who was able to manipulate and take advantage of at least the two female accused, with whom he managed to maintain simultaneous romantic relationships in order to further his egregious plans and ambitions.

[56] In *S v Mshumpa and another* 2008 (1) SACR 126 (E), Froneman J, in invoking the provisions of s 276B, ordered a 13-year non-parole period with respect to a 21 year sentence, being slightly less than two thirds of the sentence, declaring that the accused had little chance of being rehabilitated. The accused's counsel has suggested that the present life expectancy of a male is 64 years. If I were to apply counsel's argument, it would mean that I should refrain from sentencing the accused to much more than seven years imprisonment, in the face of minimum sentence legislation, the nature of the offences which he has once again committed despite his age, and the fact that his criminal career has consistently been on the uptake. The absurdity of this suggestion does not merit any further attention.

[57] *Mshumpa* also illustrates, and logically so in my view, that there is nothing which prevents a sentencing court from fixing a non-parole period which is less than the maximum period prescribed by s 276B, which this court intends to do.¹⁹ To my mind fixing of a non-parole period will not necessarily have the effect of the legislature dictating to the executive. This court has evidence before it in the form of exhibit "X", that the Minister of Justice and the National Council for Correctional Services, have been anxiously awaiting the outcome of this case since 2020, having already considered the revocation of the accused, and having resolved to recommend that parole be revoked pending the outcome of this court process.

¹⁹ See Terblanche *A Guide to Sentencing in South Africa* 3 ed (2016) 260

[58] The impression I gain from the content of the 2020 parole revocation report is that the judiciary and the executive in the circumstances of this case, may well benefit from each other's assistance. I say so because this is not the first report of this nature with respect to accused 1. In 2017 the accused was found to have been a candidate for parole by the Acting Director of Pre-release Settlement even though he had been sentenced to life imprisonment and had escaped from custody.

[59] I emphasise that the accused committed the bouquet of offences before me within months of having been released on early parole. I have no doubt that the parole board is as anxious as the victims of the offences before me, (taking into account the avalanche of offences which the accused committed before and after he was released on parole) that there should be some form of assurance that this will not happen again. Guidance from this court to my mind, can only serve to fortify those empowered to make decisions regarding parole rather than being prescriptive. The accused's parole was in any event revoked as far back as 2020. To explain, parole revocation is the process where an individual's parole is terminated, and he is sent back to prison to serve the remainder of his original sentence. It occurs when a parolee violates the conditions of his release, such as being arrested for other offences as in the case before me. It should not be ignored that the accused had served but 11 years of his sentence of life imprisonment (together with a number of other sentences which he was serving simultaneously), when he managed to escape and committed a series of offences that very same day. In the circumstances the likelihood of the Minister and the National Council being of the view that their hands are unfairly being tied by the judiciary is, to my mind, and I say this with respect and with caution, quite remote. On the contrary,

it is clear from the content of exhibit “X” that guidance from this court is anticipated and would be welcomed in these circumstances.

[60] *S v Pakane and others* 2008 (1) SACR 518 (SCA) was the first reported decision where the Supreme Court of Appeal of its own accord, invoked section 276B. The accused had been sentenced to an effective period of 15 years’ imprisonment for murder and for defeating the ends of justice. The SCA (per Maya JA, with Mthiyane JA and Hurt AJA concurring) not only dismissed his appeal with respect to sentence, but also ordered that, in accordance with s 276B(2), he should serve a non-parole period of not less than ten years. This is but one example.

[61] Having regard to the accused’s chequered past and the drastic and rapid escalation of his commission of serious and violent offences, it is clear that the accused not only has no remorse whatsoever, but also that his appetite for crime is unquenchable and has intensified by the day, and that his conduct has borne out that he has not, to date, responded to any efforts to rehabilitate him. This is to my mind, a perfect example where deterrence substantially outweighs any prospects of rehabilitation, which are, in any event, remote.

