



**IN THE HIGH COURT OF SOUTH AFRICA
(EASTERN CAPE DIVISION, MAKHANDA)**

Case No.: CA&R 107/2025

In the matter between:

RENALDO BHAKAZA LUITER

Appellant

and

THE STATE

Respondent

JUDGMENT

RUSI J

[1] The appellant stood trial in the East London Regional Court on 20 November 2024 on a charge of robbery with aggravating circumstances during which a white Toyota Corolla, 2007 model was taken and the victim caused grievous bodily harm. On 26 February 2025, the appellant was convicted of the lesser offence of theft of a motor vehicle and sentenced to 10 years' imprisonment.

[2] At the time of his sentencing in the court a quo, the appellant had begun serving a 6-year-term of imprisonment which was previously imposed on him in 2023 for a similar offence. The learned Regional Magistrate ordered that the

term of 10 years' imprisonment shall run concurrently with the 6-year-term previously imposed on the appellant.

[3] This is an appeal, with leave of the court a quo, against the 10-year-term of imprisonment.

The grounds of appeal

[4] The appeal rests on two grounds. The appellant contends that the court a quo erred in not according appropriate weight to his personal circumstances, and in over-emphasizing the seriousness of the offence and the interests of society. He further contends that the sentence imposed on him induces a sense of shock when regard is had to the circumstances of the case.

The factual background

[5] The appellant stood trial in the court a quo together with another accused named Mighty Ngxabane (Ngxabane). The appellant was charged with one count of robbery with aggravating circumstances, and he pleaded not guilty to the charge.

[6] These are the facts which the court a quo found to have been proven and on the basis of which it convicted the appellant of theft of a motor vehicle: on 03 March 2020, and in East London, the appellant and Ngxabane robbed Mr Aiden Spark of his white Toyota Corolla and other items including his cellphone. A firearm was used during the robbery, and this fact brought the offence within the ambit of the minimum sentence of 15 years' imprisonment which section 51(2) of the Criminal Law Amendment Act 105 of 1997 prescribes on conviction where the person convicted is a first offender.

[7] Confirmation was given in evidence by Mr Spark of his ownership of the motor vehicle and that on 03 March 2020 he was robbed of his vehicle and other items which included groceries and his cellphone. He further gave

confirmation of his cellphone's identity in the form of its International Mobile Equipment Identity number (the IMEI number). He could not identify his robbers. He further confirmed that his cellphone was later recovered.

[8] Ms Xoliswa Mboxela, one of the witnesses for the prosecution, was the one whose evidence linked the appellant to the commission of the offence. She was the appellant's girlfriend. According to her evidence, the appellant and Ngxabane arrived at her home in Dutywa on 27 March 2020, and they were traveling in a White Toyota Corolla. On their arrival, the appellant gave her groceries and a cellphone. At the time, the love relationship she had with the appellant had ended but the appellant was still pursuing her. She later learned that the cellphone was taken from Mr Spark during a robbery. The cellphone was traced to her by the police. Even though she had not seen who the driver of the white Toyota Corolla was between the appellant and Ngxabane on their arrival at her home, when they left, the appellant drove the vehicle.

[9] Sergeants Maja; Mphanda and Mpalala of the SAPS who were involved in the various aspects of the investigation of the robbery, confirmed that Mr Spark's cellphone was traced to Ms Mboxela in Dutywa by means of its IMEI number. Ms Mboxela also confirmed to them that the cellphone was given to her by the appellant who was in the company of Ngxabane.

The sentencing proceedings in the quo a quo

[10] It was submitted on behalf of the appellant in mitigation of sentence that he was 33 years old, unmarried with an 8-year-old child, a female, who lived with her mother. He was unemployed. According to the appellant's legal representative, the fact that the appellant was found guilty of a competent verdict together with the fact that the cellphone was recovered and returned to its owner stood as extenuating factors. Even though no previous convictions were proven against the appellant, it was disclosed by his legal representative

that at the time of the sentencing proceedings in the court a quo, the appellant had begun serving 6 years' imprisonment that was imposed on him in 2023. In this regard, it was submitted that this factor ought to be considered together with the time that the appellant spent in custody awaiting the trial of the matter. The record indicates that the appellant's first appearance was on 28 August 2023 even though the trial of the case in the Regional Court only commenced on 20 November 2024.

[11] In aggravation of sentence, the prosecutor submitted that the seriousness of the offence, coupled with the fact that the stolen vehicle was never recovered warranted a custodial sentence. He placed emphasis on the fact that the appellant was then serving a sentence for another instance of theft of a motor vehicle. It is not clear from the record when in relation to his conviction in the present case the appellant was convicted of the said offence.

