

SOUTH AFRICA / JUDGMENT

Peterson v S (A445/2016) [2017] ZAGPPHC 853 (21 November 2017) [2017] ZAGPPHC 853

COURT

North Gauteng High Court, Pretoria

BEFORE

Neukircher, Mphahlele

CASE / FILE NUMBER

A445/2016

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IN

THE HIGH COURT OF SOUTH AFRICA

GAUTENG

DIVISION, PRETORIA

Case

no: A445/2016

NOT

REPORTABLE

NOT

OF INTEREST TO OTHER JUDGES

REVISED

21/11/2017

In

the matter between:

VALTON

PETERSON APPELLANT

And

THE

STATE RESPONDENT

JUDGMENT

1. On 17 November 2015 the appellant pleaded guilty to one count of common robbery of a cell phone in the regional court, Tsakane. The appellant was convicted, as charged and a sentence of 15 years imprisonment was imposed.
2. Leave to appeal was refused by the court a quo and on 12 May 2016 leave in respect of sentence was granted on petition to the High Court.
3. It bears mentioning that the appellant was represented throughout his trial in the court a quo.
4. When he plead guilty in the court a quo the content of his guilty plea was accepted by the State and the court and it read as follows:

".. . I admit that on 15 May 2015 I was at Tsakane in the Regional Division of Gauteng.

I admit that on the day in question I did unlawfully and intentionally assaulted Ayanda Zinto and with force took the following item from him to wit a cell phone property in his lawful possession.

The offence occurred as follow: (sic)

I met the complainant on the street walking. I then stopped him demanded him to give me his cell phone and I continued to grab him

wherein I searched him without his permission then took the said cell phone from his pocket and ran away. I was later arrested.

I further admit that I had no right to take/rob the complainant of his phone. I further admit that at all material times I knew that my actions were wrongful and punishable by the law and I had no excuse in law to act the way I did."

5. The State proved the following previous convictions against the appellant:
 - 5.1 2008 - theft for which the imposition of sentence was postponed in terms of section 297 of Act 51 of 1977;
 - 5.2 2009 - robbery for which the appellant received 3 years imprisonment;
 - 5.3 2009 - robbery for which the appellant received 7 years imprisonment that was wholly suspended on condition for a period of 5 years.
6. The appellant's personal circumstances were placed before the court in mitigation of sentence:

The appellant is 23 years old, single and has no children. At the time of his arrest he was unemployed. He plead guilty and did not waste the court's time and it was submitted that by pleading guilty he showed remorse. The appellant was arrested on 15 May 2015 and was held without bail until his conviction and sentencing on 15 November 2015. The crime was a "spur of the moment" crime.

7. In sentencing the appellant to 15 years' imprisonment, the court a quo considered the "... numerous previous convictions that you have, must over a relatively short period of time, since 2008, that you have not learnt your lesson... Obviously there is no real intention on your side to rehabilitate,, therefore the court is of the opinion that a lengthy period of imprisonment is the only suitable sentence in your case."
8. In the application for leave to appeal, it is clear that this lengthy sentence was imposed as the trial court was of the view that no substantial and compelling circumstances were presented to persuade him to deviate from the minimum sentence of 15 years. Thus, it is abundantly clear that the court a quo imposed a sentence of 15 years as it was under the impression that this was the required sentence which fit the crime committed in terms of the Criminal Law Amendment Act 105 of 1997.
9. However, the appellant was never charged with a crime under that act[1] and accordingly its provisions are not applicable to this matter. This is conceded by Mr Wilsenach who appears on behalf of the State and, in my view, correctly so. He also correctly conceded that the State led no evidence on aggravating circumstances
10. This being so, the court a quo misdirected itself and imposed a sentence that was not only not warranted but, given the particular facts the sentence invokes a sense of shock and is disproportionate to the crime committed.[2] Accordingly, that sentence must be set aside and a lesser sentence imposed. The question is what is that sentence.
11. Mr Wilsenach has submitted that the appellant has previous convictions for similar offences. He was given the opportunity to

mend his ways by the imposition of a short term of imprisonment and a wholly suspended sentence of 7 years but clearly that made no impression on the appellant. He submits that the appellant must be stopped and direct imprisonment is the only way to achieve this, He submitted that 8 years imprisonment, although harsh, is an appropriate sentence. I do not agree. In my view, direct imprisonment

for a period of 8 years is too harsh a sentence for this crime.

12. Mrs van Wyk on behalf of the appellant has submitted that, insofar as the appellant's previous convictions play a role in determining the sentence to be imposed, one must not lose sight of the fact that he was a minor when he committed the crimes (13 and then 14 years of age) and it was never canvassed what motivated him to commit these crimes. She submitted that the trial court misdirected itself in finding that the appellant could not be rehabilitated.
13. Mrs van Wyk submitted further that the trial court ought to have imposed the same sentence for the appellant as that of his co-accused who was sentenced to 8 years imprisonment of which 5 years was suspended for 5 years on condition that he was not convicted again of theft, robbery or robbery with aggravating circumstances or an attempt to commit any of these offences during the period of suspension. Whilst this is so, one cannot lose sight of the fact that the appellant's co-accused was a first-time offender which the appellant is not. He has so far escaped incarceration with little more than a slap on the wrists and to impose the same sentence on him as his co-accused given the discrepancies in their history would not send the correct message.
14. I do however agree with Mrs van Wyk to an extent. One must not lose sight of the fact that the punishment must fit the crime. Whilst the appellant's conduct is certainly reprehensible, and this is not his first brush with the law, he was a minor when the previous crimes were committed, but he is now an adult and must take responsibility for his actions. He must be given the opportunity to reform and become an active member of society. Closing a door on him for 15 years, in my view will not achieve that goal. I can only but hope that he will not squander this opportunity that is now given him. This court will, for purposes of sentence, take into account all the factors set out in paragraph 6 supra as well as the fact that he was incarcerated awaiting trial.
15. In the circumstance the following order is made:
 - 15.1 the appeal against sentence succeeds.
 - 15.2 the sentence of 15 years is set aside and replaced with the following: the appellant is sentenced to 8 years imprisonment of which 3 years is suspended for 5 years on condition that he is not convicted again of theft, robbery or robbery with aggravating circumstances or an attempt to commit any of these offences during the period of suspension.

NEUKIRCHER AJ

MPHAHLELE J

I agree.

- [1] Which would be robbery with aggravating circumstances
- [2] See for example S v Sethoga and others 1990 (1) SA 270 (A) @ 279
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