

**THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG**



CASE NUMBER: A190/2015

DATE OF HEARING: 3 DECEMBER 2015

DATE OF JUDGMENT: 11 DECEMBER 2015

In the matter between:

(1) REPORTABLE: YES / NO
(2) OF INTEREST TO OTHER JUDGES: YES/NO
(3) REVISED.

.....
DATE

.....
SIGNATURE

SIZIBA, THOKOZANI

Appellant

And

THE STATE

Respondent

CORAM: Avvakoumides AJ and Hundermark AJ

J U D G M E N T

AVVAKOUMIDES, AJ

- [1] The Appellant was charged with two counts of robbery with aggravating circumstances and one count of attempted murder. He was convicted of one charge of robbery with aggravating circumstances and sentenced to 18 years' imprisonment which is three years more than the prescribed minimum sentence. He had pleaded not guilty to the charges and was represented at the trial.
- [2] The appeal is aimed at a reduction of the sentence although the Appellant unsuccessfully applied for leave to appeal against his conviction as well, notwithstanding the overwhelming evidence against him, on a proper reading of the record. The Appellant submits that the fact that he is a first offender and that he was awaiting trial for seven months before sentencing, these factors ought to be taken as substantial and compelling reasons to deviate from the prescribed minimum sentence handed out by the trial court.
- [3] It is trite that a court of appeal, in the absence of misdirection of the trial court, cannot interfere with a sentence simply because the court of appeal itself would have handed down a different or lesser sentence. Furthermore, I am of the view that the trial court took all the relevant circumstances into account, particularly the personal circumstances of the Appellant and the brutal manner of the attack on the complainant. I am unable to find any misdirection on the part of the trial court and find that the trial court exercised its discretion properly and judicially on the facts before it.

[4] The sentence imposed is in accordance with the provisions of section 51 (2) of the Minimum Sentences Amendment Act 105 of 1977. The two factors submitted by the Appellant to be substantial and compelling reasons to deviate from the prescribed minimum sentence do not qualify as substantial and compelling reasons and accordingly I find that there is no reason to interfere with the sentence.

[5] In the premises the appeal is dismissed.

G. T. AVVAKOUMIDES

ACTING JUDGE OF THE HIGH COURT

GAUTENG LOCAL DIVISION, JOHANNESBURG

I agree:

P. R. HUNDERMARK

ACTING JUDGE OF THE HIGH COURT

GAUTENG LOCAL DIVISION, JOHANNESBURG

Representation for Appellant:

Counsel: A. H. Lerm

Instructed by: Legal Aid SA Johannesburg

Representation for the Respondent:

Counsel: T. P. Mpekana

Instructed by: Director of Public Prosecutions