[12] In sentencing the appellant to 10 years' imprisonment, the learned Regional Magistrate found that a non-custodial sentence of any form would not be appropriate punishment. She took into account the gravity of the offence and its prevalence countrywide. She further reasoned that the offence causes economic loss to its victims and the financial service providers who insure people's assets against risk such as theft. It is an act of disregard for other people's possessions. The learned Regional Magistrate concluded that in the circumstances of the appellant's case, the interests of society demanded severe punishment.

[13] Since it was indicated that at the time of sentencing the appellant had begun serving a previously imposed sentence of 6 years' imprisonment, the learned Regional Magistrate ordered that the sentence of 10 years' imprisonment shall be served concurrently with the previously imposed 6-year-term.

Counsel's submissions in this Court

[14] Mr *Sojada* who appeared for the appellant, and Mr *Mondliwa* for the respondent, referred us to their respective heads of argument and elected not to make any further submissions.

[15] In the appellant's heads of argument, Mr *Sojada* submitted that in the light of the personal circumstances of the appellant and the time that he spent in custody awaiting the trial of his case, the court a quo ought to have considered alternative forms of punishment. Further, that, the court overemphasized the seriousness of the offence and the interests of society at the expense of the appellant's personal circumstances, thereby falling short of the balancing act that the law requires in the sentencing of the offender.

[16] In the heads of argument filed on behalf of the respondent, Mr *Mondliwa* submitted that even though the appellant was convicted of a competent verdict of theft and not the main count of robbery, the circumstances in which the robbery was committed were still a relevant consideration in the determination of the appropriate sentence for the competent verdict. In substantiating this contention, he submitted that since theft is a continuing offence, those who continue with it align themselves with the manner in which the property was appropriated. Mr *Mondliwa* took the view that the reason for the appellant's pre-sentence detention for a period of 2 years was not related to the delays in the commencement of the trial of his case but the fact that he had begun serving sentence that was previously imposed on him.

[17] It was further submitted that the appellant's personal circumstances were outweighed by the aggravating factors. Mr *Mondliwa* emphasized the fact that the appellant had the propensity to commit theft of motor vehicles, hence he was then serving 6 years imprisonment for theft of a motor vehicle. For all these reasons, Mr *Mondliwa* submitted that the learned Regional Magistrate properly exercised her sentencing discretion and there were no grounds to interfere with the sentence imposed on the appellant.

The legal principles

[18] It is a settled principle of the law that on appeal against a sentence imposed by a trial court, the appellate court cannot, in the absence of material misdirection, 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.¹ Nor does the appellate court enjoy unlimited powers to interfere with the terms and conditions imposed by a sentencing court on how or when the sentence is to be served.² The sentence of the trial court will be interfered with if the appellate court is satisfied that the trial court committed a misdirection of such a nature, degree and seriousness that shows that it did not exercise its sentencing discretion at all or exercised it improperly or unreasonably when imposing sentence.³ This will be the case where there exists a 'striking' or 'startling' or 'disturbing' disparity between the trial court's sentence and that which the appellate court would have imposed.⁴

[19] Punishment should fit the criminal as well as the crime and be fair to society.⁵ It is not enough for an appellant to use the phrase that 'the sentence induces a sense of shock' as a way of expressing unfounded disapproval of how

¹ *S v Malgas* (117/2000) [2001] ZASCA 30; [2001] 3 All SA 220 (A); 2001 (2) SA 1222 (SCA); 2001 (1) SACR 469 (SCA) (19 March 2001) (*Malgas*), para 12.

² *Mokela v S* 2012 (1) SACR 431 (SCA) para 9.

³ *S v Hewitt* 2017 (1) SACR 309 (SCA) at para 8.

⁴ *Hewitt*, para 8; *S v Sadler* 2000 (1) SACR 331 (SCA) para 8.

⁵ *S v Rabie* 1975(4) SA 855 (A) 862G; *S v Samuels* 2011 (1) SACR 9 (SCA), para 9.

the court's sentencing discretion was exercised. Whether the sentence induces a sense of shock must be determined against an understanding of what society requires or expects of the law in punishing crime. It must be shown that the sentence is disproportionate to the crime, the criminal, and the needs of society.

