

SOUTH AFRICA / JUDGMENT

Kunene v S (A75/2023) [2024] ZAGPJHC 515 (27 May 2024)

[2024] ZAGPJHC 515**COURT**

South Gauteng High Court, Johannesburg

BEFORE

Mabesela, Kuny

CASE / FILE NUMBER

A75/2023

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Source record**REPUBLIC OF SOUTH****AFRICA****IN THE HIGH COURT OF****SOUTH AFRICA****GAUTENG LOCAL****DIVISION, JOHANNESBURG****APPEAL CASE NO:**

A75/2023

1. REPORTABLE:

YES / NO

2. OF

INTEREST TO OTHER JUDGES: YES/NO

3.

REVISED.

In the matter between:**KUNENE****REUBEN LEBOHANG****APPELLANT****And****THE****STATE****RESPONDENT****MABESELE J ET KUNY J**

JUDGMENT

MABESELE J:

- [1] The appellant was convicted of robbery with aggravating circumstances and sentenced to 15 years imprisonment. He appeals against sentence.
- [2] The appellant raises two issues in this appeal. First, he contends that the order should have been made that the sentence of 15 years imprisonment imposed on him should run concurrently with the remaining portion of sentence of 15 years imprisonment which was imposed on him for the same offence mentioned in paragraph 1, which he committed in 2006. The appellant was out on parole when he committed the second offence. He had already served 12 years of 15 years imprisonment. His second argument is that the period of time that he had spent in prison, awaiting finalization of the trial, should have been considered as a strong mitigating factor which would have had a great impact on the sentence.
- [3] Our courts stated in numerous decisions that sentencing is a prerogative of the trial court. The appeal court can only interfere with the sentence imposed by the trial court if the sentence is vitiated by irregularity or misdirection or is disturbingly

inappropriate.[1] The court in S V Zinn [2] stated that where sentence is to be imposed on the accused regard must be had to the crime, the offender and the interests of society.

- [4] The magistrate took into account the personal circumstances of the appellant which were placed on record. The appellant was 37 years old. He has six children from different women. The children reside with their mothers. The appellant spent one year and three months, awaiting the finalization of the matter.
- [5] The magistrate was alive to the fact that, since the appellant has a previous conviction of robbery with aggravating circumstances for which he was sentenced to 15 years imprisonment, the appellant was supposed to have been sentenced to a period of 20 years imprisonment for committing the same offence, as prescribed by law[3]. The magistrate decided not to impose the said sentence on the appellant even though the magistrate correctly found no substantial

and compelling factors which justified deviation from the prescribed minimum sentence.. For all these reasons, the appeal should be dismissed.

- [6] Therefore, the following order is made:

1. The appeal against sentence is dismissed.

M.M MABESELE

(Judge of the High Court Gauteng Local Division)

I agree

S.KUNY

Appearances

On behalf of the Appellant

: Adv. Nhlazo

Instructed by

: Legal Board Aid South Africa

On behalf of the Respondent : Adv. Zuma

Instructed by

: Director of Public Prosecutions

Date of Hearing

: 20 May 2024

Date of

Judgment

: 27 May 2024

- [1] See Director of Public Prosecutions, *Kwa Zulu-Natal V P*, 2006(1) SACR 243(SCA)
- [2] 1969(2) SA 537(A) at 540(G)
- [3] Part II of Schedule 2 of the Criminal Law Amendment Act makes provision for sentence to imprisonment for a period of 20 years for a second offender
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