



**IN THE HIGH COURT OF SOUTH AFRICA
(POLLSMOOR CIRCUIT COURT, WESTERN CAPE DIVISION, CAPE
TOWN)**

Case no: CC 82/2020

In the matter between:

THE STATE

and

CEBO SOBOYISE

ACCUSED 1

ZOLA GOLELA

ACCUSED 2

Heard: 21, 24 March 21, 22, 24 April 2026

Delivered: 30 April 2026

Summary: Accused convicted on four counts of robbery with aggravating circumstances, three counts of murder, and one count of possession of a prohibited firearm. Sentencing judgment delayed by the absence of Second Accused on scheduled date. Approach to section 159 of the Criminal Procedure Act 51 of 1977 in the peculiar circumstances of this case considered. Minimal sentences imposed for murder and robbery with aggravating circumstances. Prolonged period of pre-trial incarceration considered in sentence on possession of a prohibited firearm and applied.

JUDGMENT

Bhoopchand AJ:

[1] The Accused were convicted on 27 February 2026 on four counts of robbery with aggravating circumstances, three counts of murder, and one count of possession of a prohibited firearm. The provisions of section 1 of the Criminal Procedure Act 51 of 1977 and 51(2) of the Criminal Law Amendment Act 105 of 1997 and part II of Schedule 2 thereof applied to the counts of robbery with aggravating circumstances. The provisions of section 1 of Act 51 of 1977 and section 51(1) of Act 105 of 1997 and part I of Schedule 2 applied to the counts of murder. Sections 4(1)(f)(iv) read with sections 1,17,19,20,103,117,120,(1)(a), 121 and Schedule 4, of the Firearms Control Act 60 of 2000 and section 250 of Act 51 of 1977 applied to the possession of the prohibited fireram.

[2] The counts of robbery with aggravating circumstances therefore carry a minimum sentence of between 15 years for a first offender, 20 years for a second offender, and 25 years for a third offender. The counts of murder carry a minimum sentence of life imprisonment. Both the counts of robbery with aggravating circumstances and that of murder attract the prescribed sentences unless substantial and compelling circumstances exist which justify the imposition of a lesser sentence. The contravention of the Firearms Control Act carries a sentence of twenty-five years.

[3] Both Mr Soboyise (‘Soboyise’) and Mr Golela (‘Golela’), cited as Accused 1 and Accused 2, now convicted were given ample opportunity to lead their case

on sentence. Soboyise declined to testify and Golela entered the witness box merely to insist on a probation officer's report. Ultimately, and in circumstances where the punishment could be potentially severe, the Court allowed the requests for reports, even though the law does not entitle an adult convict to one. Both convictees maintained their innocence during the sentencing procedure as they did during the trial. They neither demonstrated or articulated any thread of remorse for the crimes they committed.

[4] The personal information concerning Soboyise was obtained from the evidence led at the trial and supplemented by the content of a probation officer's report. He is 34 years old. He was 28 at the time the crimes were committed. He was born in Old Crossroads, Nyanga. Soboyise has two siblings and each have different biological fathers. Soboyise does not know his biological father. His first stepfather, Guffy Zonyana provided financial support and care to him until Zonyana was fatally wounded at the gate of his home while parking his minibus taxi. At age eleven, Soboyise relocated to the Eastern Cape where he lived in overcrowded conditions with his maternal grandmother, his two uncles, two aunts and nine cousins. His mother's income from domestic work, the grandmothers and children's social security grants sustained the Eastern Cape household. Despite the adverse living conditions, Soboyise reported to the probation officer that he received adequate love, care and emotional support and the values of education, integrity, and compassion from his grandmother. He developed strong family bonds and a sense of belonging in that household. Soboyise's uncle reminded him of his biological father and encouraged him to find his father. Soboyise developed resentment towards this uncle and his father. At age 14, Soboyise returned to reside with his mother and her husband Thozamile Buthi. He was easily incorporated into the family. Soboyise's cousin, Nandipha indicated that Buthi treated Soboyise as his own child. On Buthi's death in 2019,

Soboyise and his mother moved to Old Crossroads, although they had additional living quarters in Site B, Khayelitsha.

[5] The probation officer obtained the information that Soboyise completed his grade 12 in 2011.¹ Once he returned to Old Crossroads, Soboyise spent considerable time with his peers. His mother, Fikiswa Soboyise passed away in 2019 after reportedly taking ill with psychological ailments in the aftermath of Soboyise's incarceration. Soboyise was affected by his mother's death. Soboyise has two children, a son and a daughter. He saw his daughter in 2019 and his son at the beginning of 2025. The children are from different mothers. One of the mothers' lives in Johannesburg and works in the security industry. He last saw her as well as his daughter's mother in 2019. Soboyise's ability to provide for his children is limited by his incarceration.

