

IN THE NORTH GAUTENG HIGH COURT, PRETORIA

(REPUBLIC OF SOUTH AFRICA)

24 / 10 / 12

CASE NO: A195/2012

DELETED	NOT DELETED
(1) REPORTED	1/2
FOR THE COURT	YES/NO
24-10-2012	<i>H. G. Tolmay</i>

IN THE MATTER BETWEEN:

ZAKHELE SIBUSISO MOTSA

APPELLANT

AND

THE STATE

RESPONDENT

JUDGMENT

TOLMAY, J:

[1] The appellant was charged with a co-accused on several counts .

- [2] The appellants and his co-accused pleaded guilty on several counts. They were convicted on the following counts and sentenced as follows:

Count 1 (housebreaking with the intent to steal and theft): 3 years imprisonment

Count 2 (attempted murder): 5 years imprisonment

Count 3 (attempted robbery with aggravating circumstances): 5 years imprisonment

Count 6 (robbery with aggravating circumstances): 15 years imprisonment

Count 7 (attempted murder): 8 years imprisonment

Count 8 (robbery with aggravating circumstances): 15 years imprisonment.

Count 9 (murder): Life imprisonment

Count 10 (unlawful discharge of a firearm): 6 months imprisonment

Count 11 (unlawful possession of firearm): 2 years imprisonment

Count 12 (unlawful possession of ammunition): 1 year imprisonment

- [3] The sentences were ordered to run concurrently and the effective sentence was life imprisonment.

- [4] From a perusal of the appellant's plea it would seem that the appellant and his co-accused went on a spree of crime during the period of 13 – 15 October

2005. Pertaining to count 9, the murder charge, the appellant and the co-accused were picked up by the deceased as they were hitch-hiking. Accused 2 then shot the deceased.

- [5] The appellant was granted leave to appeal on the sentence pertaining to count 9, (murder), of life imprisonment only.

- [6] The provisions of the Minimum Sentence Act, Act 105 of 1997 is applicable pertaining to the murder charge, and life imprisonment is prescribed unless substantial and compelling circumstances exist.

- [7] It is also trite that a Court sitting on Appeal should keep in mind that sentence is a matter best left to the discretion of the trial court and should only be interfered with if there is a misdirection that would justify interference¹.

- [8] It must also be taken into consideration that courts should not deviate from the minimum sentence prescribed for flimsy reasons².

- [9] It is aggravating that the accused went on a crime spree which continued over a few days. It is also aggravating that the appellant's co-accused shot the

¹ S v Barnard 2004(1) SACR 191 SCA at 194 C-D

² S v Malinga 2001(1) SACR 409 (SCA); S v Matyityi 2011(1) SACR 40 SCA, Director of Public Prosecutions v Ngcobo 2009(2) SACR 361 (SCA)

complainant in count 9 execution style when he gave them a lift. Extenuating circumstances were also present. The accused played a secondary role in the murder of the deceased. It must be noted that he was found guilty to the murder on the basis of the doctrine of common purpose. His accomplice shot the deceased. It is also important to note that the accused pleaded guilty and thus accepted responsibility for his actions. His personal circumstances were that he came from a disadvantaged background, he is a first offender, and he was only 20 years old when the crimes were committed. When all the facts and circumstances are taken into consideration I am of the view that the court *a quo* misdirected itself when it found that there were no substantial and compelling circumstances which would allow for a deviation from the prescribed minimum sentence of life imprisonment. I am however of the view that the appellant should be given a long term of imprisonment as the murder charge should be seen in the context of the crime spree that the accused embarked on and note should be taken of the fact that the appellant never disassociated himself from the actions of his co-accused.

[10] In the light of the finding that a deviation from the prescribed minimum sentence is justified an appropriate sentences in my view will be a sentence of 30 years.

[11] Therefore I propose that the following order be made:

11.1 The sentence of life imprisonment on count 9 is set aside.

11.1 The accused is sentenced to 30 years imprisonment on count 9, the sentences on all the charges will run concurrently with the sentence on count 9. The sentence is ante dated to 15 March 2007.



R G TOLMAY

JUDGE OF THE HIGH COURT

I AGREE:



L S DE KLERK

ACTING JUDGE OF THE HIGH COURT

I AGREE:



A P LAKA

ACTING JUDGE OF THE HIGH COURT

PARTIES: Z S MOTSA v THE STATE

CASE NO: A195/2012

DATE OF HEARING: 15 OCTOBER 2012

DATE OF JUDGEMENT: 24 OCTOBER 2012

JUDGES: TOLMAY J et DE KLERK AJ et LAKA AJ

ATTORNEY FOR APPELLANT: LEGAL AID
POLOKWANE

ADVOCATE FOR APPELLANT: ADV L M MANZINI

ATTORNEY FOR RESPONDENT: STATE ATTORNEY
PRETORIA

ADVOCATE FOR RESPONDENT: ADV SIBARA