IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NO: A365/19

(1) REPORTABLE: YES

(2) OF INTEREST TO OTHER JUDGES: YES

(3) REVISED: YES

DATE: 10.12.2020

In the matter between:

TEDIUS MARIRAWAHN (ACCUSED 1)	1st Appellant
OLWETHU MEI (ACCUSED 2)	2nd Appellant
PATHISANI NSINGO (ACCUSED 3)	3rd Appellant
SIPHO SAMSON MSIBI (ACCUSED 4)	4th Appellant

And

THE STATE	Respondent

JUDGMENT

MOTHA AJ

Introduction

1. The appeal before us is on sentence only, in terms of Section 309C of The Criminal Procedure Act 51 of 1977. There are four appellants involved and they are all appealing the sentences imposed against them. The appellants were convicted in the Regional Court held at Heidelberg. They were charged with the following:

    1.1. Count 1 with a crime of robbery with aggravating circumstances as intended in section 1 of Act 51 of 1977, read with the provisions of Sections 92 (1), 92 (2), 94 and of Act 51 of 1977 as well as Section 51 and Schedule 2 of the Criminal Law Amendment Act, 105 of 1997 as amended.

    1.2. Count 2 of contravening the provisions of Section 3 read with Sections 1, 103, 117, 120 (1) (a) as well as Section 121 read with Schedule 4 and Section 151 of the Firearms Control Act 60 of 2000 and further read with Section 250 of the Criminal Procedure Act, 51 of 1977 and Section 52(2) of the Criminal Law Amendment Act, 105 of 1997 as amended.

    1.3. Count 3 of contravening the provisions of Section 90 read with Sections 1, 103, 117, 120(1)(a), Section 121 read with Schedule 4 and Section 151 of the Firearms Control Act, 60 of 2000, and further read with Section 250 of the Criminal Procedure Act, 51 of 1977- Possession of Ammunition.

2. The Court did not find any substantial and compelling circumstances to deviate from implementing the minimum sentence in terms of Section 51(2) of the Criminal Law Amendment Act, 105 of 1977.

3. The appellants were all informed of the application of this Act at plea stage. They all pleaded not guilty and were represented by Advocate Khumalo.

4. The first appellant was convicted of the following counts:

4.1. Count 1, of aggravated robbery and sentenced to 15 years' imprisonment in terms of Section 51(2) of Act 105 of 1997.

4.2. Count 2, the unlawful possession of a firearm and was sentenced to 15 years' imprisonment in terms of Section 51(2) of Act 105 of 1997.

4.3. Count 3, the possession of ammunition, and was sentenced to 5 years' imprisonment.

4.4. The second appellant was convicted of count 1 of aggravated robbery and was sentenced to 15 years' imprisonment in terms of Section 51(2) of Act 105 of 1997.

4.5. The third appellant was convicted of count 1 of aggravated robbery and was sentenced to 15 years' imprisonment in terms of Section 51(2) of Act 105 of 1997.

4.6. The fourth appellant was convicted of count 1 of aggravated robbery and was sentenced to 15 years' imprisonment in terms of Section 51(2) of Act 105 of 1997.

The facts of the case

5. The factual matrix is that all four appellants at plea stage were represented by Advocate Khumalo. The State was initially represented by Mr. Mathabela who became indisposed and was replaced by Mr. Mokoko on 27 July 2017.

6. The third appellant employed the services of Mr. Beukes who came on the record on 13 October 2016. The complainant, Mr. Musa Khumwana testified that he was travelling from Durban going to Johannesburg in UD Nissan 440 truck with a trailer on 2 February 2015. He testified that he stopped at Ladysmith to take a rest for about ten (10) minutes, then drove using the old way to the Engine Garage at Villers. At Villers he slept up to about 04:30 in the morning of 3 February 2015. At 04:30, he continued with his journey towards Johannesburg. Upon passing De Hoek Toll Gate, his *ipsissima verba* was that he was overtaken by a black Toyota motor vehicle. After the vehicle had passed, it did not proceed, it went on to apply brakes in front of him. It then drove off.