[6] Soboyise was last employed in a factory making socks in 2018. He had since and up to the time of his arrest, sold meat, fish and alcohol at home. He lived with his mother, sister and cousins. Soboyise has a previous conviction for attempted murder. He was sentenced on 15 February 2021 to five years imprisonment and declared unfit to possess a firearm. He began serving the sentence while in custody for committing the crimes relating to this case.

[7] Soboyise's Counsel summarised his personal circumstances as being ones of childhood poverty, instability, the lack of a stable father figure, and loss of close relatives, i.e., his grandmother, stepfathers and mother. Despite the adversity, he managed to complete his grade 12 schooling and ran a home business. No evidence was led regarding organised gang involvement. He is a father of two children and has been in custody since 2019 to 2021 when he began

¹ Soboyise testified during the trial that he matriculated in 2013

his period of incarceration for his previous sentence. Counsel asserts that these factors viewed cumulatively, are significant.

[8] Golela is 39 years old. He left school in grade 9. He is a grade A certified security officer. Golela worked as a mobile security supervisor at the time of his arrest. He was a lawful licensed firearm owner. He is one of nine children and has five of his own. He is married and was the family breadwinner, contributing to his wife, girlfriend, children and parents. His children range in ages from 7 to 16. He lived in an informal settlement of Polar Park in Phillippi prior to his incarceration. He earned a basic salary of R8500 per month. Golela also owned a taxi to generate additional income. Golela is a first offender.

[9] Golela has been in custody since 27 November 2019, a period of six years and five months. He did not resist arrest. Golela is the child of Lahliwe Golela and her third partner. Golela was raised in Welkom, moved to the Eastern Cape, and finally settled in Cape Town. Golela's mother died in 1999. He does not know his biological father or his paternal side of the family. Golela was diagnosed with diabetes mellitus and is on treatment for the condition. He has not joined any of the prison gangs. His sister, Lindeka was unaware of Golela's criminal activities or acts of violence.

EVALUATION

[10] The judgment has thus far focused on Soboyise and Golela, both having been convicted on eight of the fourteen charges preferred against them. Sentencing is a balancing act between the aggravating factors placed on one end of a scale and the mitigating factors on the other. The more the scale tips towards the aggravating factors, the harsher the sentence should be, or the lesser should be the inclination to deviate from a prescribed minimum sentence. The more the scale tips toward the mitigating factors, the milder a sentence should be, or the

greater the inclination to interfere and deviate from a prescribed minimum sentence. Where the analysis leaves the scale equipoised, the Court should exercise its discretion and impose a sentence that considers the quartet of factors, namely the crime, the convicted person, the community, and the consequences for the victims, with the requisite mercy the peculiar circumstances require. Where a minimum sentence applies, it should be imposed.²

[11] Both accused placed their personal circumstances before the Court. These circumstances have been carefully considered. They reflect difficult upbringings, family responsibilities, and periods of pre-trial incarceration. However, these factors are neither unusual nor sufficiently weighty to justify a departure from the legislatively prescribed sentences. The crimes were planned, violent, and executed with complete disregard for human life. The community is entitled to protection from such conduct. The absence of remorse from both accused further diminishes the weight to be attached to their personal circumstances. The Court may depart from these sentences only where the circumstances are truly convincing, weighty, exceptional in nature, and such that the imposition of the prescribed sentence would be disproportionate to the offender, the offence, the consequences for the victims, and the legitimate interests of society.³

[12] The personal circumstances of Accused 1, even when viewed cumulatively, do not come close to constituting substantial and compelling circumstances. They are neither unusual nor weighty enough to justify a departure from the prescribed sentences. His previous conviction for attempted murder, the extreme violence of the present offences, and his complete lack of remorse all point in the opposite direction. These circumstances have been weighed carefully. They reflect hardship, but they are not unusual in the context of sentencing in this

² *C.W v S* (Appeal) (A301/2024) [2025] ZAWCHC 198 (13 May 2025), at para 34

³ *S v Malgas* 2001 (1) SACR 469 (SCA) at 473 G, *S v PB* 2011 (1) SACR 448 (SCA) at paras 9-10, *S v Abrahams* 2002 (1) SACR 116 (SCA) at para 25

jurisdiction. They do not diminish his moral blameworthiness for the present offences. He was a mature adult at the time of the crimes. His previous conviction for attempted murder is aggravating, demonstrating a propensity for serious violence. Accused 1 has shown no remorse. He maintained his innocence throughout the trial and sentencing proceedings. The absence of remorse is not an aggravating factor in itself, but it limits the weight that can be attached to rehabilitation and to the personal circumstances advanced on his behalf.