[62] As for exceptional circumstances, I mention but a few:

- a. the dangerous character of the accused as is evident from his previous convictions;
- b. the fact that these offences were committed while the accused had been released on parole after having served just over 18 years of a life sentence and a plethora of other sentences, making him a danger to the parole system and the criminal justice system, as so appropriately expressed in exhibit “X”;

- c. the fact that several of the offences were committed with aggravating circumstances prevailing;
- d. the fact that an order as to a non-parole period could and should have the effect that increased vigilance is exercised by prison authorities with respect to the accused, as was indeed discussed and considered by the executive in exhibit “X”;
- e. the fact that the need to protect society from the accused for as long as possible has now become a crucial and overriding factor calling for serious consideration and can never be seen, in his circumstances, as extreme or lacking a measure of mercy, with due regard to his track record where he has repeatedly and consistently been shown mercy by the courts and the parole system, to no avail;
- f. the fact that his level of education and his status as a successful businessman and entrepreneur had absolutely no effect on his ever increasing passion for committing serious offences instead of harnessing his talents in a positive direction;
- g. the fact that sentencing the accused to a period of imprisonment until the executive is satisfied that he is no longer a danger to society would not, in his specific circumstances, be sacrificing him on the altar of deterrence.

[63] To my mind then, the fixing of a non-parole period would not be unrealistic in the circumstances.

ACCUSED TWO

[64] I now turn to accused 2. On 13 August 1996, at the age of 21, he committed robbery with an unlicensed firearm for which he was convicted on 5 September

1997. He was sentenced to ten years in prison for the robbery and three years for the possession of the firearm and the ammunition.

[65] On 12 November 2012 he was found in possession of cannabis for which he was convicted on 20 June 2013 and sentenced to four months in prison. In the matter before me he confessed to having committed practically all the offences and has been convicted in respect of 19 of the 21 counts in the indictment. He has been an awaiting trial prisoner for six years – a factor which I will take account of when I sentence him. The R5 which was used in the commission of many of these offences was found at his house in Queenstown. He was however, not informed of the minimum sentence of 15 years for the first offence of possession of a prohibited firearm escalating to 20 years for a second offence and 25 years for a third and subsequent offences, and I do not intend applying the Criminal Law Amendment Act to him as far as these minimum sentences are concerned, bearing in mind that he was informed of the maximum sentence of 25 years' incarceration in terms of the Firearms Control Act.

[66] It has been submitted on his behalf that this court should consider that the following substantial and compelling circumstances apply to him wholistically with respect to all the offences:

- a. His poor deteriorating health. In this regard his health has indeed taken a very bad turn since he has been in prison awaiting trial. He has suffered two major strokes and the resultant morbidity is clearly visible. He is now also confined to a wheelchair and unable to walk.
- b. He has spent six years in prison awaiting trial.
- c. Should the sentences I intend imposing run consecutively the effect will be shockingly and inappropriately high.

- d. There exists a long period of 22 years between his previous conviction and the commission of the offences before me.
- e. He has already suffered a number of significant losses including a parent, his aunt, a home for his girlfriend and child, and his health.

[67] The prosecution in its submissions with respect to accused 2 has been extremely generous towards him. The prosecutor has submitted that when he confessed and made a pointing out, he played open cards and that this was of tremendous assistance to the investigation. It is also submitted that he confessed in order to turn away from his wicked ways and that this is a sign of remorse. Although I take account of this, I am not persuaded that he has shown true remorse. He pleaded not guilty to all the counts and put the State through its paces to prove its case against him. Technically he is at least a second offender in respect of the armed robberies which he has committed, which ought to place him in the category of 20 years imprisonment in terms of minimum sentence legislation. I have however taken a closer look at the record of his previous convictions for robbery and the possession of a firearm and ammunition committed on 13 August 1996. Although he may have been charged with the offence of robbery with aggravating circumstances, it is not clear *ex facie* this record, that he was indeed convicted of this offence. I say this because his criminal record refers to robbery, and not robbery with aggravating circumstances. He was also not sentenced to 15 years imprisonment for robbery with aggravating circumstances in terms of the minimum sentence legislation, but to a period of ten years only. In the circumstances he is entitled to the benefit of the doubt, and I am inclined to consider him as a first offender with respect to robbery with aggravating circumstances, as provided for in section 51(2)(a)(i) read with part II of schedule 2 of the Criminal Law Amendment Act 105 of 1997.

