

IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN

Case No.: A92/2015

In the matter of:

BHEKI MAHLANGU

Applicant

and

THE STATE

Respondent

CORAM:

NAIDOO, J *et* MOKOENA, AJ

JUDGEMENT:

MOKOENA, AJ

HEARD ON:

17 AUGUST 2015

DELIVERED ON:

20 AUGUST 2015

[1] This is an appeal against sentence only. The appellant was convicted in the Bloemfontein Regional Court on a charge of robbery with aggravating circumstances and sentenced to 10 (ten) years imprisonment. On 26 November 2012 the sentencing court granted him leave to appeal against such sentence.

[2] The appellant and his two companions robbed NWJ Jewellers situated in the Loch Logan Waterfront shopping mall in Bloemfontein on 27 May 2009 at 14h00. They entered the store and ordered the employees and

customers to lie down whereafter they robbed the shop of jewellery to the value of R175 272,00.

- [3] The employees pressed the panic buttons and the security guards arrived at the jewellery shop as the appellant was trying to leave the shop. He was then arrested with the result that all jewellery was recovered. The appellant's companions managed to escape.
- [4] The sole issue to be determined by this court is whether the ten year imprisonment imposed was such as to render the sentence unreasonably excessive. Counsel for the appellant argued that the ten year imprisonment is shockingly inappropriate in that:
 - (a) the appellant is a first offender;
 - (b) the appellant was 24 years old when he was sentenced;
 - (c) the shop did not suffer any loss due to the swift action of the security officers;
 - (d) the appellant has a child and had been in custody before he was released on bail.
- [5] Counsel for the appellant then submitted that in the circumstances, an eight year jail term should have been imposed.
- [6] The sentencing discretion lies primarily with the trial court. It is the duty of the trial court to determine which factors will

influence the sentence. See: **S v Kibido** 1998 (2) SACR 213 (SCA) at 216g-i.

[7] The appeal court will interfere with sentence where there is material misdirection from the trial court.

[8] In **S v Malgas** 2001 (1) SACR 469 (SCA) at 478f-g the following was said:

“However even in the absence of material misdirection, an appeal court may yet be justified in interfering with the sentence imposed by the trial court. It may do so when the disparity between the sentence of the trial court and the sentence which the appellate court would have imposed had it been the trial court is so marked that it can properly be described as “shocking”, “startlingly” or “disturbingly inappropriate”.”

[9] The following factors were considered as mitigating:

- (a) The appellant was a first offender;
- (b) He was 24 years when he committed the crime;
- (c) He spent time in custody whilst awaiting trial;
- (d) He has a minor child;
- (e) All the goods were recovered.

[10] In **S v Vilakazi** 2009 (1) SACR 552 at 574 para [58] Nugent JA remarked as follows regarding personal circumstances of an accused person:

“Once it becomes clear that the crime is deserving of a substantial period of imprisonment the questions whether the

accused is married or single, whether he has two children or three, whether or not he is in employment, are themselves largely immaterial to what that period should be, and those seem to me to be the kind of “flimsy” grounds that Malgas said should be avoided.”

- [11] The following factors were considered as aggravating:
- (a) the seriousness and prevalence of the offence;
 - (b) the interest of the community.
- [12] Robbery is undoubtedly one of the most terrible and cruel offences our society is grappling with. It induces an untold sense of fear in the victims. Although it appears that this robbery was not violent and that the goods have since been recovered, I am of the view that in sentencing the appellant, the court *a quo* considered all relevant factors and the provisions of the Criminal Law Amendment Act 105 of 1997. The trial court clearly considered that there were compelling and substantial factors justifying departure from imposing the minimum sentence of 15 years imprisonment. It endeavoured to strike a balance between the personal circumstances of the appellant and the society in arriving at an appropriate sentence.
- [13] I am also of the view that in *casu*, there does not exist a striking disparity between the sentence imposed by the court *a quo* and the sentence which this court would have imposed if it was sitting as a court of first instance.

[14] In the result, I find that the ten year imprisonment sentence is appropriate in the circumstances.

[15] I propose that the following order be made:

The appeal against sentence is dismissed. The sentence of the appellant is confirmed.

R. MOKOENA, AJ

I concur, and it is so ordered.

S. NAIDOO, J

On behalf of the appellant: Ms. S. Kruger
Instructed by:
Justice Centre
BLOEMFONTEIN

On behalf of the respondent: Adv. L. Zweni
Instructed by:
Director: Public Prosecutions
BLOEMFONTEIN