[13] While Accused 2 presents as a first offender with stable employment and family responsibilities, these factors cannot outweigh the enormity of the crimes he committed. Accused 2's personal circumstances reflect stability, employment, and family responsibilities. Ordinarily, these factors would carry weight. However, they must be assessed against the gravity and multiplicity of the offences: three murders, and four-armed robberies. Accused 2 suffers from diabetes mellitus, for which he receives treatment. He was a lawful firearm owner. His sister was unaware of any criminal conduct on his part. There is no evidence of gang involvement. His personal circumstances, even cumulatively, do not constitute substantial and compelling circumstances.

[14] In considering both convictees, the Court cannot escape the conclusion that the murders were cold-blooded, the robberies were violent, and the use of a prohibited firearm aggravates the matter further. Both Accused maintained their innocence despite overwhelming and compelling evidence to the contrary and expressed no remorse. This limits the weight that can be attached to rehabilitation. The aggravating factors evident from the trial in this matter far outweigh the mitigating factors.

[15] In balancing a sentence, the constitutional imperative demands that the impact of crime on the victims is not brushed off lightly in the sentencing regime.⁴ A Court in this division recently asked whether the time is not ripe to replace the triad⁵ with a quartet of factors: the crime, the criminal or convicted person, the community, and the consequences, the latter being the consequences for the victim, both directly and indirectly. As an *aide-memoire*, the four Cs are those that a Court must consider and apply in unison without emphasising one over the other.⁶

[16] What would be the object of elevating the consequences for the victim on par with the traditional triad of factors? There are multiple reasons why a quartet of factors should replace the triad. Courts have, for some time, considered the impact of crime on the victims. Courts and society have agitated for the elevation of the plight of victims to place the consequences of crime on them on par with the triad of factors.⁷ The latter is neither new nor novel. The consideration of the consequences for the victims of crime is essential to analyse the complete ambit of substantial and compelling factors in cases that warrant the imposition of a prescribed minimum sentence regime.⁸

[17] The purpose of formalising the consequences to the victim as a factor that a sentencing Court should consider is multifold. It would emphasise the principle of restorative justice and the need for sentencing to reflect the full impact of the crime and incorporate the victim's voice in the sentencing process. It would recognise the spectrum of harm a crime causes, including the physical,

⁴ *S v Isaacs* 2002 (1) SACR 176 (C) at 178 B-C, suggested that the triad is incomplete because it leaves the victim out of the equation.

⁵ *S v Zinn* 1969 (2) SA 537 (A), at 540G

⁶ *C.W v S* supra, at para 39

⁷ *C.W v S* supra at para 39

⁸ Van der Merwe & Mitchell 'The use of impact statements, minimum sentences and victims' privacy interests: a therapeutic exploration' 2020 De Jure Law Journal 1-18 <http://dx.doi.org/10.17159/2225-7160/2020/v53a>. In 2010, VIS was statutorily introduced in cases involving child offenders. The Service Charter for Victims of Crime in South Africa (2007) also highlights the victim's right to provide information to the sentencing court.

psychological, social, and financial consequences the victim suffers. It engenders public confidence and reinforces public trust in the justice system.⁹

[18] The victims affected in this case, regrettably, did not get the exposure they deserved in the sentencing procedure. The father's grief as he recalled the death of his two sons during the trial, has left an indelible mark. There was no family member to narrate the grief felt by the police officer who was murdered for his cellphone. The two cashiers at the liquor store robbery still bear the immense fear and anxiety they felt even though over six years has elapsed since the incident. The security guard had to leave his job temporarily as he experienced extreme emotions and avoided contact with other people. This case emphasises the absence of sufficient information relating to the consequences for the victims and their families.

[19] The crimes for which Soboyise and Golela have been convicted of are rampant in a country battling to keep afloat under the weight of criminality. The poorer communities, as this case has once again exposed, are the hardest hit and are reeling from the level of lawlessness that has woven its clutches into the fabric of everyday existence. The crimes were committed with callous disregard for human life. The community is entitled to protection from such conduct. The interests of society weigh heavily in favour of the prescribed sentences.