Discussion

[20] In the exercise of its sentencing function the trial court has a wide discretion in deciding which factors should be allowed to influence it in determining the measure of punishment and in determining the value to be attached to each of the factors it takes into account. A failure to take certain factors into account or an improper determination of the value of such factors amounts to a misdirection, but only when the dictates of justice carry clear conviction that an error has been committed in this regard.⁶

[21] Mr *Sojada* had difficulty pointing to any misdirection on the part of the court a quo in sentencing the appellant. The record indicates that the appellant was linked to the crime by the complainant's cell phone which he lost together with his vehicle. The cellphone was alienated to the appellant's then girlfriend whose evidence I have summarized above.

[22] Fundamentally, the complainant's vehicle was not recovered. Throughout the investigation of the crime the appellant had outright denied involvement in the commission of the offence. Regard must be had to the fact that a motor vehicle is one of the items of property which are easily disposable. Needless to emphasize the prevalence of this offence the country over. Furthermore, the appellant's unwavering denial of any involvement in the crime clearly diminished prospects of its discovery or timeous discovery. These are weighty

⁶ *S v Kibido* 1998 (2) SACR 213 (SCA) at 216g-I; *S v Pillay* 1977 (4) SA 531 (A), at 535E.

considerations for the purposes sentence, and they served to aggravate the offence that the appellant stood convicted of.

[23] After considering the appellant's personal circumstances, the court a quo took into account the gravity of the offence and its adverse financial effects on not only the vehicle owner but insurance companies who are saddled with contractual obligations to replace the lost property. She further considered that the interests of society demand that offences of this nature punished severely punishment. This is in keeping with the paramount consideration in the court's exercise of its sentencing discretion is finding the right balance between the crime, the offender, and the interests of society.⁷

[24] While regard is to be had to the known purposes of punishment, namely, prevention, retribution, reformation and deterrence, each of these purposes of punishment need not be given the same weight. Proper weight must be accorded to each according to the circumstances of the case, with the result that serious crimes will usually require that retribution and deterrence should come to the fore and with other purposes playing a relatively smaller role.⁸

[25] The offence of which the appellant was convicted is no doubt a serious one marked by not only a brazen disregard of the law but other persons' property rights. The sentence that the learned Magistrate imposed possesses the required retributive and deterrent effects commensurate to the gravity of the offence, the circumstances in which it was committed and the legitimate needs of society when it comes to punishment of offences such as the present. We find no fault with the approach adopted by the court aquo in this regard.

⁷ *S v Zinn* 1969 (2) SA 537 (A); *S v RO and Another* 2010(2) SACR 248 para 30.

⁸ *S v Swart* 2004 (2) SACR 370 (SCA) at para 12.

[26] Not only this, but the learned Regional Magistrate was mindful of her duty to pay her mind to the cumulative effect of sentences. It having been submitted to her that at the time of sentencing, the appellant had begun serving a 6-year- term of imprisonment in respect of a similar offence of theft of a motor vehicle, she ordered that the sentence of 10 years' imprisonment shall run concurrently with the term that the appellant had begun serving.

[27] As observed by the Court in *Radebe and Another v S*,⁹ there is no mechanical formula to determine the extent to which the proposed sentence should be reduced, by reason of the period of detention prior to conviction. In that case, the Court held that the circumstances of an individual accused and the reason for a prolonged period of detention is among the factors to be considered in making the assessment of what weight to be attached to the period of presentencing detention.¹⁰

[28] Although it is not clear from the record when in relation to his sentencing in the present matter, the appellant was convicted of the other offence of theft of a motor vehicle, it was further indicated that at the time of his sentencing by the Regional Magistrate, he was 2 years away from completing that sentence. The learned Regional Magistrate's finding that the two years that the appellant spent awaiting the trial of the present case carried no weight in the determination of the extent to which the sentence under consideration should be reduced was correctly made. The contention made in the appellant's heads of argument that the court a quo failed to take into consideration the period that the appellant had spent in custody awaiting the trial of the present matter, cannot be sustained.

[29] Mr *Sojada* candidly conceded that there was no merit in the present appeal. His concession was well made. The appeal falls to be dismissed.

⁹ *Radebe and Another v S* (726/12) [2013] ZASCA 31; 2013 (2) SACR 165 (SCA) (27 March 2013).

¹⁰ *Id*, para 13-14.

[30] In the result, I would make the following order:

1. The appeal is dismissed.

L. RUSI
JUDGE OF THE HIGH COURT

MTSHABE AJ:
I agree.

NR MTSHABE
JUDGE OF THE HIGH COURT
(ACTING)

Appearances:

Counsel for the appellant :	<i>VM Sojada</i>
	Legal Aid South Africa
	Makhanda Justice Centre

Counsel for the respondent : *H Mondliwa*
Office of the Director of Public
Prosecutions, Makhanda

Date heard: 15 October 2025

Date delivered: 10 March 2026