7. The said motor vehicle then disappeared out of sight. He then proceeded with his journey. When he was left with a short distance to get to Jacobs off ramp in Heidelberg the black Toyota motor vehicle re-emerged. It overtook him and immediately applied brakes and he also applied his emergency brakes. Suddenly two people disembarked from the Toyota vehicle.

8. The one came to the right side of the truck and opened his door and the other one came to the left and also opened the door. The two of them got into the truck and then instructed him to take the offramp.

9. This offramp is at Jacobs' street which is close to the Heidelberg Mall. He further testified that the first Appellant is the one who came to the driver's side and was armed with a firearm. He told him that they did not want to kill him, but were only interested in the truck and the load. They drove and went to the robots. The black Toyota which was now travelling behind them overtook them and drove passed the robots and parked somewhere ahead of the robots. The fourth Appellant came from the Toyota vehicle and pulled him out of the truck.

10. At that stage he was instructed by the first Appellant to move away from the truck and go to the other side of the bridge. He and the first Appellant went to where the bridge was. He was instructed to lie prostate on the ground and not observe what was happening at the truck. He could hear that the truck was being driven away. The first Appellant began questioning him about the contents of the truck and then received a call.

11. At the end of the call, the first Appellant told him that they had failed to open the containers, therefore, they were going to go away with the complainant's cellphone and his cash. He was instructed to stand up and walk to where the truck was.

12. Furthermore, he was instructed to walk on the other side of the road whilst the first Appellant was walking on the other side of the road. The truck was no longer at the place where they had left it. As they were walking, he saw a police motor vehicle coming from the Heidelberg Mall.

13. He started lifting up his hands, waving frantically saying “police, police, assist me.” The police vehicle stopped and he ran to the vehicle. It is at this stage that the first Appellant ran away.

14. He was taken to the police station in Heidelberg for his statement, whilst the police kept on searching for the first Appellant and the truck. The police returned after about an hour later to the police station with the first Appellant who had a firearm in his possession. He was there and then identified by the complainant. He further testified that his cellphone and some items were robbed from him.

15. The complainant’s evidence is confirmed by the police witnesses, Constable Moleka and Mohlala, who after taking the complainant to the police station summoned the assistance of Constable Marima and Makhubela who eventually found the first appellant based on the description they had of him. They recovered a firearm from his person hidden in the front of his pants. The firearm recovered from the first Appellant was a police issued Z88 with the South African Police emblem on it and serial number’s C37127Z.

16. The first appellant spoke in Isizulu and English to the police and his phone remained very active which caused the South African Police to instruct him to answer it. He then spoke on the phone in Shona to a lady he identified to them as Mary. The first appellant informed them that they were driving in a blue Golf and he arranged that they should pick him up where they had left him. The police arranged to intercept this blue Golf, but on arrival the three occupants of the Golf noticed the police and sped off taking the N3 Johannesburg, then the R103. They were stopped by the heavy morning traffic at the four way stop behind the Petro Port. Then the

pursuing police officers Constable Makhubela and Marima caught up with them after a distance of about 33 kilometers.

17. They arrested the second, third and fourth appellants who were in the Golf. Constable Makhubela returned with the second and fourth appellants whilst Marima returned with the driver of the Golf being the third appellant to the Heidelberg police station.

18. The first appellant, Tedius Marirawahn testified that on 2 February 2015 he was at Pinetown that is where he got his lift. He got a lift from Musa Khunwana at the hiking spot. When he arrived at the hiking spot, he met two ladies who told him that they were waiting for someone to come and fetch them. He continued hiking until the car that the two ladies were waiting for arrived. It was a UD truck with a horse and a trailer. He then approached the other lady who told him that he needs to speak to the driver about how much he was going to pay from where he was to where he was going. The driver wanted R150.00 he asked him to reduce it because he only had R100.00, he then gave him that R100.00.