[68] The prosecution has agreed that he suffers from very poor health, and that, taking all these factors into account, substantial and compelling circumstances do exist to deviate from the minimum sentence legislation. It has proposed 12 years per robbery, ten years for the attempted murders and ten years for the firearm offences – all to run concurrently, so that he serves an effective sentence of 12 years' imprisonment. Not surprisingly, the accused and his counsel had no argument with this proposal.

[69] The accused's rapidly deteriorating health is indeed of grave concern to this court. However, he has been receiving adequate treatment in jail and there is no reason why this should and will not continue.

[70] Technically, and if the offences committed on each of the respective scenes are punished by those sentences running concurrently with each other but not concurrently with sentences imposed with respect to other scenes which involve separate and distinct offences altogether, the accused is liable to be sentenced to at least 15 years' imprisonment with respect to the first robbery at Juice Tavern, 15 years with respect to the second robbery at Juice Tavern, 15 years with respect to Dikela Bottle Store, 15 years with respect to Langeni Forest, 15 years with respect to Ace Gas, and at least 15 years with respect to the possession of the two prohibited firearms. This equates to an effective sentence of 90 years imprisonment, which, although theoretically possible, would be unrealistically high. By the same token however, a sentence of 12 years imprisonment is, to my mind, unrealistically low and would be unfairly disproportionate to, for example, the sentence which I intend imposing on accused 1.

[71] Having said this, I do consider the common cause factors mentioned in his favour as substantial and compelling circumstances. I also take into account his ill health, that he confessed to the commission of practically all the offences

which was of tremendous assistance to the police in apprehending his co-accused, and that he has spent six years awaiting trial in custody. In the circumstances I intend imposing a sentence which takes account of all these factors cumulatively.

ACCUSED THREE

[72] I now turn to accused 3. He has no previous convictions. He is 37 years old and has also spent six years in custody awaiting trial, which I intend taking into consideration when I sentence him. He has been convicted in respect of the second robbery with aggravating circumstances at Juice Tavern, one count of attempted murder, one count of reckless discharge of a firearm at that scene, and two counts of possession of prohibited firearms and ammunition. Technically, he should be sentenced to at least 15 years with respect to the events at Juice Tavern, and at least 12 years with respect to the firearms. It has been candidly conceded, and correctly so, that no substantial and compelling circumstances exist with respect to him, justifying a downward tempering of the minimum sentences. What has been contended, and with which I agree, is that to sentence him with respect to each individual offence, without causing some of the sentences to run concurrently may result in a sentence in the region of 95 years' imprisonment, which would be excessive and inappropriately long. It is further contended that he has expressed a sincere desire to reunite with his children and that he should be afforded such opportunity.

[73] On the other hand, the State has argued that he has shown no remorse and has lied his way through the trial. It was he who shot the cashier with a deadly weapon during the second robbery at Juice Tavern, resulting in permanent scars to this victim, who is fortunate to have survived. It is submitted by the prosecution that he should be sentenced to 20 years for the robbery involving aggravating circumstances at Juice Tavern and 15 years for the attempted murder, with five years running concurrently, resulting in an effective sentence of 30 years imprisonment.

ACCUSED FOUR

[74] Accused 4 has been convicted on one count only, being robbery with aggravation with respect to the events at Dikela Bottle Store. As mentioned, in terms of the minimum sentence legislation, this offence attracts a sentence of 15 years' imprisonment in the absence of substantial and compelling circumstances.

[75] It has been submitted in his favour that although alcohol and cash was stolen there were no injuries or fatalities. The fact that elevates what would otherwise have been a robbery simpliciter, to one with aggravating circumstances, was that some of the perpetrators were wielding firearms. There is no evidence, so it is argued, that accused 4 was one of those people, but it is accepted that he made common purpose with those who did. It is further contended that there is no evidence or a victim impact report before this court, to show how the owner of the bottle store was affected by this incident. One of the employees resigned, but there is no evidence that it was because of the robbery. It is further argued that there is no evidence that Dikela Bottle Store has stopped functioning as a consequence of the robbery.

