

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

**CASE NO.: CA&R192/2015**

In the matter between:

**QUINN LEEROY CAPOTO**

**Appellant**

And

**THE STATE**

**Respondent**

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**JUDGMENT**

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**BESHE, J:**

[1] The appellant was charged with robbery with aggravating circumstances read with *Section 51(2) of the Criminal Law Amendment Act 105 of 1997* (the Act), in the Regional Court, Port Elizabeth. Having pleaded guilty to the charge he was accordingly sentenced to fifteen (15) years imprisonment. He is now appealing against the sentence imposed with leave to do so having been granted by this court.

[2] The appeal is premised on the basis that the sentence imposed by the regional magistrate is unjust and disproportionate to the appellant's personal circumstances, the seriousness of the offence and the interest of the society.

[3] Fifteen years imprisonment is the minimum sentence that is prescribed by *Section 51 (2)* of the Act for robbery with aggravating circumstances. The imposition of the prescribed sentence could only be

deviated from had the court *a quo* been satisfied that substantial and compelling circumstances existed. None were found to exist by the court *a quo*.

[4] The circumstances under which the robbery was committed, as they appear from appellant's statement in terms of *Section 112 (2) of the Criminal Procedure Act 51 of 1977* are the following:

On the 24 November 2014, the appellant together with a friend accosted the complainant, a **Mr Moore**, who was walking on one of the streets in Korsten Port Elizabeth. This was after appellant's friend had suggested that they should rob the complainant. Upon reaching the complainant appellant's friend told him to hand over his cellular phone and threatened to shoot him. Appellant threatened that he would stab the complainant if he did not do as he was told. The complainant complied by handing over his blackberry cellular phone valued at approximately R1000.00. Thereafter both the appellant and his friend fled. Appellant was however arrested, seemingly after being chased. The complainant's cellular phone was found in his possession and handed back to him. No weapons were produced or wielded by the appellant and his companion.

[5] Appellant stated that he was sorry for his actions in the *Section 112 (2)* statement.

[6] When the appellant was sentenced on the 20 February 2015, he was twenty (20) years old, unmarried, did not have any children and was unemployed. He was serving a two (2) year sentence having been sentenced for robbery ten days earlier on the 10 of February 2015. Prior to that, on the 28 August 2013, he was convicted of theft as well as assault. Both counts having been taken together for sentence, he was

sentenced to twelve (12) months imprisonment which was wholly suspended for five (5) years on condition that he was not convicted of theft and or assault committed during the period of suspension.

[7] The question to be decided is whether on the conspectus of the facts outlined above, the sentence imposed by the court *a quo* can be said to be disproportional to the crime, the appellant's personal circumstances and the needs of the society and therefore unjust.

[8] It was argued that the magistrate misdirected himself in finding that there were no substantial and compelling circumstances present. **Mr Geldenhuys** submitted on behalf of the appellant that the cumulative effect of the following factors amounted to substantial and compelling circumstances justifying a departure from the prescribed sentence:

The offence was committed on the spur of the moment; no weapons were wielded by the appellant and his companion; complainant's cellular phone was recovered; he expressed remorse.

[9] The other features of this case are that appellant was twenty (20) years old at the time of sentencing and that he pleaded guilty. In my view these factors cannot necessarily be regarded as mitigating factors. There is no evidence that he was immature for his age.<sup>1</sup> We do know however that the offence in question was committed a little over a year after he was convicted of assault and theft charges and with only thirteen (13) months of a five (5) year period of suspension having elapsed. The robbery in respect of which the appellant was convicted of ten (10) days before being sentenced in respect of this case was seemingly committed before the 20 November 2014 the date on which they robbed **Mr Moore**. This is

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<sup>1</sup> **S v Matyityi 2011 (1) SACR 40 para [14]**

so because he was arrested on the same day that they robbed **Mr Moore** and was held in custody whilst awaiting trial in this matter. Although that conviction is not strictly speaking a previous conviction, it shows that the appellant was progressing from committing less serious to more serious offences. Having started off with theft and assault, he progressed to common robbery and later robbery with aggravating circumstances. This is indicative of the appellant's disregard or lack of respect for others' rights to physical integrity and property.

[10] Appellant's plea of guilty, expression of regret for his actions and the recovery of complainant's cellular phone can hardly be said to be mitigating factors or signs of remorse on his part. Having apparently been arrested not long after the offence was committed with complainant's phone in his possession, it does not appear that he had any option but to plead guilty to the charge. The fact that the cellular phone was recovered was clearly not as a result of his benevolence, honesty or change of heart.

[11] *S v Malgas*<sup>2</sup> makes it plain that courts are to give effect to the intention of the legislature that the prescribed periods of imprisonment are to be taken to be ordinarily appropriate when crimes of a specific kind are committed. And that the prescribed sentences are not to be departed from lightly and for flimsy reasons.

[12] For the reasons stated above, it is my considered view that the court *a quo* cannot be faulted for finding that there were no substantial and compelling circumstances. I am therefore unable to find that the sentence imposed is disproportionate to the crime, the appellant's personal circumstances and the interests of the society and therefore unjust.

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<sup>2</sup> 2001 (1) SACR 469 SCA para [25]

**[13] In the circumstances I propose that the appeal be dismissed and the sentence imposed in the court *a quo* be confirmed.**

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**N G BESHE  
JUDGE OF THE HIGH COURT**

**ROBERSON J**

**I agree. It is so ordered.**

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**JM ROBERSON  
JUDGE OF THE HIGH COURT**

**APPEARANCES**

For the Appellant : ADV: DP Geldenhuys  
Instructed by : GRAHAMSTOWN JUSTICE CENTRE  
High Street  
GRAHAMSTOWN  
Ref.:  
Tel.: 046 – 622 9350

For the Respondent : ADV: S Hendricks  
Instructed by : DEPUTY DIRECTOR OF PUBLIC PROSECUTIONS  
94 High Street  
GRAHAMSTOWN  
Ref.: Ms Hendricks  
Tel.: 046 – 602 3000

Date Heard : 14 October 2015  
Date Reserved : 14 October 2015  
Date Delivered : 29 October 2015