

THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN

Case No. A142/2015

In the matter between:

MOLAHLELI JOSEPH MORAKE

Appellant

and

THE STATE_

Respondent

CORAM: MOLEMELA JP *et* NAIDOO, J

JUDGMENT BY: NAIDOO,J

HEARD ON: 5 OCTOBER 2015

DELIVERED ON: 15 OCTOBER 2015

NAIDOO J

- [1] The appellant was charged in the Regional Court, Welkom with one count of Robbery with Aggravating Circumstances. He pleaded not guilty to the charge but was convicted as charged on 27 March 2015 and was sentenced to Fifteen (15) years' imprisonment, The appellant is before us on appeal against his sentence. The trial court refused his application to appeal against his

conviction and granted leave to appeal against sentence only. He petitioned the Judge President of this Division for leave to appeal against conviction but was unsuccessful in that application. Ms S Kruger appeared for the appellant and Mr FJ Pienaar appeared for the State in this court.

- [2] A brief summary of the facts in this matter is that on 21 February 2014, at about 19h45 in the evening, the complainant, was stopped by a person who turned out to be the appellant. The latter asked the complainant to give him a lift to Ventersburg, which the complainant agreed to do after they discussed that the complainant would drop the appellant off at the junction of Ventersburg and Hennenman. The complainant and the accused then stopped at a garage in Hennenman to buy airtime, where the complainant had the opportunity to observe the appellant as that garage was well lit. The appellant then requested the complainant to drop him off at another destination to the one originally agreed upon, which the complainant agreed to, for a fee. The appellant paid the complainant and the complainant proceeded to this place, being the junction between Virginia and Hennenman. When they arrived there the appellant again changed his mind and asked the complainant to drop him off near a farm called Kleinfontein, which the complainant again agreed to. When they arrived at this latter mentioned destination, the appellant refused to get out of the car, but instead attacked the complainant, dragged him out of the car and robbed the complainant, at knife point, of his motor vehicle and R450.00 in cash. The complainant sustained a cut on his hand while he was struggling with the appellant for the knife. He was also injured on his ribs during that scuffle.

- [3] The appellant appears to have had some problems with the car and enlisted the help of someone at a tavern to start the vehicle, which was done. The police arrived at the tavern and asked about the owner of the vehicle, after which the appellant drove off with the person who had repaired the vehicle. A high speed chase ensued, the appellant almost ran the police off the road, thereafter lost control of the vehicle and collided with a fence. He fled the scene but was subsequently arrested and pointed out by the complainant at the police station.
- [4] The appellant's version is that he was at a tavern when a person asked him to get someone to help to start a car outside the tavern. The police arrived and the person that asked him for help left with the police in that same car. He was later walking home when the police arrested him. He denied taking the complainant's vehicle or money. He said the complainant had falsely implicated him in this matter as a result of a quarrel they had over a woman, fourteen years prior to the incident in this matter. His version was rejected by the court, resulting in his conviction.
- [5] I turn now to deal with the issue of sentence. The grounds that the appellant relies on in his appeal are, firstly, that the trial court erred in finding that no compelling and substantial circumstances exist to justify it in deviating from imposing the prescribed minimum sentence and, secondly, that the sentence imposed is shockingly inappropriate, in that it was out of proportion to the accepted facts of the case and the personal circumstances of the appellant.

[6] The appellant's personal circumstances placed on record are that he is a forty (40) year old married man who has two children aged 12 years and 7 years. He resided, at the time of his arrest, with his wife, sister and two children in Ventersburg. He was self-employed and ran a tuck shop, supporting his family with his earnings from the tuck shop. His highest educational qualification is grade 11. The appellant is not a first offender, and I pause to note that the appellant has at least six previous convictions and was sentenced to varying periods of imprisonment in respect of each conviction. In this matter, he spent four months in custody awaiting trial from the date of his arrest, before the charge was withdrawn. The charge was reinstated in August 2014 and he spent another six months in custody until he was convicted in this matter in March 2015.

