



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

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|------------------------------|--------|
| Reportable: | YES/NO |
| Of Interest to other Judges: | YES/NO |
| Circulate to Magistrates: | YES/NO |

Case No: A238/2017

In the matter between:

LEFU MERE

Appellant

and

THE STATE

Respondent

CORAM:

VAN ZYL, J *et* LOUBSER, J

JUDGMENT BY:

LOUBSER, J

HEARD ON:

12 FEBRUARY 2018

DELIVERED ON:

22 FEBRUARY 2018

[I] **INTRODUCTION:**

- [1] The appellant was convicted and sentenced in the Regional Court of Viljoenskroon on two counts of Robbery with Aggravating Circumstances and sentenced to 15 years imprisonment on each count, the sentences to be served concurrently. He was also declared unfit to possess a fire-arm in terms of the provisions of the **Firearms Control Act no 60 of 2000**. The appeal is against sentence only.

[II] **THE FACTS:**

- [2] On the evidence before him, the Regional Magistrate found that the Appellant has entered a certain shop around the evening in the company of three others, of whom two were his co-accused in the Court *a quo*. One of the co-accused was armed with a firearm, while the other co-accused and the Appellant himself carried knives. When the four of them entered the shop, another four men in their company waited outside the shop.
- [3] Inside the shop, the Appellant and his co-accused encountered the shopkeeper and a friend of his where they were in conversation. The Appellant then stabbed the friend twice on the forehead with the knife and they took his cell phone. They also

threatened the shopkeeper with the firearm and a knife and they robbed him of his cell phone as well. Thereafter they took some R2000 from the till on the counter and left. None of the stolen goods were ever retrieved.

[III] **SUBMISSIONS ADVANCED BY COUNSEL:**

[4] On behalf of the Appellant, it was submitted that the Court *a quo* under-emphasized the personal circumstances of the Appellant and therefore failed to exercise its discretion properly and judicially in arriving at the sentences imposed. It was further submitted that the Court *a quo* erred in finding that there were no substantial and compelling circumstances present in the Appellant's case, and the minimum sentences of 15 years imprisonment on each count were therefore uncalled for in the premises.

[5] The sentences imposed were supported by Counsel for the Respondent. He submitted that a Court should not deviate from the prescribed minimum sentences for reasons that are not substantial. Considerations of retribution, prevention and public interest would still call for a long term of imprisonment in the

present case even had substantial and compelling circumstances been found.

[IV] **DETERMINATION:**

[6] In terms of **Section 51 of Act 105 of 1997** the minimum sentence for Robbery with Aggravating Circumstances in the case of a first offender, is 15 years imprisonment. Here the Appellant is a first offender, and he was 20 years of age when he was sentenced. In terms of the Act, a lesser sentence than the minimum may be imposed if the Court is satisfied that substantial and compelling circumstances exist which justify the lesser sentence.

[7] In **S v Mahlangu and Others 2012(2) SACR 373 (GSJ) at 377h** it was stated that substantial and compelling circumstances means "truly convincing reasons". There must not be marginal differences in personal circumstances or degrees of involvement. At the end of the day, the ultimate cumulative impact of the circumstances must be such as to justify a departure. In **S v Abrahams 2002(1) SACR 1168 (SCA)** it was held that where factors of substance do not compel the conclusion that the application of a prescribed sentence would be unjust, that

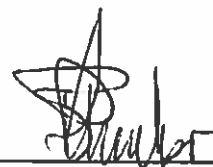
sentence has to be imposed. In addition hereto, it has already become trite that sentencing is pre-eminently the prerogative of the trial court, and that a court of appeal will only interfere with any sentence in limited circumstances.

(See: S v KHUMALO 1973(3) SA 697 (A) at 698 B-C, AND S v PIETERS 1987(3) SA 717 (A) at 728 B-C)

[8] In my view, the record of proceedings in the instant case clearly shows that the presiding Magistrate had considered all the relevant factors in determining whether substantial and compelling circumstances exist. The fact that the Appellant was only 20 years of age and that he was a first offender, was taken into account. On the other hand, the Magistrate was also aware that the Appellant had stabbed one of the victims in circumstances where the victims were not resisting, and that the robbery was clearly a pre-meditated event. The Magistrate had found correctly, in my view, that there were no substantial and compelling circumstances justifying a deviation from the prescribed minimum sentence.

[9] The following order is therefore made:

1. The appeal against sentence is dismissed.



P J LOUBSER, J

I concur:



C VAN ZYL, J