

✓✓delivered 16/11/2017

IN THE HIGH COURT OF SOUTH AFRICA
NORTH GAUTENG DIVISION, PRETORIA

CASE NO. A668/2016

MAKOBA SIMON MONARE

APPELLANT

AND

THE STATE

RESPONDENT

JUDGEMENT

MOHLALA AJ (LOUW J concurring)

INTRODUCTION

1. The appellant in this matter was charged and convicted in the regional court, Schweizer Reneke on a charge of robbery with aggravating circumstances as a second accused, and was sentenced to 17 years imprisonment.
2. The court also ordered that 5 (five) years of the sentence imposed would run concurrently with the sentence that the Appellant was serving at the time on a count of rape.

3. The appeal is against sentence only.

THE APPELLANT'S SUBMISSIONS

PERSONAL CIRCUMSTANCES

4. It was submitted on behalf of the appellant that his personal circumstances were not taken fully into account when the sentence was imposed. It was submitted that the only personal factors considered were, firstly, that the appellant was 28 years old when he was sentenced; secondly, that he did not receive formal training, life skills and/or anger management, thirdly, that he is not married; and lastly, that he had two minor children aged 4 and 6 years.
5. It was therefore argued that further personal circumstances were not taken into account. The court simply took it that there are sufficient personal circumstances before it. It was contended that the court should have gone further and fully investigated other personal circumstance, such as by considering the probation officer's report and/or calling additional witnesses. In order to support his contention, reference was made to *Samuels v S* 2011(1) SACR 9 (SCA).
6. It was accordingly argued that the courts conduct amounted to a misdirection that has caused prejudice to the appellant, and as such the matter should be remitted to the court a quo for reconsideration of the sentence.

PREVIOUS CONVICTIONS – SENTENCE

7. The appellant had previous convictions in respect of which he had served one year of the 16 (sixteen) years sentence.
8. The court a quo ordered that five years of the sentence of 17 years on count of robbery should run concurrently with the previous sentence of 16 years. Effectively, this means that the appellant would serve a sentence of 27 years in prison. It was submitted that half of the sentence should have been ordered to run concurrently.

THE RESPONDENT'S SUBMISSIONS

9. The State argued with reference to *S v De Jager* 1965(2) SA 616 (A) and confirmed in the case of *S v Pieters* 1987(5) SA 717(A) that it is trite law that a court of appeal can only interfere when the following exists:
 - 9.1 the lower court fails to exercise its judicial discretion properly;
 - 9.2 the lower court misdirected itself or if there was a severe irregularity;
 - 9.3 the sentence is so severe that no reasonable court would have imposed it;
 - 9.4 the sentence is shockingly inappropriate;
 - 9.5 there is a striking disparity between the sentence imposed by the trial court and what the appeal court would have imposed.

10. The State submitted that the court *aquo* took into account all the relevant mitigating and aggravating factors and when it imposed the sentence and that it did not misdirect itself. Further, that the minimum sentence for the crime of robbery is 15 (fifteen) years.
11. The State also argued that the submission by the Appellant that not all the personal circumstances were put before and considered by the court is not valid. It was argued that all personal circumstances were put before court, and that there is nothing further that could have been put before court as a mitigating factor.
12. The State also argued that robbery is a serious offence and the crime committed by the Appellant was premeditated robbery. What is more, the person robbed was injured seriously. The State argued that the magistrate correctly found that, in the interests of protecting the community, there is a need to sentence robbers and perpetrators sufficiently. The sentence should be sufficient to restore faith in the justice system.

ANALYSIS

13. As was established by the State, it is a well-established principle of our law that an appeal court may only interfere with the sentence of a trial court in the circumstances set out in paragraph 9 above.
14. Firstly, it is critical to assess whether the the court applied its discretion properly when it imposed the sentence, and specifically whether mitigating circumstances were taken into account and fully

considered. In terms of the record as presented and the arguments presented, the magistrate court clearly took into account the mitigating factors that are relevant to the Appellants' personal circumstances.

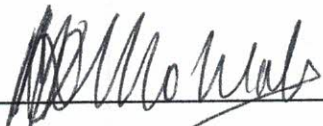
15. It was further argued that the court was obliged to conduct a further inquiry into the appellant's personal circumstances. Therefore, it was contended that the court misdirected itself and did not take into account all the relevant personal circumstances.
16. The State however argued that all the personal circumstances that could mitigate against the sentence were taken into account fully and there was nothing further that could have been put before court.
17. I agree with the State in this regard because even the argument on behalf of the appellant fails to identify what additional information or factors the court should have taken into account fully. The reference on behalf of the appellant to additional witnesses being called and to a probation officer's report being called for does not take the matter any further as it is not specific enough to conclude that there are indeed additional circumstances that should have been taken into account.
18. The other relevant factor that this court is asked to take into account is the previous conviction and sentence of the appellant. In this regard it is important to note that whilst the appellant was out on bail on the charge of rape, he committed the additional offence of robbery which led to the present sentence being imposed. These two very serious offences were committed separately and independent of each other.

Therefore, the two sentences would normally be served separately. The submissions on behalf of the appellant is that the court aquo should have ordered fifty per cent of the sentence to run concurrently, thereby reducing the sentence from 27 years to a shorter term of 24 years.

19. In my view, the conduct of the appellant does not reflect any remorse or change in his behavior in that, whilst out on bail on a charge for a very serious offence of rape, he proceeded to commit another serious offence of robbery. Furthermore, the robbery was premeditated and the victim thereof was seriously injured. The question then becomes whether a person in the appellant's circumstances deserved the leniency of the court? Our courts have consistently held that "*it is not irrelevant to bear in mind that, if sentences for serious crimes are too lenient, the administration of justice may fall into disrepute and injured persons may incline to take the law into their own hands.*" *Mudau v The State* [2012] ZASCA 56 para 14; *R v Karg* 1961 (1) SA 231 (A) at 236A-B.

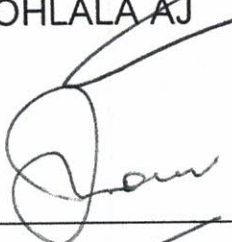
20. The crimes committed by the Appellant are clearly serious offences. In my view, the Appellant did not deserve more leniency of the court than what he received and as such I find that the sentence imposed by the magistrate was in line with the law and facts, and that interference by this court is not warranted.

21. The appeal is accordingly dismissed.



MOHLALA AJ

I concur



LOUW J