19. They then departed and the driver told them that he wanted to pay his rent at Pietermaritzburg. When they got to Pietermaritzburg, he alighted with the one lady. They went to pay the rental but immediately came back saying that the ATM machine was not working. They then proceeded on their journey, upon reaching Nigel offramp he was dropped off. Then the truck left. He walked to the traffic lights and realized that there was another man who was on his left, upon looking at this man he noticed that it was the driver of the truck. He stated that he was surprised to see the driver and even asked him what he was doing. He told him that he was waiting for someone to come and fetch him. He saw a car and realized that it was a police car. The driver of the truck ran towards the police. As the

driver got inside the police vehicle, he became surprised. Nonetheless, he continued hiking for transport to Johannesburg.

20. A police van came on top of the bridge with two police officers who took him to the police station. At the police station he learnt that the truck had been hijacked and he was immediately accused and charged with truck hijacking.

21. The second appellant, Mr. Olwethu May testified that he did not know the first appellant and only met him on the day of his arrest at the police station. He further stated that he is a truck driver and a lady called Mary, whom he knew for about a month, phoned him on 2 February 2015 asking him to meet her at Villiers in order to drive a truck for her. He arranged with the third appellant to transport him to the Engen garage at Villiers. The third appellant was the owner and driver of a blue Golf 5. He came and collected him and the fourth appellant, a friend whom he invited along, from Pumula where they stay. At Villiers they waited for Mary for about an hour and when they finally met her, he was told that he could only get the truck at Heidelberg.

22. He then drove the truck from Nigel offramp travelling along R23 to Carnival city. At Carnival city he parked the truck and left the key inside on Mary's instructions, after about fifteen minutes Mary, another lady, the third and fourth appellants collected him in a Golf. They drove to Germiston taxi rank where they dropped off Mary and the other lady. On their way home, namely Pumula, Mary phoned and requested them to collect someone from Heidelberg.

23. At Heidelberg, they could not find this man as arranged; and tried various times to contact him unsuccessfully. They left using the R101 up to the

Barry Marais four way stop. Suddenly a police motor vehicle coming from the front made a U-turn and stopped behind them.

24. They were searched and taken to Heidelberg police station for questioning. They were then arrested for truck hijacking.

25. The third appellant, Patisani Nsingo testified that, the second appellant, his friend contacted him for a lift to Villiers promising to reimburse his petrol money. He agreed and picked up the second appellant from Pumula and later on the fourth appellant, a person he did not know. They left for Villiers Engen garage where the second appellant, a truck driver by profession, was to be handed a truck to drive. He dropped the second and fourth appellants off at an offramp at Jacob street and he headed home.

26. When he was a few kilometers away, he was again called by the second appellant who requested him to turn back and pick up the fourth appellant where he had earlier dropped them off. He met the fourth appellant now in the company of two other ladies and headed for Pumula where they were to be dropped off. However, he had to go via Carnival city to pick up the second appellant on the instructions of one Mary.

27. Indeed, the second appellant was picked up and they headed for Germiston taxi rank where they dropped off the ladies. He was then asked by Mary and the second appellant to pick up someone unknown in Heidelberg where he had dropped off the second and fourth appellant earlier. Reluctantly, he agreed and drove to the area, however, there was no one to pick up and he headed on the N3 taking the R103 offramp to drop the second and fourth appellants off in Pumula. At the Barry Marais four-way stop, they crossed a police van that made a U-turn and pulled them off with a siren and blue lights. This was at 5:00 a.m. in the morning. They were

searched, handcuffed and taken to Heidelberg police station where they were arrested.

28. The fourth appellant, Sipho Samson Msibi, testified that he did not know the first appellant. He is friends with the second appellant who invited him to Villiers where the second appellant had to fetch a truck to drive. He was just there to keep him company. They were transported by the third appellant, whom he met for the first time on that day. Upon their arrival at Villiers, the second appellant exited the motor vehicle and spoke alone to an unknown lady at the door of the garage. When he returned, they drove to Nigel offramp where they were dropped off by the third appellant.

