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

Case Number: **A99/2022**

**REPORTABLE: NO  
OF INTEREST TO OTHER JUDGES: NO  
REVISED: YES  
10/11/2022**

In the matter between:

**PETER NDLOVU**

First Appellant

**HOWARD SIBIZA**

Second Appellant

and

**THE STATE**

Respondent

**JUDGMENT**

**JANSE VAN NIEUWENHUIZEN J:**

[1] The first and second appellants pleaded guilty and were convicted and sentenced in the court *a quo* as follows:

First Appellant:

Count 1: Robbery with aggravated circumstances: 15 years imprisonment

Count 3: Possession of a firearm: 7 years imprisonment

Count 4: Possession of ammunition: 1 year imprisonment

The court ordered that the sentence imposed on count 4 runs concurrently with count 3 and that 2 years of the sentence imposed on count 3 runs concurrently with count 1. The effective sentence being 20 years imprisonment

Second Appellant

Count 1: Robbery with aggravated circumstances: 15 years imprisonment

Count 2: Robbery with aggravated circumstances: 15 years imprisonment

Count 5: Possession of a firearm: 5 years imprisonment

Count 6: Possession of ammunition: 1 year imprisonment

The court ordered that the sentences imposed on counts 5 and 6 runs concurrently with count 1 and that 7 years of the sentence imposed on count 2, also runs concurrently with count 1. The effective sentence being 23 years imprisonment.

[2] This appeal is directed at the sentences imposed by the court *a quo*.

**Facts**

[3] On 27 August 2020 the first and second appellants in the company

of two co- perpetrators proceeded to the Ackermans Store, Springs Gate Shopping Mall, Springs to commit an armed robbery.

[4] Both appellants explained their involvement in the crime in their respective plea explanations. The first appellant stated that he was in possession of a semi-automatic pistol which was loaded with ammunition and the second appellant stated that he was in possession of a loaded revolver. Upon entering the store the first and second appellants pointed the firearms at staff members and demanded to be taken to the safe. The threat yielded the necessary result and three of the staff members took them to the back office where the safe was located.

[5] The first and second appellants together with their co-perpetrators took 57 cell phones and a thousand rand cash from the safe and fled the scene. Security personnel noticed them and their co perpetrators and a decision was taken to part ways, The first appellant was apprehended by the police shortly afterwards and taken into custody.

[6] The second appellant ran into a parking area and came across a black Volkswagen motor vehicle. He knocked his revolver against the driver's side of the window and ordered the occupants to vacate the vehicle. Once the occupants had alighted from the vehicle the second appellant, whilst yielding his revolver, demanded the car keys from the lady who was the driver of the vehicle.

[7] The keys were handed over to the second appellant who fled the scene in the vehicle. Shortly thereafter the second appellant abandoned the vehicle and was arrested by the police.

## **Sentence**

[8] The first and second appellants are both first offenders and spend almost a year in custody awaiting trial. The first appellant is 47 years old and has

been residing with his wife and two children in H[...] for the past 25 years. Prior to the Covid lockdown, the first appellant was working as a mechanic and earned an income of approximately R 10 000, 00 in a good month. He was the sole breadwinner of the family.

[9] The second appellant is 36 years of age, has a life partner and has three children aged 19, 17 and 3 years old. The second appellant has been residing with his life partner and the youngest child in Y[...] for the past 12 years. The second appellant is a taxi driver and earns approximately R 2 000, 00 per month.

[10] Both appellants explained that the Covid lockdown rendered them unemployed which caused financial hardship for their families. Although they know what they did was wrong, it was done out of sheer desperation.

[11] In terms of section 51(2) of the Criminal Law Amendment Act, 105 of 1997, a minimum sentence of 15 years imprisonment is prescribed for a first offender who is found guilty of robbery with aggravating circumstances. Section 51(3) provides that the court has a discretion to impose a lesser sentence, should the court find that substantial and compelling circumstances exist to justify a lesser sentence.

[12] The court *a quo* duly weighed the seriousness of the crime, the personal circumstances of the appellants and interests of society in considering an appropriate sentence. The court found that there are no substantial and compelling circumstances to justify the imposition of a lesser than the prescribed minimum of 15 years imprisonment in respect of the charges of robbery with aggravating circumstances.

[13] The court *a quo*'s finding in this regard cannot be faulted.

[14] It is trite that a sentence should reflect the moral blameworthiness of an accused person. In this respect, the cumulative effect of the sentences imposed

on the various charges plays a roll. Both appellants were economically active citizens who provided for their families prior to the Covid lockdown. Both pleaded guilty and in doing so saved precious judicial resources.

[15] The plea of guilty also saved the victims of the crime from testifying in court and reliving their, no doubt, horrendous ordeal. In pleading guilty the appellants took responsibility for their actions, a phenomenon that one seldom encounters in criminal matters. Their plea demonstrates remorse and is indicative of a good change of rehabilitation. Although the offence committed by the appellants is appalling, it appears from the facts that they are not career criminals.

[16] The fact that the appellants' committed the crime out of "*desperation*... is no excuse. They must be properly and fairly punished for the crimes that they committed.

[17] Bearing all the aforesaid in mind, I am of the view that the court *a quo* erred in sentencing the appellants to effective sentences of respectively 20 and 23 years direct imprisonment.

[18] I am of the view that the sentences imposed on count 3 and count 4 in respect of the first appellant should run concurrently with the sentence imposed on count 1. This result in an effective sentence of 15 years in respect of the first appellant.

[19] In respect of the second appellant, I am of the view, that the sentence imposed on count 2 and 6 and two years of the sentence imposed on count 5 should run concurrently with the sentence imposed on count 1, resulting in an effective sentence of 18 years imprisonment.

## **ORDER**

In the result, I propose the following order:

1. The first and second appellants' appeal against sentence is upheld.
2. The sentence by the court *a quo* is set aside and replaced with the following sentence:

First Appellant

Count 1: 15 years imprisonment.

Count 3: 7 years imprisonment.

Count 4: 1 year imprisonment.

In terms of section 280(2) of the Criminal Procedure Act, 51 of 1977 ("the Act") the court orders as follows:

The sentence imposed on count 3 and count 4 runs concurrently with the sentence imposed on count 1. The effective sentence being 15 years Imprisonment.

Second Appellant

Count 1: 15 years imprisonment.

Count 2: 15 years imprisonment

Count 5: 5 years imprisonment

Count 6: 1 year imprisonment

In terms of section 280(2) of the Criminal Procedure Act, 51 of 1977 ("the Act") the court orders as follows:

The sentence imposed on count 2 and count 6 runs and two years of the sentence imposed on count 5 runs concurrently with sentence imposed on

count 1. The effective sentence being 18 years imprisonment.

3. The sentences are ante dated to 8 September 2021.

N. JANSE VAN NIEUWENHUIZEN  
JUDGE OF THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, PRETORIA

I concur,

S MAGARDIE  
ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, PRETORIA

**DATE HEARD:**

19 October 2022

**DATE DELIVERED:**

10 November 2022

**APPEARANCES**

For the 1<sup>st</sup> & 2<sup>nd</sup> Appellants:

Instructed by:

Advocate H.L. Alberts

Legal aid South Africa

For the Respondent

Instructed by:

Advocate E.V. Sihlangu

The Director of Public Prosecutions