IN THE HIGH COURT OF SOUTH AFRICA
[TRANSVAAL PROVINCIAL DIVISION]

Date: 30/05/2008
Case No: A1018/2007

UNREPORTABLE

In the matter between:

TEBOGO JOHANNES MATLALA APPELLANT

And

THE STATE RESPONDENT

JUDGEMENT

MAKGOKA AJ

[1] The Appellant stood trial in the regional court, Benoni, on a charge of robbery with aggravating circumstances. He was convicted of the charge and sentenced to 15 years imprisonment and he was also found unfit to possess a fire-arm in terms of section 103 of Act 60 of 2000. The Appellant was legally represented throughout his trial. With leave of this court, the Applicant appeals only against the sentence imposed.

[2] The brief facts that led to the conviction of the Applicant are the following: On 5 August 2006 at approximately 5H00 in the morning, the complainant, Khenke, was on her way to work, walking along a street in Daveyton. The Appellant approached her from front and passed her.

Just thereafter, when she looked back, the Appellant was behind her pointing a fire-arm at her. The Appellant then robbed her of a cellphone and a R20.00 note. The cellphone was worth approximaterly R3 000.00. The Appellant then walked away with the said items. The complainant later summoned the help of the police and directed them to the Appellant's house, where the robbed items were recovered in the possession of the Appellant.

[3] Turning now to the sentence imposed by the Regional Magistrate, Section 5 [2] [a] [i] of the Criminal Law Amendment 105 of 1997 prescribes a minimum sentence of 15 years imprisonment for robbery with aggravating circumstances, unless the court is satisfied that substantial and compelling circumstances exist. In the present case the regional magistrate, correctly so, considered the prevalence of this type of robbery in her region. She further took into account that the Appellant was 21 years old, single, employed and earned R100.00 a day, washing cars. The Appellant's education level is grade 10.

[4] What the regional magistrate failed to consider though, are the circumstances of the robbery namely, the value of the robbed items, as well as the fact that the cellphone was recovered, plus the fact that no physical violence was involved during the robbery, and that the Appellant spent almost three months in custody pending finalization of

the trial. In my view, these facors and the Appellant's age, plus the fact that the Appellant is a first offender, cumulatively considered, constitute substantial and compelling circumstances.

[5] In v The State [2006J SCA 158 [RSA] the facts were as follows: The Appellant, aged 20, was part of a gang that robbed business premises of an optometrist, where optical frames and sunglasses to the value of approximately R22 000.00 were removed after two women who were in charge at the premises at the time had been forced at gunpoint to part with them. On conviction, the Appellant was sentenced to 15 years imprisonment, the regional magistrate having found no compelling and substantial circumstances. On a further appeal on sentence, Navsa , with Malan and Cachalia AJJA concurring, said the following at page 5:

> "The Appellant's youth is certainly a the magistrate ought to have considered more seriously. Whilst one appreciates the magistrate's frustration at the current levels of he did not properly take into account that in the present case the degree of involved in the robbery was limited. Furthermore, a number of articles removed from the optometrist was recovered. The robbery was executed in a and inept manner. The appellant spent approximately four months in custody pending the finalisation of trial. These are factors not given due weight by the

magistrate or the court below. In my , and considering the *dicta*this court's judgment in S Malgas 2001 (2) SA 1222 (SCA) (at 1230E-G and 1231 -D), these factors cumulatively constitute substantial and compelling circumstances. We must guard against imposing uniform sentences that do not distinguish between the facts of and the personal circumstances of ."

[6] I am in respectful agreement with the approach of the learned judge, and the remarks quoted above, are apposite. In my view the failure by the regional magistrate to take into account the factors mentioned in paragraph 4 above, constituted a misdirection in considering an appropriate sentence, on which basis we are entitled to interfere with the sentence imposed. I am of the view that a sentence of 6 years under the circumstances, would be appropriate.

[7] I therefore propose the following order:

[7.1] The appeal by the appellant succeeds;

[7.2] The sentence imposed by the regional magistrate is set aside and in its place the following is substituted.

"The Accused is sentenced to 6 (six) years imprisonment."

[7.3] The sentence is antedated to 1 November 2006.

T M MAKGOKA
ACTING JUDGE OF THE HIGH COURT

I agree

D A BASSON
JUDGE OF THE HIGH COURT