29. They waited for two to three minutes for the truck to arrive, and when it arrived there were two ladies and a male in the truck, all unknown to him. He was instructed by the second appellant to wait with the ladies for the third appellant to fetch them. The second appellant was then left alone in the truck.

30. Certainly, the third appellant arrived and picked them up. He drove the ladies to Germiston. Since he was tired, he soon fell asleep. When he woke up, he realized that the second appellant was already in the car. After dropping off the ladies in Germiston, appellant the second appellant received a call telling them to go pick up someone in Heidelberg. He again fell asleep and when he woke up there were police surrounding the car and they were arrested.

Appeal against sentence

31. The personal circumstances of the appellant were placed on record in mitigation of the sentence: The first appellant was, at the time of the

sentence, a 32 years old Zimbabwean national. He had arrived here in South Africa in the year 2000. He neither has any previous convictions nor pending cases or outstanding warrant against his name. His highest level of education is form 4 which is equivalent to grade 12 here in South Africa.

32. At the time of his arrest, he was not formally employed. He survived by doing piece jobs and more in particular being a mechanic where he earned an amount of R4000.00 per month. He was a primary caregiver for his children who are in Zimbabwe. He has three children aged 7, 5 and 4 one with his wife and 2 with two other women who also reside in Zimbabwe.

33. The second appellant was, at the time of sentence, a 31 years old South African citizen. His highest level of education is grade 12 and he has one previous conviction for the contravention of Section 36. At the time of arrest, he was unemployed, however, he used to drive trucks at R2000.00 per trip. He has four children with different mothers aged 9, 8, 5 and 4. They all reside with their mothers and receive government grants.

34. The third appellant was, at the time of sentence, 31 years old. He has a degree in Logistics, and has no previous convictions, nor pending cases or outstanding warrants against his name. He had a business and his last payment before arrest was R160 000.00. He has one child who is four years of age.

35. The fourth appellant was, at the time of sentence, 35 years old. His highest level of education is grade 10. He has no previous convictions, nor pending cases or outstanding warrants against his name. He was a builder assisting his uncle in his construction business. He was earning R1000.00 per week. He is single with two children aged 14 and 19 who stay with their mothers. They are all receiving government grants.

The Law

36. The basic approach in every appeal against sentence was set out in *State vs Rabie 1975 (4) SA 855 (A) at page 857 D-E* to be the following:

    1. *"In every appeal against sentence, whether imposed by a magistrate or a judge, a Court hearing the appeal -*

        1.1.1. *"(a) should be guided by the principle that punishment is 'pre-eminently a matter for the discretion of the trial court', and;*

        1.1.2. *(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 any irregularity or misdirection or is disturbingly inappropriate.". S v Giannoulis 1975 (4) SA 869 (A) at page 868 G-H.*

37. Therefore, a sentence should only be interfered with on appeal where (i) an irregularity occurred; (ii) the trial court materially misdirected itself on the question of sentence; or (iii) the sentence would be described as so disturbing that it induces a sense of shock. The mere fact that any or all the judges sitting on appeal would have imposed another sentence, be it heavier or more lenient, if he presided in first place, is not enough reason for a Court of Appeal to interfere with a sentence imposed.

38. In *State v Zinn, 969 (2) SA 537 (A) at page 540 G* it was held that:

> *"What has to be considered is the triad consisting of the crime, the offender and the interests of society."*

39. In determining an appropriate sentence regard must be had inter alia to the main purposes of punishment. It is submitted that all of these factors need to be considered before a balanced sentence can be imposed.

