

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, PRETORIA

(1) REPORTABLE: YES / NO

(2) OF INTEREST TO OTHER JUDGES: YES / NO

DATE

14/5/2026

SIGNATURE

[Redacted Signature]

CASE NO: A123/2025

In the matter between:

ALBERTO HLATCHWAYO

APPELLANT

And

THE STATE

RESPONDENT

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JUDGMENT: CRIMINAL APPEAL

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Coram: Holland-Muter J and Matjele AJ

## **MATJELE AJ:**

### **INTRODUCTION:**

1. The Appellant was charged and convicted in the Regional Division of Gauteng held at Fochville with one count of Robbery with aggravating circumstances read with section 51(2) of Act 105 of 1997.
2. On the 14 May 2024 the appellant was legally represented throughout the trial in the court a quo. He pleaded guilty on the count of robbery with aggravating circumstances as charged, and was accordingly convicted.
3. In terms of his plea, he was with four friends and that they drank alcohol during the day. In the evening they drove back from Potchefstroom and stopped at an Engen Garage on the N12 in Fochville. One of the five men remained in the car while the other four went into the garage's shop. Two of the men were armed with firearms. The agreement was that the men with firearms would point the employees while the appellant and another robber removed money and cigarettes from the shelf. All happened as planned.
4. The appellant had several previous convictions, viz:
  - a. 31 August 1994, Theft, sentenced to 4 years imprisonment;
  - b. 10 July 1995, Theft committed on 21 April 1995, sentenced 4 years imprisonment;
  - c. 31 August 2002, trespass sentenced to 3 months imprisonment; Theft sentenced to 3 years imprisonment, 2 years of which was suspended for 5

years; and possession of gold sentenced to 2 years imprisonment, and gold to be forfeited to Harmony Gold mine; and

d. 13 January 2010, Robbery, sentenced to 17 years imprisonment, and declared unfit to possess a firearm per s.103 of Act 60 of 2000.

5. He was therefore sentenced to 20 years imprisonment, and declared unfit to possess a firearm in terms of section 103(1) of Act 60 of 2000 for this robbery with aggravating circumstances.

#### AD SENTENCE:

6. The appellant now appeals against his sentence only, and application for Leave to Appeal against the sentence was granted on 12 November 2024.

7. It is argued on behalf of the Appellant that the court 'a quo' did not consider his personal circumstances that at the time of sentence, the Appellant was 53 years old, not married, but having a partner; having three minor children and three adult dependants; had passed grade seven at school; and was not employed, but did informal work when available. It was further argued that he showed remorse by pleading guilty, and that his previous convictions were old.

8. Case law relied upon by the applicant emphasised the need for proportionality<sup>1</sup> in sentencing, arguing that the court 'a quo' emphasised only the interests of society and deterrence purposes of sentencing.

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<sup>1</sup> S v SMM 2013 (2) SACR 292 (SCA para 13; S v Makwanyane 1995 (3) SA 391 (CC) paragraph [94]; S v Vilakazi 2009 (1) SACR 552 (SCA) par [15]; and S v Dodo 2001(3) SA 382 (CC) paragraph [37].

9. It is the respondent's submissions, on the other hand, that the sentence imposed is not shockingly inappropriate in the light of the prevalence of the offence; the appellant's several previous convictions of robbery and theft, all similar in nature to the present offence; that the appellant was not deterred by his previous sentences, with his criminal actions having seemingly increased in severity with the present premeditated robbery of the victims at gun point, among others. His plea of guilty, which was almost two years later, the respondent argues was necessitated by the strong case against the Appellant, and not remorse.

10. The essential inquiry in an appeal against sentence is not whether the sentence was right or wrong, but whether the sentencing court exercised its discretion properly and judicially. It is trite that sentencing is a judicious exercise which lies exclusively with the discretion of a sentencing court. In *S v Mokela*<sup>2</sup> it was held that sentencing remains pre-eminently within the discretion of the sentencing court, and the appeal court does not enjoy the privilege to interfere with the sentence which has been properly imposed by a sentencing court.

11. The appeal court will only interfere with the sentence of the trial court if the imposed sentence induces a sense of shock or manifestly inappropriate.

12. *S v Malgas*<sup>3</sup> sets out clear guidelines on the consideration of the minimum sentence provisions (as the Act is often referred to) in cases where they apply. It

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<sup>2</sup> 2012 (2) SACR 431 (SCA), at 435f

<sup>3</sup> *S v Malgas* 2001 (1) SACR 469 (SCA).

is however unfortunate that it has often been said that courts tend to pay little more than lip service to these guidelines.<sup>4</sup> Ponnann JA states as follows in *S v Matyityi*,<sup>5</sup> a view I fully align myself with that Courts are obliged to impose prescribed sentences unless there are truly convincing reasons for departing from them, and not subvert the will of the legislature by resort to vague, ill-defined concepts such as “relative youthfulness” or other equally vague and ill-founded hypotheses.

13. I agree with the Court ‘a quo’ that there are no substantial and compelling circumstances that justify a departure from imposing the prescribed minimum sentence. In light of the last previous conviction of robbery in 2010, albeit committed not with aggravating circumstances, he was sentenced to 17 years imprisonment, which sentence he was still serving, and in all probabilities on parole when he committed the present offence. There is no justification for deviating from the imposed prescribed 20 years imprisonment minimum sentence prescribed for a second offender.

14. There is therefore no basis for interfering with the sentence imposed on the appellant.

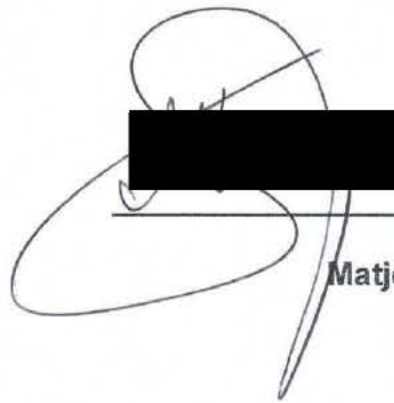
15. In the premises I make the following order:

- a) The appeal against sentence is dismissed.

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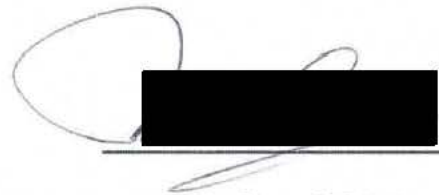
<sup>4</sup> See *S v Dodo* 2001 (1) SACR 594 (CC) at 602-603; *S v Blignaut* 2008 (1) SACR 78 (SCA) para 3 and *S v Nkunkuma & others* 2014 (2) SACR 168 (SCA) paras 9 and 10.

<sup>5</sup> *S v Matyityi* 2011 (1) SACR 40 (SCA), para 23.



Matjele AJ

I agree



Holland-Muter J

**Heads of argument prepared by:**

On behalf of the applicant: Adv. Leana Augustyn

Instructed by: Legal Aid Board

On behalf of the respondent: Adv. A Coetzee

Instructed by: DPP PRETORIA

Date of hearing: 13<sup>th</sup> May 2026

Date of judgment: 14<sup>th</sup> May 2026