[20] The Court then turns to consider the four purposes of sentencing, namely retribution, prevention, rehabilitation and deterrence.¹⁰ They guide a Court in determining an appropriate sentence. The principles underlying retribution, rehabilitation, prevention, and deterrence preclude leniency in this case. Serious crimes usually require retribution and deterrence to be effective, and

⁹ Guide to Victim Impact Statements, Child Witness Institute, <https://lawlibrary.org.za/akn/za/doc/guide/2022-11-16/guide-to-victim-impact-statements/eng@2022-11-16>

¹⁰ *S v Rabie* 1975 (4) SA 855 (A) at 862 A-C

rehabilitation of the offender consequently plays a relatively smaller role.¹¹ Soboyise and Golela committed serious offences, and they show no remorse for their actions. They chose not to testify in mitigation of sentence, demanding instead probation officer's reports that are not peremptory in the case of adult offenders. That was regrettably misconceived.

[21] The probation officers report on Soboyise stated that he presents a high criminogenic risk profile, characterised by a pattern of violent offending, a lack of accountability, and limited prospects of rehabilitation. His continued denial of responsibility and the absence of remorse indicates poor insight into his behaviour and reduces the likelihood of meaningful behavioural changes at this stage. The probation officer's report on Golela states that he has not accepted responsibility for the offences even though he understands that the offences are serious and have consequences. Counsel for Golela tried to persuade the Court that none of the ballistics evidence implicated his licensed firearm. In the absence of direct evidence from Golela, the Court cannot speculate on the extent of his involvement especially when he identified himself with a common purpose in the robberies, murders, and possession of a prohibited firearm.

[22] The factors presented by Counsel for the defence do not amount to substantial and compelling circumstances, either singularly or cumulatively, that would justify this Court's departure from imposing the statutorily prescribed minimum sentences for the offences of which Soboyise and Golela have been found guilty. The Court has considered that Soboyise and Golela have been incarcerated for over six years, their harsh upbringing in poverty-stricken circumstances, their efforts to be gainfully employed and to provide for their respective families and the ages of their children where applicable. Yet their inability to accept responsibility and conjure defences that were unsustainable

¹¹ *S v Swart*, 2004, vol 2, SACR, page 370, SCA at para 12

weigh heavily against any leniency. The Court is mindful that mercy remains an integral component of the sentencing discretion. Mercy, properly understood, is not an act of misplaced leniency but a recognition that punishment must remain humane and proportionate. It operates within the bounds of the Court's ordinary discretion and does not permit a departure from legislatively prescribed minimum sentences.

[23] In respect of the contravention of the Firearms Control Act, the Legislature has prescribed a maximum penalty of 25 years' imprisonment. The Court therefore retains its full discretion to impose a proportionate sentence. In exercising that discretion, the Court takes into account the protracted period of pre-trial incarceration and the personal circumstances relevant to this count.¹² These factors, viewed through the lens of mercy and proportionality, justify a sentence below the statutory maximum. This conclusion does not dilute the seriousness of the offence, nor does it affect the mandatory sentences applicable to the murder and robbery counts.

[24] Both convictees have been in custody for a protracted period of approximately six years and five months awaiting the finalisation of this matter. This period of incarceration, although not determinative, must be accorded meaningful weight in assessing a proportionate sentence on this count. When this factor is considered together with the personal circumstances relevant to this offence alone, the Court is satisfied that the imposition of the maximum sentence of 25 years' imprisonment would be disproportionate. The reduction of the sentence on this count does not constitute a deviation from any prescribed minimum, nor does it dilute the gravity of the offence or the need for deterrence. It reflects the Court's ordinary sentencing discretion in respect of an offence for

¹² The Court considered the cases of *S v Radebe* 2013 (2) SACR 161 (SCA), *Kwa Zulu Natal v Ngcobo & Others* 2009 (2) SACR 361 (SCA), *S v Solomons and Others* [2020] ZAWCHC 116 at para 26, *S v Brophy* 2007 (2) SACR 56 (W) at 57 B-C before penning this paragraph of the judgment.

which the Legislature has prescribed only an upper limit. In the premises, a just and proportionate sentence on this count will be imposed.

SECTION 159 OF THE CPA

[25] Before reading the order on sentence, the Court is required to address the position of Mr Golela, who was absent on 24 April 2026 when the matter was set down for the delivery of judgment on sentence. The explanation tendered on that date was that he was unwell. The Court accepted that explanation and granted a postponement to 30 April 2026. The Court therefore issued a directive on 24 April 2026 that the matter would proceed on 30 April 2026, in order to ensure finality and to manage the process efficiently.