[76] The accused also does not have a criminal record. His role was only linked to the theft of the liquor. He has spent six years in custody awaiting trial, which I will take account of when I sentence him. All of the above, it is submitted, amount to substantial and compelling circumstances. On his behalf, a seven-year sentence is proposed. The prosecution to some extent has conceded that the accused's personal circumstances together with the fact that he is a first offender, and that his role in the commission of the offence was somewhat lesser than that of his co-accused, justify deviating from the minimum sentence provisions. By the same token, the prosecutor has argued that the accused has not played open cards with this court and has not shown remorse during the course of the trial. It has been suggested by the State that he should be sentenced to 13 years' imprisonment.

[77] I am inclined to accept that the position of accused 4 is somewhat different to that of some of his co-accused who have been shown to have been hardened, recidivistic criminals. I accept that his personal circumstances, together with the proven facts regarding his participation in the offence, and the fact that he has spent six years in gaol awaiting trial, makes out a case for substantial and compelling circumstances to deviate from the minimum sentence of 15 years' imprisonment.

ACCUSED FIVE

[78] Accused 5, as I have said previously, is in a different position to her co-accused. She has been forthright and honest throughout this trial. She was deceived by accused 1 (who used her to satisfy his own selfish ends) into believing that the AK47 which he left at her home, had been issued to him for his security business. She has placed vital information before this court to assist it to discredit much of the versions of accused numbers 1 and 3. I am quite frankly

shocked that she only managed to make bail during the course of this trial, and that she was constrained to wallow in prison for almost four years. Her relationship with accused one has cost her dearly in respect of many facets of her life, and I have no doubt that she has learnt a valuable lesson therefrom. In this particular narrative, in my view, she is a victim. Having said that, she has impressed me as a strong young woman who, despite her bad fortune, is still bent on completing her studies and becoming a contributing and productive member of society. She has wasted no time to re-enroll for her studies.

[79] It is the duty of this court, having regard to her personal circumstances, to ensure that she is not returned to prison. Having said that, she has been convicted of a serious offence. In my view, a wholly suspended, relatively lengthy prison sentence would be appropriate. The prosecution has, candidly, not contended differently, and has suggested a wholly suspended sentence of 5 years' imprisonment. The concession is well made and appropriate in the circumstances.

ACCUSED SIX

[80] Although accused 6 falls within a similar category as that of accused 5, her circumstances are distinguishable in that:

- a. She only spent six weeks in custody before she made bail on 22 July 2022 and has had the benefit of making good use of her liberty and freedom since then to retain her independence and her employment.
- b. She played a major role, together with accused 1, who was her boyfriend at the time, in facilitating the cash in transit heist. Simply stated, if she did not take advantage of her relationship with the s 204 witness, Andile Nomlomo, to extract what would otherwise be confidential information

from him, through serious threats to his safety and that of his family, the events in Langeni Forest would, in all likelihood, not have transpired. It also appears from the pre-sentence report from the Eastern Cape Social Development office, that Mr Nomlomo lost his job as a result of this.

[81] Having said that, accused 6 has managed to retain her employment to date, and has attended her trial religiously. The prosecution has argued for direct imprisonment for accused 6. I am not inclined to believe that anything good will come out of sending her to prison now, when she has managed to retain her job and to continue supporting her extended family throughout this trial. She too, in my view was a victim of the parasitic relationship which accused one had cultivated and nurtured with her. This much she conveyed to the Correctional Services social worker, Ms Makabala, when she conceded that she committed the offence in respect of which she has been convicted, and remained in the relationship with accused 1, out of fear for him and to some extent, under duress. To my mind, the negative results which will no doubt flow from removing her from society as a diligent employee and a supporter of a number of indigent people, far outweigh anything positive which may flow from incarcerating her.

[82] I am also informed by Ms Makabala that the municipal manager where accused 6 is presently employed, fully supports her and has indicated that she will retain her employment if subjected to a non-custodial sentence. All these factors taken together, to my mind, make out a good case for keeping her out of prison.

[83] The prosecution has asked me to carefully consider the circumstances of the offence in which she was involved. I have. To that end I have given due consideration to the possibility of imposing a sentence in respect of accused 6 which will not entail her having to serve her sentence on the inside of a prison.

This has caused me to seriously consider the provisions of s 276(1)(h) read with s 276A of the CPA. These sections read as follows:

276 Nature of punishments

(1) Subject to the provisions of this Act and any other law and of the common law, the following sentences may be passed upon a person convicted of an offence, namely- ...