40. In *S v Holder 1979 (2) SA 70 (A) p74-75:*

> *"Hierdie benadering is 'n gesonde benadering. By die toepassing van hierdie benadering moet egter nie net gewaak word teen 'n onderbeklemontoning van of die besindere mens (die beskuldigde), of die misdaad of die maatskappy nie, maar ook teen 'n oorbeklemtoning van ees van hierdie drie elemente. Daar moet gestreef word na 'n gepaste vonnis, volgens die eise van tyd, en 'n gespaste vonnis sal altyd 'n vonnis wees wat gebaseer is op 'n gebalanseerde ooweging van die drie elemente".*

41. Both counsels for the Appellants argued that the court a quo misdirected itself in that it imposed a sentence that is shocking and disproportionate to the facts of the case. They further stated that, by over-emphasizing the seriousness of the offence and the interest of society, the magistrate failed to take into account the prospects of rehabilitation and by finding that they were no substantial and compelling circumstances to deviate from imposing the minimum sentence. They also submitted that all the appellants spent three years in prison before sentencing.

42. They were incarcerated on 03 February 2015 and remained in custody until 15 March 2018 when they were sentenced. With regard to the first appellant, counsel submitted that the magistrate failed to take into account the cumulative effect of the sentence.

43. He stated that the court erred in not applying the determinative test in *State vs Malgas 2001 (1) SACR 469 (SCA)* at paragraph 25, to wit:

> *"If the sentence in court on consideration of the circumstances of the particular case is satisfied that they render the prescribed sentence unjust in that it will be disproportionate to the crime, the criminal, and the needs of society, so that an injustice will be done by imposing that sentence, it is entitled to impose a lesser sentence."*

44. In *State vs Mahomotsa 2002 (2) SACR 435 (SCA)* at paragraph 18, the court stated that:

> *"in cases falling within the categories delineated in the Act, there are bound to be differences in the degree of their seriousness. They should be no misunderstanding about this; they will all be serious but some will be more serious than others, subject to the caveat that follows, it is only right that the differences in seriousness should receive recognition when it comes to the meeting out of punishment."*

45. At this stage it is also important to refer to *State vs Dodo 2001 (1) SACR 594 (CC)*, a Constitutional Court decision at paragraph 38 the court said:

"to attempt to justify any period of penal incarceration, let alone imprisonment for life as in the present case, without inquiring into the proportionality between the offence and the period of imprisonment, is to ignore, if not to deny, that which lies at the very heart of human dignity. Human beings are not commodities to which a price can be attached; they are creatures with inherent and infinite worth;

they ought to be treated as ends in themselves, never merely as means to an end. Where the length of a sentence, which has been imposed because of its general deterrent effect on others, bares no relation to the gravity of the offence, the offender is being used essentially as a means to another end and the offender's dignity assailed. So too where the reformative effect of the punishment is predominantly and the offender sentenced to lengthy imprisonment, principally because he cannot be reformed in a shorter period, but the length of imprisonment bares no relationship to what the committed offence merits. Even in the absence of such features, mere disproportionality between the offence and the period of imprisonment would also tend to treat the offender as a means to an end, thereby denying the offender's humanity."

46. In *State vs Kruger 2012 (1) SACR 369 (SCA)* at page 372 F-G, the Court held that:

"*the Trial as well as the High Court reasoned that it was inappropriate to order the sentences to run concurrently because the offences were committed at different places and at different times. While this may be a consideration, it cannot justify a failure to factor in cumulative effect of the ultimate number of years imposed. I*

believe that a sentencing court ought to tirelessly balance the mitigating and aggravating factors in order to reach an appropriate sentence. I also acknowledge that it is a daunting exercise indeed."

