



**IN THE HIGH COURT OF SOUTH AFRICA**  
**(NORTH GAUTENG, PRETORIA)**

(1) REPORTABLE: YES / NO  
(2) OF INTEREST TO OTHER JUDGES: YES / NO  
(3) REVISED: ✓

18.09.2014

DATE

[Signature]

SIGNATURE

**CASE NO: A344/14**

**DATE:** 24/10/2014

In the matter between:

**JOE NCONGWANE**

**APPELLANT**

and

**THE STATE**

**RESPONDENT**

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**JUDGMENT**

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**RAULINGA J,**

1. This is an appeal against sentence only.
2. The appellant was convicted on one count of robbery in the district court, sitting at Nelspruit. He was sentenced to undergo 3 years direct imprisonment. He has been released on bail in the amount of R5000.00 pending appeal. The appellant was legally represented throughout the trial.

3. The evidence of the state is that the complainant, Mr Nieuwoudt, was cycling on the Old Airport road on the 13 May 2013, when he was attacked by three men who were walking on foot. Their backs were turned on him. As he approached them, one of them turned around and pushed him into the bushes. He was held down and his backpack was pulled from his shoulders. His cell-phone was taken from the back pocket of his pants and his glasses were broken during the incident.
4. The three men jumped over the fence with his bicycle. Mr Nieuwoudt managed to chase after them and managed to retrieve his bicycle. He reported the case to the police. Mr Nieuwoudt testified that the value of the bicycle was R2000 and that of the backpack R1000.
5. The appellant submits that, the court a quo imposed the maximum sentence that a district court may impose – 3 years direct imprisonment, which it was not entitled to do because it failed to properly consider the prospects of rehabilitation.
6. The Supreme Court of Appeal has cautioned that, one could not only sentence to satisfy public demand for revenge, the other sentencing objectives, including rehabilitation would never be discarded altogether in order to attain a balanced and effective sentence – *S v SMM 2013(2) SACR 292 (SCA)*. I agree with Counsel for the appellant that even in very serious crimes committed and where minimum sentences are to be imposed, the court must consider the prospect of rehabilitation of an accused favourably. In deserving cases, it is necessary to keep the accused outside prison in order to achieve this purpose.
7. Even in a robbery charge such as this one, the appellant's youth is a factor that the court has to consider seriously. In casu the degree of violence involved in the robbery is limited, Mr Nieuwoudt's bicycle has been recovered and the complainant was not injured. These are some of the factors which make the appellant eligible for a sentence with the option of a fine. It was necessary to guard against imposing uniform sentences that did not distinguish between the facts of different cases and the personal circumstances of offenders – *S v Ndlovu 2007(1) SACR 535(SCA)*.
8. In the case of first offenders, particular regard should be paid to the desirability of keeping such offender out of prison if this is at all possible. It is unfortunate that at present there are no facilities for keeping first offenders separate from hardened criminals in our prisons, and there is little doubt that any first offender sent to prison

runs a real risk of contamination from hardened criminals – *S v Mutize* 1978 (2) SA 911(RA) at 914G (1978 RLR D 148 at 153).

9. The personal circumstances of the appellant were as follows when he was sentenced by the court a quo:

- (i) He was 27 years old;
- (ii) He was a first offender;
- (iii) The appellant has two children, and
- (iv) He was the sole breadwinner in the family.

10. In the circumstances I am of the view that the court a quo didn't exercise its discretion properly. The sentence is justified to be interfered with.

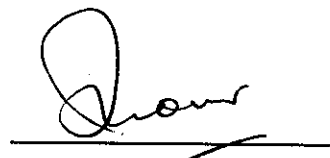
11. I propose the following order:

- (a) The appeal on sentence is upheld.
- (b) The sentence of three years imprisonment is set aside.
- (c) The accused is sentenced to pay a fine of R4000 or failing which undergo a period of 6 months imprisonment.



**T J RAULINGA**  
**JUDGE OF THE NORTH GAUTENG HIGH COURT**

I agree



**JW LOUW**  
**JUDGE OF THE NORTH GAUTENG HIGH COURT**