(h) correctional supervision ...

276A Imposition of correctional supervision ...

(1) Punishment shall, subject to the provisions of section 75 of the Child Justice Act, 2008, only be imposed under section 276(1)(h)-

(a) after a report of a probation officer or a correctional official has been placed before the court; and

(b) for a fixed period not exceeding three years ...

[84] Sachs J in the Constitutional Court has described correctional service as ‘an innovative form of sentence, which if used in appropriate cases and if applied to those who are likely to respond positively to its regimen, can serve to protect society without the destructive impact incarceration can have on a convicted criminal’s innocent family members.’ Sachs J also said that correctional supervision ‘keeps open the option of restorative justice is flexible to meet the specific circumstances of each offender’s case ... and creates a greater chance for rehabilitation ...’²⁰ Indeed, it has been held that correctional supervision can be a severe and appropriate punishment, even in respect of serious offences, such as the one in respect of which accused 6 has been convicted.²¹

²⁰ See *S v M (Centre for Child Law as Amicus Curiae)* 2007 (2) SACR 539 (CC) at [61] to [64]

²¹ See *S v E* (unreported, GP case no A274/2016, 14 December 2016 at [18]; *S v Mosikili* 2019 (1) SACR 705 (GP) where an accused convicted of murder was sentenced to this sentencing regime.

[85] In *S v Mosikili* at [10], Moultrie AJ referred to some of the ‘laudable objectives of community corrections’ as follows:

- (i) to afford sentenced offenders an opportunity to serve their sentences in a non-custodial manner;
- (ii) to enable persons subject to community corrections to lead a socially responsible and crime-free life during the period of their sentence and in future;
- (iii) to enable persons subject to community corrections to be rehabilitated in a manner that best keeps them as an integral part of society

[86] In the particularly helpful and informative judgment of Kriegler AJA in *S v R* 1993 (1) SA 476 (A), the court pointed out that the introduction of correctional supervision as a sentencing option had ushered in a new phase in the South African criminal justice system. The court, appropriately in my view, drew particular attention to the fact that the variety of forms of correctional supervision were especially striking, and that the term ‘correctional supervision’ referred not so much to a sentence, as to a collective term for a wide variety of measures which have in common that they are all applied outside the confines of a prison.

[87] The legislature, according to Kriegler AJA, clearly indicated that as a whole, punishment, whether it be rehabilitative, or, if needs be, highly punitive in nature, is not necessarily or even primarily attainable by means of imprisonment. The legislature having expressed itself so clearly, it is the duty of judicial officers, so the judgment goes, to use these ample means at their disposal. I agree with Kriegler AJA. It is particularly important in this matter to emphasise, as Kriegler AJA did, that this form of punishment can impose a finely tuned sentence without resorting to imprisonment with all its known disadvantages for both the prisoner and the broader community.

[88] It has been held that a court must use correctional supervision in appropriate cases because the legislature, by providing for this type of sentence, has distinguished between two types of offenders: those who ought to be removed from society by means of imprisonment (such as accused numbers 1, 2, 3 and 4 for example), and those who, although deserving of punishment, should not be removed from society (such as accused numbers 5 and 6).²² In appropriate cases, correctional supervision is not necessarily a lenient alternative to imprisonment behind the wall of a correctional facility.²³

[89] As stated by the author Terblanche:

‘The main advantages of correctional supervision are, on the one hand, that it can be a sentence with a high punitive value, yet on the other hand ... [it] ... has a substantial potential to promote the rehabilitation of the offender.’

[90] It is clear in my view, as Kriegler AJA found in *S v R*, that it is possible for a trial court to impose severe punishment in respect of even very serious offences without making use of imprisonment, and without thereby sometimes destroying whatever good characteristics remain as far as the offender is concerned. It is indeed possible to serve the interests of the community by imposing a deterrent and strict sentence, other than imprisonment, not only with appropriate conditions but also in combination with any other form of sentence like a suspended sentence, with the hopeful effect that the offender will be particularly prudent in adhering to such conditions (which an incarcerated prisoner is not obliged to do) for fear of the suspended sentence being put into operation. After fully

²² Per Theron J in *S v Bergh* 2006 (2) SACR 225 (N) at 235e

²³ See *S v R* above

considering these options, I am of the view that this type of sentence is the most suitable, regard being had to the circumstances of accused 6.