[7] It is generally accepted in our law that an appeal court should interfere with the sentence imposed by a trial court only if the trial court has misdirected itself in the imposition of sentence, resulting in a sentence which is so inappropriate that it induces a sense of shock. This principle was succinctly stated in the case of **Gregory Lex Blank v The State 1995(1) SACR 62 (A)**, where the court said:

"It has repeatedly been emphasized by this court that the imposition of sentence is pre-eminently a matter falling within the discretion of the trial judge and that a court of appeal can interfere only where

such discretion was not properly exercised. One of the ways in which it may be shown that a trial court's discretion was not properly exercised is by pointing to a misdirection in the court's reasons for sentence."

See **S v Pillay 1977 (4) SA 531 (A)** at p 535 E-F and **S v Rabie 1975 (4) SA 855 (A)**, which we were referred to by Mr Pienaar, the respondent's counsel. In the Rabie case, Holmes JA set out on page 857, the following guiding principles with regard to interference with a sentence on appeal:

- "1. In every appeal against sentence, whether imposed by a magistrate or a Judge, the Court hearing the appeal –
 - (a) should be guided by the principle that punishment is "pre-eminently a matter for the discretion of the trial Court"; and
 - (b) should be careful not to erode such discretion: hence the further principle that the sentence should only be altered if the discretion has not been "judicially and properly exercised".
2. The test under (b) is whether the sentence is vitiated by irregularity or misdirection or is disturbingly inappropriate."

This principle was also followed by Holmes JA in **S v Giannoulis 1975 (4) SA 867 (A)**.

- [8] The trial court balanced the personal circumstances of the appellant against the aggravating circumstances that it considered were present in this matter, namely, that the offence is very serious and that the interests of society demanded harsher sentences in such matters. It is apparent from the reasons for sentence that the trial court

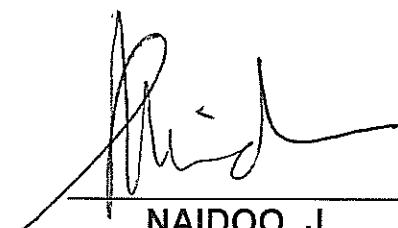
also took into account the fact that the appellant's previous convictions did little to deter or rehabilitate him. The court correctly pointed out that no sooner was he released from prison after serving a sentence, he would re-offend and go back to prison. His sentences ranged from four months to seven years' imprisonment. By way of example, on 22 April 2008 he was released on parole supervision until 5 November 2009. He committed another offence three months after his release on parole, for which he was sentenced to four years' imprisonment. The current offence appears to have been committed one year after he served the latter mentioned sentence.

[9] It is clear that the trial court thoroughly interrogated the mitigating as well as the aggravating factors relevant to this case. I cannot find that the court over-emphasised the aggravating factors or attached too little weight, to the personal circumstances of the appellant, as argued by Ms Kruger in her Heads of Argument. A sentencing court is required to perform a fine balancing act, in considering competing factors, to arrive at a just and appropriate sentence. In my view, the trial court in this matter properly balanced the seriousness of the offences, the interests of society and the interests of the appellant. I cannot find any misdirection on the part of the trial court which warrants the interference of this court in the sentences that it imposed.

[10] In the circumstances, the following order is made:

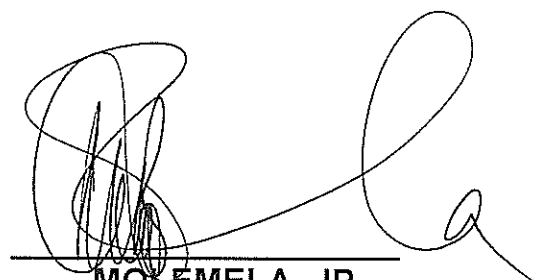
10.1 The appeal against sentence is dismissed.

10.2 The conviction and sentence of the appellant are confirmed.



NAIDOO, J

I agree



MOLEMELA, JP

On behalf of the Appellant:

Instructed by:

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On behalf of the Respondent:

Instructed by:

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The State

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