

**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE HIGH COURT, CAPE TOWN)**

Case No: A223/2010

In the matter between:

SHAUN WILLIAMS

Appellant

Versus

THE STATE

Respondent

JUDGMENT DELIVERED 4 JULY 2010

Allie, J

[1] The appellant was charged with two separate counts of robbery with aggravating circumstances in that he allegedly used a firearm to rob each complainant on a separate occasion, each of their cellphones. The offences were committed 2½ weeks apart.

[2] He was convicted on both counts and sentenced to 15 years imprisonment on each count. The sentences were ordered to run concurrently. He appeals against the sentences only.

[3] The court *a quo* found that Act 105 of 1997 in which is prescribed a minimum sentence for the offence, already determined a sentence of 15 years imprisonment for a first offender. The magistrate accordingly believed that the legislature had already provided for a first offender and the fact that this was his first offence, was not a substantial and compelling factor.

[4] The court *a quo* went on to conclude that the appellant's age of 18 years was not a mitigating factor. The court *a quo* said that it had shown mercy by making the sentences run concurrently.

[5] While the complainants were not injured, there is no doubt that they were traumatised by being threatened with a firearm.

[6] The appellant and society at large have to accept that the lack of injuries are not due to the good will of the perpetrator, but in this case it can be ascribed to the co-operation of the complainants.

[7] The offence of robbery where a firearm is used but no one is injured cannot be reduced in its impact upon the victim and society at large to the offence of theft.

[8] However, the youthfulness of the offender in this case the age of 18 years cannot be ignored as it is a mitigating factor which serves as a substantial and compelling circumstance to justify a deviation from the prescribed minimum sentence. I accordingly find the court *a quo*'s dismissal of this mitigating factor to be a misdirection.

[9] I would set aside the sentences imposed and replace them with the following sentence.

[10] The appellant is ordered to serve the following sentence:

10.1 On count 1, 10 years direct imprisonment.

10.2 On count 2, 10 years direct imprisonment.

[11] The sentence on count 2 shall run concurrently with the sentence imposed on count 1.



ALLIE, J

I agree



R JAGA, AJ