[26] Section 159 of the Criminal Procedure Act 51 of 1977 governs the circumstances in which criminal proceedings may continue in the absence of an accused person. Section 159(1) concerns situations where the conduct of an accused renders the continuation of proceedings impracticable. That provision does not arise on the facts of this matter. Section 159(2) applies where two or more accused appear jointly at criminal proceedings. Section 159(2)(a) deals with an accused who applies for leave to be absent. Section 159(2)(b) applies where an accused is absent without the leave of the Court. In both instances, the Court may authorise the absence of the accused and direct that the proceedings continue in his absence if it is of the opinion that the proceedings cannot be postponed without undue prejudice, embarrassment, or inconvenience to the prosecution, any co-accused, or any witness in attendance or subpoenaed to attend.

[27] Section 159(3) empowers the Court to order a separation of trials where appropriate. That provision is not apt in the present circumstances. The trial has been conducted jointly from inception, the accused were convicted jointly, and the sentencing proceedings have been completed in respect of both accused. No

further evidence was to be led. What remained was the delivery of judgment on sentence.

[28] The statutory framework does not expressly contemplate the precise situation that had arisen here: a joint trial in which both accused were present throughout, all evidence had been led, argument had been presented, and only the delivery of judgment on sentence remained, but one accused was absent due to illness. A court faced with a similar situation must therefore apply s 159 purposively and in a manner consistent with the fair-trial rights of both accused and the need to ensure the proper administration of justice. The extensive history of delays in this matter, the fact that all evidence had been led, that both accused had closed their cases on sentence, and that argument had been presented, would have been relevant considerations in assessing prejudice. The presence of legal representation for Accused 2 would have also been material, as Counsel is able to receive the judgment on behalf of an absent accused. The presence of Mr Golela in Court today obviated the need for the Court to consider or apply the provisions of section 159 of the Criminal Procedure Act.

ORDER

[29] In the circumstances, the Court makes the following order that is to be read in conjunction with the amended indictment and this Court's judgment on conviction:

[30] **Count 1:** Robbery with aggravating circumstances under section 1 of the Criminal Procedure Act 51 of 1977 and 51(2) of the Criminal Law Amendment Act 105 of 1997 and part II of Schedule 2: **Both Accused: 15 years.**

[31] **Count 2:** Robbery with aggravating circumstances section 1 of the Criminal Procedure Act 51 of 1977 and 51(2) of the Criminal Law Amendment Act 105 of 1997 and part II of Schedule 2: **Both Accused: 15 years.**

[32] **Count 3:** Robbery with aggravating circumstances. Section 1 of the Criminal Procedure Act 51 of 1977 and 51(2) of the Criminal Law Amendment Act 105 of 1997 and part II of Schedule 2 : **Both Accused: 15 years.**

[33] **Count 4:** Murder section 1 of Act 51 of 1977 and section 51(1) of Act 105 of 1997 and part I of Schedule 2: **Both Accused: life imprisonment.**

[34] **Count 5:** Murder section 1 of Act 51 of 1977 and section 51(1) of Act 105 of 1997 and part I of Schedule 2: **Both Accused: Life imprisonment.**

[35] **Count 6:** Robbery with aggravating circumstances section 1 of the Criminal Procedure Act 51 of 1977 and 51(2) of the Criminal Law Amendment Act 105 of 1997 and part II of Schedule 2: **Both Accused: Fifteen years.**

[36] **Count 7:** Murder section 1 of Act 51 of 1977 and section 51(1) of Act 105 of 1997 and part I of Schedule 2: **Both Accused: Life imprisonment.**

[37] **Count 13:** Contravention of the Firearms Control Act 60 of 2000 Sections 4(1)(f)(iv) read with sections 1,17,19,20,103,117,120, (1)(a), 121 and Schedule 4, of the Firearms Control Act 60 of 2000 and section 250 of Act 51 of 1977: **Both Accused: Fifteen years.**

[38] As sentences of life imprisonment have been imposed on counts 4, 5, and 7, the sentences automatically run concurrently.

[39] In terms of section 103(1) of the Firearms Control Act 60 of 2000, Mr Soboyise and Mr Golela are declared unfit to possess a firearm, and the Registrar of Firearms is to be notified accordingly.

◀ [REDACTED]

BHOOPCHAND AJ

Acting judge

High Court

Western Cape Division

Judgment was handed down on Thursday 30 April 2026

State Prosecutor: Advocate Rudolph
Accused 1 represented by Advocate Vundla
Accused 2 represented by Advocate Kunju