

IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)
REPUBLIC OF SOUTH AFRICA



A622/15
CASE NO: A ~~662~~/2015

DELETE WHICHEVER IS NOT APPLICABLE

- (1) REPORTABLE: YES/NO
- (2) OF INTEREST TO OTHERS JUDGES: YES/NO
- (3) REVISED

17.11.2016

DATE

SIGNATURE

In the matter between:

NEO MOFOKENG

Appellant

and

THE STATE

Respondent

JUDGMENT

JANSE VAN NIEUWENHUIZEN J

- [1] The appellant pleaded guilty to one count of robbery and was convicted accordingly. A sentence of 12 years imprisonment was imposed by the court *a quo*.
- [2] The appeal is only against sentence.
- [3] Mr van As, counsel for the appellant, relying on the judgments in *S v Malgas* 2001 (1) SACR 469 SCA and *S v Pillay* 1977 (4) SACR 531 A, correctly referred to the principle applicable in considering an appropriate sentence on appeal, to wit: sentencing is pre-eminently a matter for the discretion of the trial court and a court of appeal will only interfere if the trial court materially misdirected itself or where the sentence imposed is shockingly inappropriate.
- [4] The appellant pleaded guilty to the robbery of R 190, 00 cash and jewellery of an unknown value. In his plea explanation he stated that he came into contact with the complainant whilst looking for work. He accosted the complainant in her house and tied her hands with a charger cord in order to rob her of the items mentioned *supra*. The fact that the complainant was robbed in the sanctity of her home contributes to the serious nature of the crime.
- [5] The appellant is a 23 year old unemployed male. He is not married and has no children.
- [6] In imposing 12 years imprisonment, the court *a quo* placed a lot of emphasis on the fact that the appellant has two previous convictions, to wit: in 2008 he was convicted on a charge of housebreaking with the intent to steal and theft and sentenced to 4 years imprisonment wholly suspended for 5 years; in 2010 he was convicted on a similar charge and sentenced to 7 years imprisonment of which 2 years were suspended for 5 years, resulting in an effective sentence of 5 years imprisonment.

- [7] The appellant was released on parole on 23 October 2012 and committed the present offence on 16 July 2013.
- [8] The court *a quo* found that the previous sentences did not deter the appellant and taking all the other relevant factors into account imposed the 12 years imprisonment sentence.
- [9] Although the appellant has two previous sentences, his youth, the fact that the complainant was not injured, the fact that the appellant pleaded guilty and the relative small value of the stolen items, renders the sentence imposed by the court *a quo*, in my view, shockingly inappropriate.
- [10] In such event, this court may interfere with the sentence and impose a sentence that is proportionate to the nature of the crime and the circumstances under which it was committed.

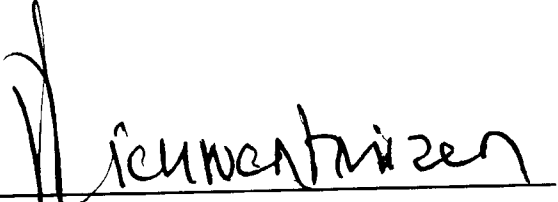
ORDER

In the premises, I propose the following order:


1. The appeal against sentence is upheld.
2. The sentence of 12 years imprisonment is set aside and substituted with the following sentence:

"The accused is sentenced to 8 years imprisonment. In terms of section 280 of the Criminal Procedure Act, 51 of 1977 the court orders that this sentence is to run concurrently with the sentence the accused is presently serving."

3. The sentence is ante-dated to 17 February 2014.


N JANSE VAN NIEUWENHUIZEN
JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

I agree.


N DAVIS
ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

It is so ordered.

APPEARANCES

Counsel for the Appellant: Advocate F Van As

Instructed by: Legal Aid South Africa

Counsel for the State: Advocate Jacobs

Instructed by: The State