

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

Case Number: A10/25

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: YES
20 May 2026	
DATE	SIGNATURE

In the matter between:

SIYABONGA WENI

Appellant

and

THE STATE

Respondent

JUDGMENT

JANSE VAN NIUWENHUIZEN J

Introduction

- [1] The appellant was convicted on one count of robbery with aggravated circumstances and sentenced to 15 years imprisonment in the Regional Court for the district of Merafong City held at Fochville.
- [2] The appeal lies against the conviction and sentence.

Facts

- [3] On 13 August 2022 at approximately 20:00, Xolile Chachu and his friend, Tshiamo, were on their way home from a shop when they were accosted by Mercy. Xolile explained that he knows Mercy as they both live in the same township. On a question whether he would be able to identify Mercy, Xolile pointed to the appellant and identified him as Mercy. Xolile further explained that they were approximately 12 to 15 metres from the shop when Mercy accosted them and that he had no trouble in recognising Mercy, because the shop was illuminated by a bright white light.
- [4] The appellant asked Xolile what the time was, and after Xolile consulted his phone, he told the appellant the time as requested. The appellant said that he wanted to see for himself, and Xolile showed the appellant the time on his phone. Whilst Xolile was in the process of returning the phone to his pocket, the appellant grabbed his phone.
- [5] Upon being asked by Xolile what he was doing, the appellant produced a knife, and Xolile decided to keep quiet. The appellant left the scene, and Xolile and Tshiamo returned home. Xolile informed his parents of what had happened, and his parents called the police.
- [6] Xolile testified that he did not get his phone back, but that the appellant's mother bought him another phone.
- [7] During cross-examination, Xolile was referred to the statement he made to the police, and it was pointed out to him that he merely stated that a "a black male" approached him. He did not mention the appellant's name. Xolile responded that

he did mention the appellant's name to the police, but also agreed that if he did, it would have been in the statement.

- [8] It was put to Xolile that the appellant denies that he was the person who robbed him and that he will testify that he was at his parental home on the evening of the robbery.
- [9] Tshiamo testified next, and, aside from the exact time when the appellant produced the knife during the incident, his evidence largely confirmed that of Xolile.
- [10] The appellant testified in his own defence. He testified that he arrived home on 13 August 2022 at 18:00 and went to his bedroom. His mother and younger brother were also at home. He remained at home until the following day, when the police arrested him. The police did not find Xolile's cell phone in his possession.
- [11] The police advised him to replace Xolile's cell phone to make things easier for him. He informed his parents of the advice, and his mother bought a cell phone for Xolile. Thereafter, Xolile's parents endeavoured to withdraw the charge against him, without success.
- [12] During cross-examination, the appellant explained that his family is afraid to testify and, as a result, he has no witnesses to corroborate his account that he was at home on the night of the incident.
- [13] The appellant further testified that he does not know Xolile and Tshiamo and denied that he robbed Xolile of his cell phone.

Conviction

Issue in dispute

- [14] The only issue in dispute is the identity of the person who robbed Xolile. The appellant submitted that there were material contradictions in the testimony of the two state witnesses and that the court erred in relying on their evidence to convict the appellant.

Judgment

- [15] The court *a quo* was acutely aware of the contradictions between the evidence of Xolile and Tshiamo in respect of when exactly the knife was produced during the incident. The court *a quo* also considered the contradictions between their versions in court and the statements they deposed to shortly after the event. Having analysed the evidence of Xolile and Tshiamo and having had regard to applicable case law, the court came to the following conclusion:

"Both testified from their vantage points and although they varied their evidence slightly, there are no glaring inconsistencies as to the testimony of the taking and the use of violence."

- [16] Having accepted the evidence of Xolile and Tshiamo, the court *a quo* considered the appellant's alibi defence and, in having regard to the evidence in its totality, rejected the defence.

Discussion

- [17] Both Xolile and Tshiamo had ample time to observe the appellant. The appellant was close to them, and the lighting provided by the shop adequately illuminated the area where the incident occurred. It is, furthermore, telling that Xolile took his parents and the police directly to the appellant's parental home. If Xolile did not know the appellant, he would surely not have known where the appellant resided.
- [18] In the result, I am of the view that the court *a quo* was correct in relying on the evidence of the two state witnesses to convict the appellant.

Sentence

- [19] In terms of section 51(2)(a)(i) of the Criminal Law Amendment Act, 105 of 1997, a minimum sentence of 15 years imprisonment is prescribed for the crime the appellant was convicted of. Section 51(3) provides that a court may impose a lesser sentence if the court is satisfied that substantial and compelling circumstances exist which justify the imposition of a lesser sentence.

- [20] In *casu* the court was not satisfied that such circumstances existed and imposed the prescribed minimum sentence of 15 years on the appellant. The appellant submitted that the sentence imposed by the court *a quo* was shockingly harsh and induced a sense of shock. According to the appellant, his personal circumstances, coupled with the time he spent in custody prior to his conviction, establish substantial and compelling circumstances that justify a deviation from the prescribed minimum sentence.

Test on appeal

- [21] It is trite that a court of appeal's power to interfere with the sentence imposed by the court *a quo* is circumscribed. The principle was succinctly summarised by the Constitutional Court in *S v Bogaards* 2013 (1) SACR 1 (CC) at [41]:

"[41] Ordinarily, sentencing is within the discretion of the trial court. An appellate court's power to interfere with sentences imposed by courts below is circumscribed. It can only do so where there has been an irregularity that results in a failure of justice; the court below misdirected itself to such an extent that its decision on sentence is vitiated; or the sentence is so disproportionate or shocking that no reasonable court could have imposed it. ..."

Facts and discussion

- [22] The appellant's personal circumstances are:

- 22.1 he was 25 years old;
- 22.2 he was single and resided with his parents and siblings;
- 22.3 he passed grade 7; and
- 22.4 he was in custody serving a sentence.

- [23] The appellant, furthermore, submitted that Xolile did not suffer any injuries, which factor coupled with the appellant's personal circumstances, justified a lesser sentence of not more than 10 years' imprisonment.

[24] In order for this court to interfere with the imposed minimum sentence, the court needs to find that the sentence of 15 years imposed by the court *a quo* is so disproportionate or shocking that no reasonable court could have imposed it. ..."

[25] It could hardly be said that the imposition of a prescribed minimum sentence is shockingly disproportionate. The court *a quo* was bound by legislation to impose the sentence.

[26] In the result, the court *a quo* did not err, but complied with the legislative imperative in sentencing the appellant.

Order

I propose the following order:

The appeal against conviction and sentence is dismissed.

N JANSE VAN NIEUWENHUIZEN

JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

I agree.

M LENYAI

JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

It is so ordered.

Date of hearing: 16 April 2026

Date delivered: 20 May 2026

For the Appellant: Adv S Moeng

Instructed by : Pretoria Justice Centre

For Respondent : Adv Mafunisa

Instructed by: Director of Public Prosecutions, Pretoria