

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, PRETORIA

CASE NO: A242/2020

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

Date: 4 July 2022

E van der Schyff

In the matter between:

BONGILE JOSEPH NKOPANE

1<sup>ST</sup> APPELLANT

JOSEPH ZINGILE BIXA

2<sup>ND</sup> APPELLANT

and

THE STATE

RESPONDENT

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JUDGMENT

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Van der Schyff J (Munzhelele J concurring)

**Introduction**

- [1] The appellants were convicted of robbery with aggravating circumstances in the Fochville regional Court. The first appellant was sentenced to twenty years' imprisonment, and the second appellant to fifteen years' imprisonment. They were also declared unfit to possess a firearm in terms of s 103 of the Firearms Control Act 60 of 2000.
  
- [2] The appellants' application for leave to appeal against the conviction and sentence was dismissed. They were, however, granted leave to appeal against the sentence via petition by the High Court.
  
- [3] It is trite that sentencing powers pre-eminently fall within the judicial discretion of the trial court. A court of appeal should be careful not to erode this discretion. The principle has been affirmed in *S v Rabie*<sup>1</sup> that a court sitting on appeal will only interfere with the sentence imposed by the trial court if the sentencing court exercised its discretion unreasonably or in circumstances where the sentence is adversely disproportionate.
  
- [4] The record does not reflect that the learned regional court magistrate exercised his sentencing discretion improperly or unreasonably. The record reflects that the judgment on sentence was well balanced and thoroughly considered. The learned regional court magistrate explained that in determining a just sentence, he considered the accused's personal particulars and circumstances, the crime, the seriousness of the offence, and the interest of the community. He then tried to blend the sentence with mercy. In the circumstances, it cannot be found that the sentences imposed induce a sense of shock or are startlingly inappropriate. The appellants' personal circumstances were placed on record and considered by the learned regional court magistrate.
  
- [5] Minimum sentences are prescribed for persons convicted of the offence of robbery with aggravating circumstances. The Supreme Court of Appeal emphasised in *S v Malgas*<sup>2</sup> that:

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<sup>1</sup> 1975 (4) SA 855 (A) at 857D-E.

<sup>2</sup> 2001 (1) SACR 469 (SCA).

'The specified sentences are not to be departed from lightly and for flimsy reasons. Speculative hypotheses, aversion to imprisoning first offenders, personal doubts as to the efficacy of the policy underlying the legislation, and marginal differences in personal circumstances or degrees of participation between co-offenders are to be excluded.'

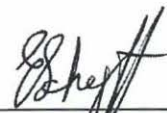
- [6] The mere fact that the items that were robbed were of trivial value and that the complainant did not sustain any injuries during the robbery does not constitute substantial and compelling circumstances justifying the imposition of a lesser sentence than the sentence prescribed by the legislature. The complainant was robbed of all the cash he had on him. For a poor man, the loss of R80.00 can be worse than the loss of R500 000.00 for a wealthy man. In any event, the cumulative effect of the appellants' respective ages, their personal circumstances, and the fact that the complainant did not suffer any injuries during the robbery, pales when considered against the fact that neither appellant was a first offender. The first appellant's previous convictions include a conviction on a charge of robbery, and the second appellant's previous convictions include a conviction on a charge of rape.

## ORDER

**In the result, the appellants' appeal against the sentence imposed by the Regional Court of Gauteng sitting at Fochville stands to be dismissed, and the following order is granted:**

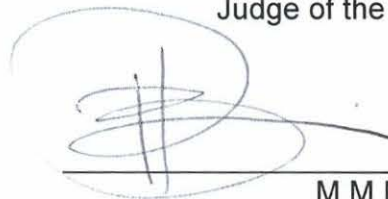
1. The appellants' appeal against the sentence imposed by the Regional Court of Gauteng, sitting at Fochville, is dismissed.

I concur



E van der Schyff

Judge of the High Court



M M Munzhelele

Judge of the High Court

Delivered: This judgment is handed down electronically by uploading it to the electronic file of this matter on CaseLines. As a courtesy gesture, it will be sent to the parties/their legal representatives by email.

For the appellants:	M B Kgagara
Instructed by:	Pretoria Justice Centre
For the respondent:	E V Sihlangu
Instructed by:	State Attorney
Date of the hearing:	26 May 2022
Date of judgment:	4 July 2022