

SOUTH AFRICA / JUDGMENT

Duma v S (A198/2016) [2017] ZAGPPHC 565 (25 August 2017) [2017] ZAGPPHC 565

COURT

North Gauteng High Court, Pretoria

BEFORE

M A Hawyes, S A M Baqwa

CASE / FILE NUMBER

A198/2016

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IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)

CASE NO: A198/2016

Not reportable

Not of interest to other judges

Revised.

25/8/2017

MPHO SIPHO SURGE DUMA Appellant

and

THE STATE Respondent

JUDGMENT

HAWYES AJ

- [1] The appellant was convicted and sentenced in the Regional Court Benoni on two charges of robbery with aggravating circumstance on the 26 May 2014.
- [2] A firearm was used in the execution of both crimes and the provisions of Section 51(2) of Act 105 of 1997 are applicable.

- [3] No substantial and compelling circumstances were found to be present and the appellant was sentenced to 15 years imprisonment on each count. The learned magistrate ordered that 10 years of the sentence on count 2 were to be served concurrently with the sentence on count 1 resulting in an effective sentence of 20 years imprisonment.
- [4] Leave to appeal against the sentence only was granted by the court a quo on the 14 November 2014.

Grounds of Appeal

- [5] The personal circumstances of the appellant placed before the learned magistrates were:

- He was 33 years at the time of his sentencing,
- He is in his middle ages and was not above rehabilitation.
- He is single and has 3 minor children who were aged 11 years, 8 years and 9 months at the time of sentencing.
- He was self employed doing burglar bars and security gates. He earned approximately R5000 00 per month.
- He went to school until standard 7 and left school early due to financial constraints.
- The victims in the two robberies were not harmed.
- He was arrested on the 26 March 2013 and spent a year and two months awaiting trial in this matter.

- [6] The appellant argued that the court a quo erred by over-emphasizing the seriousness of the crimes and the interest of society to the detriment of his personal circumstance which were not fully placed on record and thus under-emphasized.

- [7] The appellant argued further that the trial court did not show any mercy to him and that the sentence imposed was shockingly harsh and induced a sense of shock.

- [8] The sentence imposed was intended to break the appellant and leave him without any hope or chance of being rehabilitated. Appellant

reiterated that the complainant did not suffer physical harm from the commission of the offences.

- [9] The appellant suggested that an effective period of not more than twelve years imprisonment should have been imposed in this matter and that the sentence should be interfered with.

Discussion

- [10] It is noteworthy that no argument, both in the appellant's heads and at the hearing of the appeal, was presented regarding the absence of substantial and compelling circumstances. No mention was made that the trial court misdirected itself in this regard. The appellant appeared content to argue his case on the traditional grounds that a court must consider prior to sentencing.
- [11] Counsel for the respondent drew our attention to the fact that the appellant has two previous convictions for possession of unlicensed firearms and that a firearm was once again used in the execution of the crimes, In casu.
- [12] It is indeed trite law that a court of appeal will be hesitant to interfere with the sentencing discretion of a trial court see S vs Salzwedel 1999(2) SACR 586 and S vs Pieters 1987(3) SA 717(A).
- [13] Whilst hearing argument at the appeal hearing counsel for the appellant effectively conceded that the sentences imposed by the learned magistrate were in order.
- [14] I find that the sentences imposed by the reamed magistrate and the pre- sentence processes that were followed contained no misdirection. The sentences on both counts are reasonable (no substantial and compelling circumstance were proven).The teamed magistrate ameliorated the effect of the sentences by ordering that 10 years of the second conviction for robbery run concurrently with the first Lastly the sentences do not induce a sense of shock and should not be interfered with.
- [15] In the circumstances I propose that the following order be made:

The appeal is dismissed.

M. A. HAWYES

ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION.PRETORIA

I agree and it is so ordered.

S. A. M BAQWA

GAUTENG DIVISION. PRETORIA

Heard on: 01 August 2017

Delivered on: 25/08/2017

For the Applicant: Adv S Moeng

Instructed by: Legal Aid

For the First Respondent: Adv A J Fourie

Instructed by: The Director of Public Prosecutions, Pretoria

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Prepared on 23 October 2026 · Esheria