[91] It is however necessary to emphasise that correctional supervision can only be imposed after a report of a probation officer or a correctional official has been placed before the court, and if necessary, *viva voce* evidence has been presented to place the available terms and conditions before the court. Indeed, in *S v Omar* 1993 (2) SACR 5 (C) it was held that the report of the probation officer or the correctional official must make specific recommendations as to house arrest and community service and the court should be fully informed by such report of the effect thereof on the offender's liberty, employment and domestic arrangement, particularly in that one of the main reasons why this court has elected to consider this sentencing option, is for accused 6 to retain her employment and in so doing, continue benefiting those whom she is supporting. The probation officer or correctional official, as an expert, can assist the court in understanding why one sentencing option should be preferred against another, having regard to the accused's particular circumstances. It is also necessary to mention that this court intends imposing correctional supervision as but one of the conditions of an appropriate suspended sentence. This, in my view, is not only permissible but prudent in the circumstances, having regard to the seriousness of the offence.²⁴

[92] To this end I requested a probation officer's report which, when it was finally produced, was so fraught with errors and misnomers that no reliance could be placed thereon. Correctional supervision was, in any event, not recommended because the officer was under the skewed impression that accused 6 had been convicted of practically all of the 21 offences in the indictment, and not only attempted robbery with aggravating circumstances based on common purpose, in

²⁴ See *S v Van der Westhuizen* 1994 (1) SACR 191 (O); *S v Esau* (unreported, WCC case no 199/21, 30 July 2021)

the sense that there is no evidence that the accused was even present during the commission of the offence. After much discussion, and a recommendation that a report from a correctional official would be singularly more helpful, I made the following order:

1. The trial is adjourned to 17 and 18 November 2025 for sentencing proceedings...
2. It is recorded that this court intends sentencing accused number 6 ... to a lengthy period of imprisonment, wholly suspended on certain conditions.
3. One of these conditions will be that she be subjected to correction supervision in terms of s 276(1)(h) of the Criminal Procedure Act 51 of 1977 for a fixed period of three years.
4. To this end Ms V. Makalaba ... who is a social worker at Mqanduli Correctional Centre, is directed to prepare a report containing appropriate proposals on what the terms and conditions of the correction supervision should be, as envisaged in sections 50 and 52 of the Correctional Services Act 111 of 1998. ...

[93] In response thereto, and on 13 November 2025, Ms V. Makalaba, a social worker with the Department of Correctional Services, filed the necessary report. She also presented *viva voce* evidence to the satisfaction of this court. During her testimony on oath, Ms Makalaba advised the court that the accused has admitted having committed the offence for which she has been convicted and has indicated that she regrets her conduct in this regard. In the premises her evidence and recommendations are that accused 6 is a suitable candidate for correctional supervision. This court is indebted to Ms Makalaba for her report and her recommendations, which I intend incorporating to a greater or lesser degree in an appropriate sentencing regime applicable to accused 6.

[94] Finally, I was requested by counsel for accused 6 not to invoke the provisions of s 103 of the Firearms Control Act when I sentence her. There has

not been any similar request from any of the other accused. The relevant portion of the section reads as follows:

- (1) Unless the court determines otherwise, a person becomes unfit to possess a firearm if convicted of –
 - (a) the unlawful possession of a firearm or ammunition;
 - (b) any crime or offence involving the unlawful use or handling of a firearm, whether the firearm was used or handled by that person *or another participant in that offence* (my emphasis);
 -
 - (o) any conspiracy, incitement or attempt to commit an offence referred to above.

[95] Accused 6 is accordingly deemed to be unfit to possess a firearm unless this court determines otherwise. This being a legislative deeming provision, it is for the accused to persuade the court to deviate therefrom for good reason. I have not been addressed on why I should deviate from the provision. Nor has the accused presented evidence to persuade me to do so. In the circumstances, there is nothing before me to consider which justifies a departure from the provisions of the section.

Sentences imposed in respect of the six accused

ACCUSED ONE

1. On count 4, you are sentenced to 25 years' imprisonment.
2. On count 5, you are sentenced to 10 years' imprisonment.
3. On count 6, you are sentenced to 10 years' imprisonment.
4. On count 7, you are sentenced to 5 years' imprisonment.