47. Counsel for the Respondent referred to the locus classicus, namely, *State vs Malgas* supra again at paragraph 25 where the court stated in respect of substantial and compelling circumstances:

> *"the specified sentences were not to be departed from lightly and for flimsy reasons which could not withstand scrutiny. Speculative hypotheses favorable to the offender, maudlin sympathy, aversion to imprisoning first offenders, personal doubts as to the efficacy of the policy implicit in the amending legislation, and like considerations were equally obviously not intended to qualify as substantial and compelling circumstances. Nor were marginal differences in the personal circumstances or degrees or participation of co-offenders which, but for the provisions, might have justified differentiating between them.*
>
> *But for the rest I can see no warrant for deducing that the legislature intended a court to exclude from consideration, ante omnia as it were, any or all of the many factors traditionally and rightly taken into account by courts, when sentencing offenders… it is axiomatic in the normal process of sentencing that, while each of a number of mitigating factors when viewed in isolation may have little persuasive force, their combined impact may be considerable. Parliament cannot have been ignorant of that. There is no indication in the language it has employed that it intended the enquiry into the existence of substantial and compelling circumstances justifying a departure, to proceed in a*

radically different way, namely, by eliminating at the very threshold of the enquiry one or more factors traditionally and rightly taken into consideration when assessing sentence. None of those factors have been singled out either expressly or impliedly for exclusion from consideration."

48. The counsel for the respondent further stated that one would be hard pressed to find that the magistrate misdirect himself in view of the fact that as first offenders the appellants received fifteen years which accords with the Act of sentencing depending on the criminal history of the offender namely:

"(a) Part II of schedule 2, in the case of:

(i) a first offender, to imprisonment for a period not less than 15 years;
(ii) a second offender of any such offence, to imprisonment for a period no less than 20 years; and
(iii) a third or subsequent offender of any such offence, to imprisonment for a period not less than 25 years…"[1]

49. The counsel for the respondent submitted that there is a theoretical understanding of robber with aggravating circumstances. She contended that there is robbery accompanied with the use of a weapon and the use in this sense does not have to mean the firing of the weapon. It still amounts to the fact that the robber made use of the firearm in order to submit a victim to the instructions of the robber. Therefore, the fact that there was no firing of the weapon does not diminish the seriousness of the offence in

fact if there was any further acts, save for the wielding of a firearm, more charges would have been added.

50. The fact that no one was injured was simply fortuitous and had the complainant resisted he would most likely had been shot. I pause to mention the matter of *State vs Radebe 2013 (2) SACR 165 (SCA)*. The court addressing the issue of periods spent in detention whilst awaiting trial at paragraph [14] stated the approach to be adopted as follows:

> *"A better approach, in my view, is that the period in detention pre-sentencing is but one of the factors that should be taken into account in determining whether the effective period of imprisonment is justified: whether it is proportionate to the crime committed. Such an approach would take into account the conditions affecting the accused in detention and the reason for a prolonged period of detention. And accordingly, in determining, in respect of the charge of robbery with aggravating circumstances, whether substantial and compelling circumstances warrant a lesser sentence than that prescribed by the Criminal Law amendment Act 105 of 1997 (15 years' imprisonment for robbery), the test is not whether on its own that period of detention constitutes a substantial or compelling circumstance, but whether the effective sentence proposed is proportionate to the crime or crimes committed: "whether the sentence in all the circumstances, including the period spent in detention prior to conviction and sentencing, is a just one."*

51. The magistrate quoted the matter of *State vs Mqabhi 2015 (1) SACR 508 9 (GJ) at paragraph 38* stated the following.

> *"1. Pre-sentence detention was a factor to be taken into account. 2. The period of detention was not to be isolated as a substantial and compelling circumstances. 3. The reason for the prolonged period of pre-sentence detention was a factor. 4. There is no mechanical formula or rule of thumb to determine the period by which a sentence was to be reduced if it is to be reduced.*
> *If there is only one serious offence that was committed, the offender had not, and he was not responsible for the undue delay a Court might readily reduce such a sentence."* [2]

52. The magistrate stated the following reasons for not taking pre-sentence detention of three years of the appellants into account as a factor:

a) The unavailability of the first prosecutor who started this matter, this cannot be attributable to the appellants.

b) The chopping and changing of legal representation by appellant 3. This again is incorrect in that appellant 1, 2 and 4 cannot be held responsible thereof.

c) The unavailability at some stages of the interpreter involved in this matter due to his illness. Once more this factor cannot be laid at the door of the appellants. [3]

d) Various other factors contributed to the delay in this matter. The magistrate does not mention these factors but one can surmise from the following statements that he makes that he was referring to the appellants not

pleading guilty to the charges. What is one to make of the statement at page 697 of the record.

