

**REPUBLIC OF SOUTH AFRICA**



**IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, PRETORIA**

**CASE NO: A8/2021**

|                   |                                 |
|-------------------|---------------------------------|
| (1)               | REPORTABLE: NO                  |
| (2)               | OF INTEREST TO OTHER JUDGES: NO |
| (3)               | REVISED                         |
| 07 SEPTEMBER 2021 | J COCHRANE                      |
| DATE              | SIGNATURE                       |

In the matter between:

**HLALANATHI MAHANABO**

**APPELLANT**

and

**THE STATE**

**RESPONDENT**

This Judgment has been handed down electronically and shall be circulated to the parties by way of email. The date and time for hand-down shall be deemed to be 07 September 2021 at 12h00.

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**JUDGMENT**

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**COCHRANE AJ (COLLIS J Concurring)**

[1] The appellant Mr Hlalanathi Mahanabo appeared before the Oberholzer Regional Court on a charge of robbery with aggravating circumstances to which he pleaded not guilty. He was subsequently convicted of the charge and sentenced to fifteen years' imprisonment in terms of section 51(2) of the Criminal Law Amendment Act 105 of 1997 on 28 January 2020.

[2] The appellant's application for leave to appeal his conviction and related sentence was dismissed by the *court a quo*. He subsequently petitioned the Honourable Judge President of this court for leave to appeal both his conviction and sentence in terms of Section 309C of the Criminal Procedure Act No 51 of 1997. On 26 October 2020, the petition was granted only in respect of sentence.

[3] Succinctly, the appellant appeals his sentence on the following grounds:

3.1 That the sentence imposed by the trial court is shockingly inappropriate in that it is out of proportion to the totality of the accepted facts in mitigation;

3.2 That the *court a quo* erred in not fully considering the following:

- a) The age and personal circumstances of the appellant;
- b) The rehabilitation element;
- c) The mitigating factors inherent in the facts found proven;
- d) Absence of planning.

3.3 That the *court a quo* erred in emphasizing the following factors:

- a) The seriousness of the offence;
- b) The interests of society;
- c) The prevalence of the offence;
- d) The deterrent effect of the sentence;
- e) The retributive element of sentencing;
- f) The period of time accused has already spent in custody before finalisation of the matter.

- [4] The origin of the conviction and sentence arose from events which occurred on the morning of 10 August 2019, at or near Agnew Road in the district of Oberholzer, Gauteng. It was during this morning that the appellant, acting in common purpose with two other unknown perpetrators, unlawfully and intentionally assaulted the complainant. A knife was held to the complainant's neck by one perpetrator while the appellant and the third perpetrator searched the complainant. The appellant took the complainant's cell phone. The complainant returned to his home and took his vehicle to search for the perpetrators. The complainant located and chased the perpetrators in his vehicle, he apprehended the appellant who subsequently admitted to dropping the cell phone during the chase. The appellant led the complainant to the place where both the cell phone and the knife were discovered.
- [5] The powers of an appeal court to interfere with the discretion of the sentencing court are limited. The appeal court will only interfere with the sentence imposed if the sentencing court's discretion was exercised improperly.<sup>1</sup> A sentencing court will have failed to exercise its discretion properly and reasonably if the sentence is startlingly inappropriate or induces a sense of shock.<sup>2</sup>
- [6] The trial court must accordingly weigh both mitigating and aggravating factors in exercising its discretion, focused on the nature of the crime, the personal circumstances of the offender and the interest of society.
- [7] In terms of Section 51(2) of Act 51 of 1997 the prescribed minimum sentence for a first offender is 15 years imprisonment unless the court finds substantial and compelling circumstances to deviate and impose a lesser sentence.
- [8] In its heads of argument the appellants' counsel submitted that the substantial and compelling circumstances in this case were:

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<sup>1</sup> S v Malgas 2001 (1) SACR 469 (SCA)

<sup>2</sup> S v Wright 2000 (1) SACR 322 (SCA) at 324h & S v Michael and Another 2010 (1) SACR at 134h – 135b.

- (i) The Appellants youth and the fact that he was gainfully employed at the time of committing the crime;
- (ii) That he was a first offender; and
- (iii) That the complainant did not suffer any physical harm and his stolen items were recovered.

[9] During argument the respondents' counsel conceded:

- (i) That the appellants age of 24 did not qualify as a compelling circumstance;
- (ii) That the appellant and the other two perpetrators had operated as a "gang" indicating pre-mediation and planning;
- (iii) That there would be a serious outcry from the community if reduced sentences were to be granted in circumstances such as these; and
- (iv) That the appellant would benefit from rehabilitation programmes in place in prison.

[10] The Respondents' counsel argued that the fact that the appellant was gainfully employed at the time of committing the crime, was not to be considered as a mitigating factor as it indicated that the crime was committed out of greed.

[11] From the transcribed record, it is evident that the trial court in its judgement did consider all the Appellants aforesaid personal circumstances however, due to the nature and seriousness of the crime and the interests of society, determined that these did not qualify as substantial and compelling circumstances which would justify a deviation from the prescribed sentence.

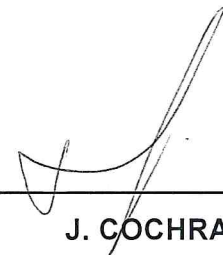
[12] The sentence imposed by the trial court did not induce a sense of shock, nor could it have been considered startlingly inappropriate considering the

seriousness of the crime and the lack of any substantial or compelling circumstances.

[13] As a consequence and in my view, no misdirection was exercised by the sentencing court when it imposed its sentence and as a result, I must conclude that the appeal has no merit and must therefore fail.

[14] In the result the following order is made:

14.1. The appeal against the sentence is dismissed.



**J. COCHRANE**  
**ACTING JUDGE OF THE HIGH COURT**  
**GAUTENG DIVISION, PRETORIA**

I agree, and it is so ordered.



**C. COLLIS**  
**JUDGE OF THE HIGH COURT**  
**GAUTENG DIVISION, PRETORIA**

**Appearances**

|                    |  |
|--------------------|--|
| For the Appellant  | : Adv. JL Kgokane                                  |
| Instructed by      | : Legal Aid of South Africa: Pretoria Local Office |
| For the Respondent | : Adv. L. Williams                                 |
| Instructed by      | : The Director of Public Prosecutions: Pretoria    |
| Date of Hearing    | : 31 May 2021                                      |
| Date of Judgment   | : 07 September 2021                                |

**Judgment transmitted electronically.**