5. It is ordered that the sentences imposed on counts 5, 6 and 7 are to run concurrently with each other and concurrently with the sentence imposed on count 4.
6. The effective period of imprisonment with respect to counts 4, 5, 6 and 7 is 25 years.
7. On count 9, you are sentenced to 25 years' imprisonment.
8. On count 11 you are sentenced to 10 years' imprisonment.
9. On count 12 you are sentenced to 5 years' imprisonment.
10. It is ordered that the sentences on counts 11 and 12 are to run concurrently with each other, and concurrently with the sentence on count 9.
11. The effective period of imprisonment in respect of counts 9, 11 and 12 is 25 years.
12. On count 13, you are sentenced to 25 years' imprisonment.
13. On count 14, you are sentenced to 10 years' imprisonment.
14. On count 15, you are sentenced to 10 years' imprisonment.
15. On count 16, you are sentenced to 10 years' imprisonment.
16. It is ordered that the sentences in respect of counts 14, 15 and 16 are to run concurrently with each other, and concurrently with the sentence on count 13.
17. The effective period of imprisonment with respect to counts 13, 14, 15 and 16 is 25 years.
18. On counts 18 and 19 which are taken as one, you are sentenced to 15 years' imprisonment.
19. On counts 20 and 21 which are taken as one, you are sentenced to 15 years' imprisonment.
20. The sentence on counts 18 and 19 shall run concurrently with the sentence on counts 20 and 21.

21. The effective period of imprisonment with respect to counts 18, 19, 20 and 21 is 15 years.
22. It is further ordered that the sentences on counts 13, 14, 15, 16, 18, 19, 20 and 21 will also run concurrently with the effective sentence in respect of counts 4, 5, 6 and 7.
23. In the result, the total effective period of imprisonment is 50 years.
24. In terms of the provisions of section 276B of the Criminal Procedure Act 51 of 1977, you shall not be placed on parole until you have served a period of at least 20 years of your effective sentence of 50 years' imprisonment.
25. In terms of the provisions of section 103 of the Firearms Control Act 60 of 2000, you remain unfit to possess a firearm.²⁵

ACCUSED TWO

1. On count 1, you are sentenced to 15 years' imprisonment.
2. On counts 2 and 3, taken as one, you are sentenced to 5 years' imprisonment.
3. On count 4, you are sentenced to 15 years' imprisonment.
4. On count 5, you are sentenced to 10 years' imprisonment.
5. On count 6, you are sentenced to 10 years' imprisonment.
6. On count 7, you are sentenced to 5 years' imprisonment.
7. On count 8, you are sentenced to 15 years' imprisonment.
8. On count 9, you are sentenced to 15 years' imprisonment.
9. On count 11, you are sentenced to 10 years' imprisonment.
10. On count 12, you are sentenced to 5 years' imprisonment.

²⁵ The prosecution is directed to forthwith communicate the outcome of this case to the National Council for Correctional Services as mandated by Judge Desai on 22 February 2020, which mandate was approved by the Minister of Correctional Services on 29 May 2020.

11. On count 13, you are sentenced to 15 years' imprisonment.
12. On count 14, you are sentenced to 10 years' imprisonment.
13. On count 15, you are sentenced to 10 years' imprisonment.
14. On count 16, you are sentenced to 10 years' imprisonment.
15. On counts 18 and 19, taken as one, you are sentenced to 15 years' imprisonment.
16. On counts 20 and 21, taken as one, you are sentenced to 15 years' imprisonment.
17. It is ordered that the sentences on counts 2, 3, 4, 5, 6, 7, 8, 9, 11, 12, 13, 14, 15, 16, 18, 19, 20 and 21 are to run concurrently with each other and concurrently with the sentence imposed on count 1.
18. In the result, the total effective period of imprisonment is 15 years.
19. In terms of the provisions of section 103 of the Firearms Control Act 60 of 2000, you remain unfit to possess a firearm.

