

SOUTH GAUTENG HIGH COURT OF SOUTH AFRICA

DELMAS CIRCUIT DIVISION

Case No: CC97/2008

In the matter of:

THE STATE

versus

PRESTAGE LUNGELO MAHLASELA

Accused 1

SENTENCE

[1] I have convicted accused 1, Prestage Lungelo Mahlasela, of the murder on 11 May 2007 of the late Siphwe Phakati (count 1), of the robbery of the late Siphwe Pakathe (“the deceased”) of his cellular phone with aggravating circumstances (count 2), of the unlawful possession of a firearm (count 3), and of the unlawful possession of ammunition (count 4). His co-accused, Ntsikelelo Collen Hlakuva, was acquitted. I further on refer to accused 1 as “the accused”.

[2] The State, represented by Adv Russell Sibara, led no *viva voce* evidence in aggravation of sentence. The accused did not testify and led no *viva voce* evidence in

mitigation of sentence, but Adv Robin Stransham-Ford, who represents the accused, placed facts before me from the Bar in mitigation of sentence. Counsel for the State and for the accused addressed me on the matter of sentence. I have requested a pre-sentence report from a probation officer. Such report was handed in by agreement between the parties.

[3] On 11 May 2007, at around 11 pm, the deceased answered a call on his cellular phone outside Zock's Tavern when he was approached by the accused who demanded his cellular phone. The deceased refused to give it to him. The accused produced a firearm and shot the deceased once in the abdomen. The deceased fell down and the accused took the deceased's cellular phone. The deceased died as a result of the gunshot wound to his abdomen.

[4] Section 51(1), read with subsection 51(3)(a) of the Criminal Law Amendment Act 105 of 1997 ("the Act") and with Part I of Schedule 2 to the Act, prescribes imprisonment for life where a person is convicted of murder when the death of the victim was caused by the accused in committing or attempting to commit or after having committed or attempted to commit robbery with aggravating circumstances as defined in section 1 of the Criminal Procedure Act 51 of 1977, and section 51(2)(a)(i), read with subsection 51(3)(a) of the Act and with Part II of Schedule 2 to the Act, prescribes a minimum sentence of 15 years imprisonment for a first offender convicted of robbery when there are aggravating circumstances, unless 'substantial and compelling circumstances exist justifying the imposition of a lesser sentence'. The wielding of a firearm or the infliction of grievous bodily harm constitutes such defined aggravating circumstances in relation to robbery or attempted robbery.

[5] In considering whether or not substantial and compelling circumstances exist which would justify the imposition of lesser sentences than those prescribed, the traditional objectives of punishment, namely prevention, retribution, deterrence and rehabilitation, still apply, and I am enjoined to weigh the personal circumstances of the accused against the seriousness of the crimes committed by him and the interests of society.

[6] The murder and robbery crimes committed by the accused in this matter are very serious. The death of the deceased was caused by the accused in committing robbery with aggravating circumstances. The deceased's life was taken simply because he refused to comply with the accused's demand for his cellular phone. The accused has shown no remorse for his actions. Our country at present suffers an unacceptable and distressing incidence of violence and the community demands that courts deal seriously and severely with such offenders and for appropriately severe punishments to be imposed for such crimes as the ones the accused committed.

[7] The personal circumstances of the accused appear from the probation officer's report and, as I have mentioned, Adv Stransham-Ford also placed certain facts on record on behalf of the accused. I do not intend to repeat all such facts and circumstances herein, but I have duly considered and taken them into account in the determination of appropriate sentences for the accused.

[8] The accused is a first offender. He testified at the trial that he was born on 21 January 1978. He was accordingly 29 years of age at the time of the commission of

the offences of which he was convicted. He also testified at the trial that he had consumed a considerable volume of alcohol on the evening in question. I found his evidence about the level of his sobriety improbable in the light of the volume of alcohol he claimed to have consumed during the course of the evening in question. I accept in his favour that alcohol had played a role in the commission of the offences. The accused has been in custody awaiting the finalization of his criminal trial for about 1 year and 10 months.

[9] The personal circumstances of the accused, the role that alcohol played in the commission of the offences, the fact that he is a first offender, and the time spent in custody awaiting the finalization of these proceedings cumulatively do not, in my judgment, amount to substantial and compelling circumstances which would justify the imposition of lesser sentences than the minimum prescribed ones when balanced against the seriousness and senselessness of the murder, the seriousness of the robbery, and the public interest in appropriately severe punishments being imposed for such crimes. I arrive at this conclusion in full recognition that life imprisonment is the heaviest sentence a person can legally be obliged to serve. A consideration of all the circumstances of this particular case satisfies me that the imposition of the minimum sentences prescribed by the Act would not be unjust. Such sentences would not be disproportionate to the crimes, the criminal and the legitimate interests of society in the case of the accused.

[10] In the result the accused is sentenced to:

- A. 1. Imprisonment for life pursuant to his conviction on count 1 (murder);

2. Imprisonment for a term of fifteen years pursuant to his conviction on count 2 (robbery with aggravating circumstances);
 3. Imprisonment for a term of three years pursuant to his conviction on count 3 (unlawful possession of a firearm); and
 4. Imprisonment for a term of 1 year pursuant to his conviction on count 4 (unlawful possession of ammunition).
- B. The sentences of fifteen years imprisonment, three years imprisonment, and 1 year imprisonment run concurrently with the sentence of imprisonment for life for the murder conviction.

P.A. MEYER
JUDGE OF THE HIGH COURT

27 March 2009