

Reportable:	YES / <u>NO</u>
Circulate to Judges:	YES / <u>NO</u>
Circulate to Magistrates:	YES / <u>NO</u>
Circulate to Regional Magistrates:	YES / <u>NO</u>



IN THE NORTH WEST HIGH COURT, MAHIKENG

CASE NO: CA 12/2016

In the matter between:

SIZWE ALLEN MAHLANGU

Appellant

and

THE STATE

Respondent

HENDRICKS J & GURA J

DATE OF HEARING : 28 APRIL 2017

DATE OF JUDGMENT : 11 MAY 2017

COUNSEL FOR APPELLANT : MR. MADIBA

COUNSEL FOR THE RESPONDENT : ADV. MOKONE

JUDGMENT

HENDRICKS J

Introduction

[1] The Appellant was arraigned before the Regional Court, Ga Rankuwa and charged with the offences of attempted murder and robbery. On the charge of attempted murder he pleaded guilty to the competent charge of assault with intent to do grievous bodily harm and on the second charge, he pleaded guilty to robbery. The prosecutor accepted the aforementioned plea and the Appellant was consequently convicted. The two offences were taken as one for the purpose of sentence and an effective term of twelve (12) years imprisonment was imposed. The Appellant now appeals, with leave of the court *a quo*, the sentence imposed upon him.

[2] The facts of this case are contained in the plea explanation and reads as follow:-

"I am the accused in this matter, the contents here in contained are to the best of my knowledge and believe both true and correct. I plead guilty to the charges of assault with intent to do grievously bodily harm and common robbery. My legal representative has explained to me the consequences of making this statement. I plead guilty freely and voluntarily without unduly influence. I understand that I may be convicted solely on this statement without the State leading any evidence. I further understand that should the Honourable Court convict me on the basis of this statement, I will be sentenced. I admit that on the 4th of June 2013 and at or near Mabopane in the Regional Division of Madibeng I the accused, did unlawfully and intentionally

assault Diale Molefe a male person by assaulting him and further biting his ear. I further did unlawfully and intentionally assault Diale Molefe and did there and then with force take the following to wit a service pistol Z88 9mm Parabellum the property belonging to Diale Molefe. I was aware at all times that my actions were wrongful and unlawful. On the day in question I had a fight with Diale Molefe, I then grabbed him, throttled him and bit his ear. I further robbed him of his fire arm that he was in possession of and there after the fire arm was taken from me immediately there after. I was aware at all times that my actions were wrongful and unlawful and punishable by law. I therefore plead with the Honourable Court to have mercy on me."

[3] In his judgment on sentence the Regional Magistrate stated:

"Mr. Mahlangu you have already been convicted of the offence of attempted murder as well as robbery..."

and

"Now coming to sentencing, I am aware that you are convicted of two counts being attempted murder and robbery."

This is incorrect because the Appellant pleaded guilty and was convicted on his plea on the competent charge of assault with intent to do grievous bodily harm. This is a gross misdirection on the part of the Regional Magistrate which vitiates the sentencing proceedings and which entitles this Court to set aside the sentence and to substitute it with an appropriate sentence.

[4] The following personal circumstances of the Appellant were placed on record:

- He was 39 years of age when convicted;
- He is married in terms of customary law;
- He has 2 dependents;
- He showed remorse and pleaded guilty to the offence.

[5] The aggravating facts and circumstances are the following:

- The complainant is peace officer who was trying to enforce law and order;
- The appellant was resisting arrest and even went further to attack, injure and disarm a police officer of his fire arm;
- The appellant was wanted by the police for an offence which he allegedly committed whilst on parole;
- Both the offences of assault with intent to do grievous bodily harm and robbery are serious and prevalent crimes;
- The appellant's conduct and demeanor demonstrated that he has no regard to law and life of a fellow human being;
- He was not a first offender but has a list of relevant previous convictions.

[6] The Regional Magistrate took both offences together as one for the purpose of sentence and stated:

“It seems to me and it has been confirmed by the Prosecutor now that one only needs one set of facts to prove the two offences, in other words there is nothing wrong in taking the offences as one because they are, you need only one set of facts to prove the offence. They are closely related as to time and they are closely related on the date and the scene. So I am going to treat them or I will rather let them or I will treat them as one for purposes of sentence.”

I agree.

- [7] Having considered all the facts, factors and circumstances of this case, I am of the view that a sentence of five (5) years imprisonment would be appropriate under the circumstances of this case.

Order

- [8] Consequently, the following order is made:

- (1) The appeal against sentence is upheld.
- (2) The sentence imposed by the Regional Court is set aside and is replaced with the following sentence:
“The accused is sentenced to five (5) years imprisonment.”
- (3) The sentence is ante-dated to 09th February 2015.

R D HENDRICKS
JUDGE OF THE HIGH COURT
NORTH WEST DIVISION, MAHIKENG

I agree

SAMKELO GURA
JUDGE OF THE HIGH COURT
NORTH WEST DIVISION, MAHIKENG