ACCUSED THREE

1. On count 9, you are sentenced to 15 years' imprisonment.
2. On count 11, you are sentenced to 10 years' imprisonment.
3. On count 12, you are sentenced to 5 years' imprisonment.
4. It is ordered that the sentences on counts 11 and 12 shall run concurrently with each other and concurrently with the sentence on count 9.
5. The effective period of imprisonment with respect to counts 9, 11 and 12 is 15 years.
6. On counts 18 and 19, taken as one, you are sentenced to 15 years' imprisonment.
7. On counts 20 and 21, taken as one, you are sentenced to 15 years' imprisonment.

8. It is ordered that the sentence on counts 18 and 19 is to run concurrently with the sentence on counts 20 and 21.
9. The effective period of imprisonment with respect to counts 18, 19, 20 and 21 is 15 years.
10. It is further ordered that 10 years of the effective sentence of 15 years' imprisonment on counts 18, 19, 20 and 21, are to run concurrently with the sentence of 15 years' imprisonment on counts 9, 11 and 12.
11. In the result, the final effective period of imprisonment is 20 years.
12. In terms of the provisions of section 103 of the Firearms Control Act 60 of 2000, you are declared unfit to possess a firearm.

ACCUSED FOUR

1. On count 1, you are sentenced to 12 years' imprisonment.
2. In terms of the provisions of section 103 of the Firearms Control Act 60 of 2000, you are declared unfit to possess a firearm.

ACCUSED FIVE

1. On count 20, you are sentenced to 5 years' imprisonment, wholly suspended for 5 years, on the condition that you are not convicted of any offence in terms of which the unlawful possession of a firearm is an element, during the period of suspension.
2. In terms of the provisions of section 103 of the Firearms Control Act 60 of 2000, you are declared unfit to possess a firearm.

ACCUSED SIX

1. On count 13, you are sentenced to 12 years' imprisonment, wholly suspended for 5 years on the following conditions:
 - a. that you are not convicted of robbery with aggravating circumstances or of any competent verdict to a charge of robbery with aggravating circumstances, during the period of suspension;
 - b. that you are not convicted of any offence of which the unlawful possession of a firearm is an element, during the period of suspension;
 - c. that you refrain from making any direct or indirect contact with the witness Andile Nomlomo, during the period of suspension;
 - d. that in terms of section 276(1)(h) read with section 276A(1)(b) of the Criminal Procedure Act 51 of 1977, you shall forthwith subject yourself to a fixed period of 3 years' correctional supervision.
 - e. To this end, you are ordered to report to social worker Ms V. Makalaba at the Community Service Office, Mqanduli Correctional Centre at 8am on Wednesday, 19 November 2025, for you to commence the 3-year fixed period of correctional supervision.
 - f. Your correctional supervision under the auspices of Correctional Services at the Mqanduli Correctional Centre, shall include, but not be limited to the following:
 - house detention for the duration of the fixed three year period provided that you shall be allowed to attend to your employment commitments and participate in any correctional supervision programs as prescribed by the National Commissioner of Correction Services or his/her delegated proxy, and provided further that your house detention may be

partly suspended at the discretion of the National Commissioner after you have served a specific period thereof;

- that you shall not leave the magisterial district of Mqanduli or the magisterial district where you presently reside, without the prior approval of the Commissioner or the Head of Community Corrections, except to attend to your work commitments at your place of employment;
- that you are subjected to individual oriented treatment, facilitated family conferences, community service, and appropriate rehabilitation programs, the terms and conditions of which shall be determined at the discretion of the Commissioner of Correctional Services or the Head of Community Corrections, or a correction official or officials to whom the task of supervising your compliance with the conditions of your correctional supervision has been duly delegated.

- g. In terms of section 52 of the Correctional Services Act 111 of 1998, the Commissioner may prescribe further conditions which are deemed to be essential for the successful execution of your correctional supervision.
- h. The appropriate correctional officials shall monitor your compliance with the terms of your house arrest by means of impromptu visits to your place of abode.
- i. The Commissioner shall ensure that the conditions of your correctional supervision are strictly complied with and shall act in accordance with the provisions of section 70 of the Correctional Services Act upon violation of any of these conditions.

2. In terms of the provisions of section 103 of the Firearms Control Act 60 of 2000 you are declared unfit to possess a firearm.

I.T. STRETCH
JUDGE OF THE HIGH COURT

Date of Sentence: 17 & 18 November 2025