



IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NO: A559/2017

DELETE WHICHEVER IS NOT APPLICABLE

- (1) REPORTABLE: NO
(2) OF INTEREST TO OTHERS JUDGES: NO
(3) REVISED

5/11/2019

DATE

SIGNATURE

In the matter between:

GIFT RADEBE

APPELLANT

v

THE STATE

RESPONDENT

JUDGMENT

NEUKIRCHER J

1. This is an appeal on sentence only.
2. The appellant was charged with one count of robbery with aggravating circumstances as read with Section 1 of Act 51 of 1977 (the CPA) and Schedule 2 of s51 of the CPA, in the Regional Division of Gauteng at Benoni. He was represented at his trial and plead not guilty. No plea explanation was provided.

THE FACTS

3. Thato Pule (Pule) testified that he was on his way home from a friend's house when he saw appellant¹. They greeted each other and appellant asked to see his Sony Xperia E1 cell phone. When Pule refused, appellant took out a knife² and demanded his phone and threatened to kill Pule.
4. Appellant's friend then moved to stand behind Pule and so he handed the phone over.
5. As the two men walked away, Pule followed them asking for his phone back. Appellant then then picked up a brick and threw it at him. He tried to block it with his forearm and it struck him there.

¹ Who was known to him and who was standing with another man

² An Okapi knife with a brown handle

6. Pule then went home and contacted his service provider to report the stolen phone.
7. The following day he mentioned the incident to his brother and they went looking for the appellant. When they found him the appellant told them that the phone was at his grandfather's house. They went there to find the phone but to no avail. Appellant and his co-accused were then arrested.
8. Pule's brother testified but could not confirm any of the events proceeding those in paragraph 6. He did corroborate the remainder of Pule's evidence.
9. Appellant testified and denied the events in question.
10. Despite his disavowing of knowledge of the events, appellant was found guilty as charged.

THE SENTENCE

11. When sentencing the appellant, the court *a quo* took into account:
 - 11.1 that appellant had lied regarding his personal circumstances during the sentencing proceedings:

11.1.1 in his bail application he informed the court that he was living with his father and stepmother and that he was 19 years old;

11.1.2 in the sentencing proceedings he stated that he was living with the unemployed mother of his 29 month-old child; and

11.1.3 he is actually 23 years old.

11.2 that he was a Grade 10 learner and earned R300 per week working for his father. He was treated as a first offender.

11.3 He was in custody since 5 November 2014 and shown no remorse at all.

12. The court could not find any substantial and compelling circumstances to deviate from the minimum sentence.

13. Whilst I agree that the crime is a serious one, I am of the view that the sentence imposed is startlingly inappropriate given that a) the appellant is very young, b) is considered a first offender and c) spent time imprisoned awaiting trial.

14. In my view, the Court *a quo* overemphasized the interests of society and underemphasized the interests of the appellant and the rehabilitative elements of a sentence of imprisonment³.

³ See *S v Kruger* 2012 (1) SACR 369 (SCA): *punishing an accused should not be likened to revenge. It must have all the elements of and purposes of punishment, prevention, retribution, individual and general deterrence and rehabilitation.* Also *C v Van Hoggenberg* 212 (1) SACR 462 (GSJ at [6])

15. This being so, there are substantial and compelling circumstances to deviate from the minimum sentence and I am of the view that a sentence of 10 years imprisonment is appropriate.

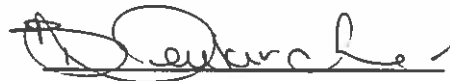
ORDER

16. Thus the following order is made:

16.1 the appeal as against sentence succeeds;

16.2 the sentence of the court *a quo* is set aside and replaced with the following:

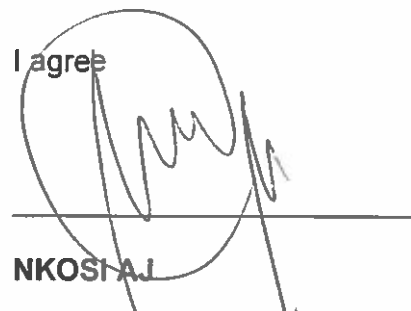
"the appellant is sentenced to 10 years' imprisonment. His time spent in prison awaiting this appeal is to be taken into consideration when considering his parole."



NEUKIRCHER J

JUDGE OF THE HIGH
COURT

I agree



NKOSIAJ

ACTING JUDGE OF THE
HIGH COURT

Counsel for the appellant: Mr Moeng

Instructed by: Legal Aid South Africa, Pretoria Justice Centre

Counsel for the respondent: Mr Pruis

Instructed by: National Director of Public Prosecutions

Date of application : 28 October 2019

Date of judgment : 30 October 2019