

**NOT REPORTABLE**

**IN THE SOUTH GAUTENG HIGH COURT OF SOUTH AFRICA**

**JOHANNESBURG**

**CASE NO:** A78/2009

**DATE:** 2009-04-23

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In the matter between

**NKOSINATHI B MAZIBUKO**

**1<sup>st</sup> Appellant**

**MONDI CELE**

**2<sup>nd</sup> Appellant**

and

20 **THE STATE**

**Respondent**

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**J U D G M E N T**

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**VAN OOSTEN, J:** The appellants were convicted in the Johannesburg Regional Court of robbery with aggravating circumstances and the unlawful possession of a firearm and ammunition. They were both sentenced to 16 years imprisonment on the robbery charge and a further two years imprisonment on the remaining charges which were taken

together for the purpose of sentence. The appeal is against sentence only leave having been granted by the court *a quo*.

The facts of the matter are briefly the following. The complainant, a taxi owner, in the early hours of the morning, on his usual rounds picked up the appellants as passengers in his taxi. Having offloaded the other passengers along his route the appellants remained behind. One of them pulled out a firearm and the other moved to the front of the vehicle and also pointed a firearm at the complainant.

The complainant was ordered to hand them his cell phone which he did. At his request he was allowed to keep the sim card of the cellphone. The complainant stopped  
10 his vehicle and they all alighted. The complainant was searched again and his personal belongings and money were taken from him. They tied him to a tree with a black cloth, returned to the vehicle and sped off.

The complainant managed to untie himself and raised alarm. The appellants were arrested the next day in the complainant's taxi in a roadblock near Warden, on their way to KwaZulu Natal. There was no damage to the vehicle and the complainant's cellphone was recovered. The other personal items of which he was robbed were however not recovered. Two firearms both loaded with live ammunition (the subject matter of counts 2 and 3 respectively) were found in a secret compartment inside the vehicle.

It is trite that sentencing is pre-eminently a matter for the discretion of the trial court. An  
20 appeal court is only entitled to interfere with a sentence where there has been a material misdirection by the trial court or when the sentence imposed by the trial court is shocking and startlingly inappropriate. The regional magistrate duly considered the appellants' personal

circumstances and the fact that they had spent almost one year in prison awaiting trial. The first appellant was 46 years old at the time and the second appellant 31 years old.

The crime of armed robbery, it hardly needs to be stated, is extremely serious. It is an ever increasing prevalent offence and it is in the general public interest that sentences imposed in these matters should act as a deterrent to others. On this week's appeal roll in this court all the matters involve charges of armed robbery.

A sentence of 16 years imprisonment in respect of armed robbery, in the circumstances of this case, does not strike me as either unreasonable or unduly harsh. There is no doubt that the robbery was accompanied by serious aggravating factors. It was  
10 pre-planned and premeditated. The two accused acted in concert which makes it a gang robbery. The complainant was ambushed in his vehicle with which he was earning a living. The complainant was terrorised with firearms. He was tied to a tree.

It was suggested on behalf of the appellants that all sentences should have been ordered to run concurrently. I cannot agree. The unlawful possession of firearms and ammunition charges constitute separate and distinct offences deserving their own punishment. In the absence of any misdirection no justification in my view, exists for this court to interfere with the sentences that were imposed.

For all these reasons the appeal is dismissed.

**MOKGOATLHENG, J:** I agree.