> *"In the end in the analysis, the Court found that the evidence against the accused was overwhelming and therefore although they exercise their rights which they are entitled to do to test the evidence.*
> *The delay in this matter is just as much theirs as any of the other occurrences and therefore I do not regard this issue singly or together with the others as creating a substantial and compelling circumstance."*

53. We find that there is certainly a misdirection by the magistrate especially when one looks at Section 35 (3) (h) of the Constitution.

It does not help the situation to hear the following words uttered by the magistrate although they might have been uttered in jest:[4]

> *"I as a judicial officer almost want to say, Thank God this matter is finished, I actually expected a postponement together with reports not present. It is a matter in which we sat for an extremely long time and it is a matter which took a big effort from all involved and I think especially myself with the amounts of volumes of evidence that had to be gone through when the cell phone records and the routes and everything else were submitted in this case. Be that as it may, after a day's judgement the accused were convicted as indicated."*

54. Both Counsel for the appellants and respondent agreed that the magistrate misdirected himself. Once it is established that the court *a quo* misdirected itself in a material aspect, this court may reconsider the sentence. However, the fact that the magistrate has misdirected himself does not necessarily mean that the sentence will be tempered with, there still need to be substantial and compelling circumstances that lead to the deviation from the minimum sentence.
55. In casu, if all factors are taken into consideration, firstly, the appellants are virtually all first offenders bar the second appellant with a conviction for contravening section 36. Secondly, they spent well over 36 months in custody pre-sentence. Thirdly, even though the complainant did not get some of his items back, the truck and its contents were recovered and there were no injuries.

56. The factors mentioned *supra* viewed cumulatively establish, in my view, substantial and compelling circumstances which justify a deviation from the prescribed minimum sentence of 15 years' imprisonment in respect of robbery with aggravating circumstances and in respect of the possession of a semi-automatic pistol.

57. Having regard to the above discussion, I make the following order:

Order,

1. The appeal against the sentences imposed on the appellants by the court *a quo* is upheld.

2. The sentences are set aside and replaced with the following sentences:

"Accused 1 is sentenced as follows:
Count 1: 12 years imprisonment;
Count 2: 12 years imprisonment; and
Count 3: 3 years imprisonment

It is ordered that the sentence imposed in count 1 run concurrently with the sentence imposed in count 2. The effective sentence is therefore 15 years imprisonment."

Accused 2 is sentenced to 12 years imprisonment.
Accused 3 is sentenced to 12 years imprisonment.
Accused 4 is sentenced to 12 years imprisonment."

In terms of Section 282 of the CPA, the sentences are antedated to the 15 March 2018, the date of sentence.

M. P. MOTHA

ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION OF THE HIGH COURT, PRETORIA
Electronically submitted therefore unsigned

Delivered: This judgement was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the Parties/their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date for hand-down is deemed to be 23 November 2020.

NICOLINE VAN NIEWEHUIZEN
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

Date of hearing: 17 November 2020
Date of judgment: 10 DECEMBER 2020

Appearances:

For the Appellant 1, 2 and 4: Adv. Martin
(Instructed by Pretoria Justice Centre)

For Appellant 3: Adv. Jwaqa

For the Respondent: Adv. Mohammed

(Instructed by Office of the Director of Public Prosecution)

1. Criminal Law amendment Act 105 of 1997
2. Trial records bundle 3 at page 696 paragraph 10.
3. Trial records bundle 3 at page 696 paragraph 10
4. Trial records bundle 3 at page 689 paragraph 10