

SOUTH AFRICA / JUDGMENT

Piyoos v S (A583/2009) [2010] ZAWCHC 385 (30 April 2010)

[2010] ZAWCHC 385

COURT

Western Cape High Court, Cape Town

BEFORE

Meer, Meyer

CASE / FILE NUMBER

A583/2009

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IN

THE HIGH COURT OF SOUTH AFRICA

(WESTERN

CAPE HIGH COURT, CAPE TOWN)

CASE

NUMBER:

A583/2009

DATE:

30
APRIL 2010
In

the matter between:

JONATHAN
PIYOOS

.....Appellant

and

THE
STATE

.....Respondent

JUDGMENT

MEER, J:

The Appellant was convicted in the Bellville Regional Court on a charge of robbery with aggravating circumstances. On 9 May 2007, he was sentenced to the minimum sentence of 15 years, prescribed for a first offender as per Section 51(2)(a)(i) of Act 105 of 1997 ("the Act"). Appellant appeals against his sentence only. The grounds of appeal, in essence, are that the court a quo erred in failing to find substantial and compelling circumstances, justifying a lesser sentence than the prescribed minimum

In this regard it is emphasised that the Appellant is a first offender, was 18 years of age when the offence was committed and the

Complainant was not seriously injured. The Appellant has also been in custody for six months before sentence and, it was pointed out, had displayed remorse. Today, however, it was conceded that the remorse was opportunistic in the light of a letter written by Appellant after sentence, in which he denies his involvement in the offence.

Appellant contends that the Magistrate emphasised the seriousness of the crime and the interests of the community to the detriment of those of Appellant and was not sufficiently astute to his personal circumstances. The Appellant comes from a disadvantaged background.

He was 23 at the time of sentence, married with two children aged 1 and 4 and his wife was expecting their child. The Appellant was the sole breadwinner and supported his family with a monthly income of R800.00 to R900,00 from odd jobs. He has never had fixed employment since leaving school in Standard 6. due to financial problems. Appellant and his family lived with his mother, who helped them

The circumstances under which the robbery was committed, are typical of so many house burglaries, of what can almost be regarded as a pandemic in our country. The Complainant, a young girl, opens the front door in response to the doorbell, was held up with a firearm, locked in the toilet, Appellant keeping guard outside, whilst he and his Co-Accused ransacked the house of mostly electrical equipment to the value of just under R20 000-00. Once the burglars had left, the Complainant escaped through the toilet window. She has understandably been traumatised by the event. The stolen goods, it appears, were later recovered.

In sentencing the Appellant, the Court a quo took cognisance of Appellant's personal circumstances, the seriousness of the crime and indeed the impact thereof on the Complainant. Whilst it is so that robbery with aggravating circumstances is rampant in our society, and the Magistrate did well to emphasise this, the Court a quo, in my view, failed to attach due weight to Appellant's youth, or in any event that fact was not sufficiently, in my view, reflected in the sentence actually imposed. Equally, the Court, in my view, did not attach sufficient weight to the fact that there was a minimum of violence used.

It should be borne in mind, with regard to the Appellant's youth, that had Appellant been even a day younger than his 18 years at the time the offence was committed, the minimum sentence would not have been applied in quite the same way. In terms of Section 51(3)(b) of the Act, the Court would have, in those circumstances, had to furnish reasons for imposing the minimum sentence, which would not automatically have been applicable.

Moreover, as controversial a proposition as this is likely to be, this was not the worst type of robbery, given that the Complainant, as aforementioned, was not seriously physically injured. These considerations, together with the fact that Appellant is a young man, with young dependants, cumulatively, in my view, constitute substantial and compelling circumstances, which militate against the minimum sentence in the interests of Appellant's young family to whom he must fulfil his commitments.

\ would in the circumstances grant the appeal and substitute the minimum sentence imposed in the Court a quo with the following sentence. The Accused is sentenced to TWELVE YEARS (121 IMPRISONMENT, of which FOUR

- (4) YEARS are SUSPENDED for a period of FIVE (5) YEARS on condition he is not convicted during the period of suspension on any charge of robbery, fraud, theft or any crime of dishonesty or violence, for which he is sentenced to direct imprisonment.

MEER, J

MEYER. AJ: I agree.

MEYER, AJ

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Prepared on 12 October 2026 · Esheria