IN THE HIGH COURT OF SOUTH AFRICA

KWAZULU-NATAL DIVISION, PIETERMARITZBURG

CASE NO. AR708/16

In the matter between:

DAZI REGINALD SANDILE DLADLA **APPELLANT**

and

THE STATE **RESPONDENT**

J U D G M E N T

Henriques J (Lopes J et D Pillay J concurring)

[1] The appellant was convicted in the High Court presiding in Ladysmith on 2 March 2000 on the following counts:

Count 1: Robbery;

Count 2 : Assault with intent to do grievous bodily harm;
Count 4 and 5: Murder;
Count 6 : Attempted murder.

He was sentenced as follows:
Count 1 : Three (3) years' imprisonment;
Count 2 : Two (2) years' imprisonment;
Count 4 : Thirty (30) years' imprisonment;
Count 5 : Thirty (30) years' imprisonment;
Count 6 : Ten (10) years' imprisonment.

[2] The sentences imposed on counts 1, 2 and 6 were ordered to run concurrently with the sentences imposed on counts 4 and 5. The appellant was thus sentenced to an effective 60 years' imprisonment. Leave to appeal the convictions and sentences was refused by the court a quo on 13 October 2009, and on 21 July 2016 on petition, leave to appeal the sentences imposed was granted. It is this appeal which serves before us.

[3] The grounds of appeal relied on by the appellant are the following: that the court a quo committed a misdirection in not ordering all the sentences to run concurrently and as a consequence the effective term of imprisonment is disproportionate having regard to the offences, and the court a quo failed to attach sufficient weight to the age of the appellant, he being 23 years old at the time of sentencing.

[4] Before dealing with the merits of the appeal it is necessary to briefly deal with the circumstances in which the offences were committed, as this has a bearing on the conclusion reached. It is undisputed that the incidents occurred at approximately 17h00 on 4 June 1998 at an extremely busy taxi rank in Escourt when the complainant in counts 1 and 2, Brenda Mbatha, was robbed by the appellant and his companion. When she attempted to retrieve her purse a struggle ensued between her and the appellant, and during the struggle, she struck him with a beer bottle as a result of which he dropped her purse which she recovered minus the money that had been inside it. At the time of her struggling with the appellant Alpheous Xaba (the

deceased in count 3) attempted to intervene and assist her to no avail. The appellant and his companion were able to run away.

[5] A short while later, the appellant accompanied by five other males returned to the taxi rank and began assaulting Brenda Mbatha and Xaba. She was assaulted with stones and bottles, and during the assault, Jabulani Zwane attempted to intervene and assist Mbatha in hiding from her assailants. Whilst the assault occurred Mbatha heard a gunshot, as someone among the five who accompanied the appellant was armed. The evidence revealed that several shots were fired at innocent persons who were in the vicinity of the taxi rank which resulted in the death of the deceased in counts 4 and 5.

[6] It is trite that the imposition of sentence is a matter which falls within the sole discretion of the trial court. An appeal court's powers to interfere with the sentence imposed is limited to circumstances where there is a material misdirection or irregularity vitiating the sentence, or if the sentence imposed is 'disturbingly' or 'startlingly' inappropriate so as to induce a sense of shock, or if it is one which differs so greatly from the one which the appeal court itself would have imposed (*S v Kgosimore*[1]).

[7] At the hearing of the appeal, Mr *Masondo* who appeared for the appellant indicated that the appeal was focused on the sentences imposed in respect of counts 4 and 5. He submitted that an appropriate sentence for these two counts was one of 20 years' imprisonment in respect of each count, and for the court to order all the sentences to run concurrently.

[8] This submission, in my view, fails to take into consideration the gravity of the offences and the fact that three innocent bystanders were shot, two of whom died as a consequence, and the fact that the appellant was no stranger to the law as he had a previous conviction for murder which sentence was wholly suspended, and that these offences were committed during the period of suspension.

[9] Mr *Singh* who appeared for the respondent, whilst conceding the appeal, submitted that a sentence of life imprisonment was appropriate in respect of counts 4 and 5. This submission was based on the appellant's previous conviction and the

[1] *S v Kgosimore* 1999 (2) SACR 238

particularly vicious and brutal circumstances under which the present offences were committed. He submitted that despite the appellant's age, he was not a callow youth and his youthfulness did not play a role in the commission of the offences.

[10] The following must be borne in mind. The indictment in this matter did not make reference to the minimum sentencing legislation. Although the record contains reference to it in the judgment on sentence, the court a quo was concerned with the appropriateness of a sentence of life imprisonment and one of the recognised purposes of sentence being rehabilitation. In addition, the Supreme Court of Appeal has warned against the imposition of excessively long sentences (*S v Mhlakaza*[2]).

[11] It appears that the court a quo in imposing the sentences that it did on counts 4 and 5, despite being alive to the importance of rehabilitation, failed to consider the cumulative effect of the sentences imposed (see *S v Johaar,* and *S v Moswathupa)*[3], and in addition, did not consider that all the offences were closely related in time and space to each other and with one common intent (*S v Mokela)*.[4] In addition, when imposing sentence, a sentencing court ought not to be influenced by factors such as eligibility for parole or the minimum period of time that a sentenced prisoner will serve. This is the exclusive domain of Correctional Services.

[12] I agree with the sentiments expressed by our courts that the imposition of a period of imprisonment of 60 years is a 'methuselah' sentence and defeats one of the purposes of sentencing, being rehabilitation. In *S v Nkosi*[5] which was referred to by the respondent in the heads of argument, the court remarked that the imposition of such a sentence results in an accused person having no chance of being released on the expiry of the sentence and also no chance of being released on parole and such sentence is tantamount to cruel, inhuman and degrading punishment.

[13] At the hearing both parties agreed that an appropriate option to ameliorate the effect of the sentences would be to order the sentences on all counts to run concurrently, which would translate to the appellant serving an effective 30 years' imprisonment. Given the circumstances of the offence and the personal circumstances of the appellant this is the most appropriate option.

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[2] *S v Mhlakaza & another* 1997 (1) SACR 515 (SCA)
[3] *S v Johaar & another* 2010 (1) SACR 23 (SCA); *S v Moswathupa* 2012 (1) SACR 259 (SCA)
[4] *S v Mokela* 2012 (1) SACR 431 (SCA) para 11
[5] *S v Nkosi & others* 2003 (1) SACR 91 (SCA) para 9

[14] In the result it is ordered that the appeal against sentence is upheld to the extent that the sentences imposed on all counts are to run concurrently. The appellant will thus serve an effective 30 (thirty) years' imprisonment. Such sentences are antedated to 2 March 2000 in terms of s 282 of the Criminal Procedure Act 51 of 1977.

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Henriques J

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D Pillay J

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Lopes J

Appeal heard on :	1 August 2018
Judgment handed down on :	10 August 2018
Counsel for the appellant :	Mr *Masondo*
Instructed by :	Durban Justice Centre The Marine, Ground Floor, 22 Dorothy Nyembe Street Durban Telephone (031) 304 3290 Reference : SB Masondo X707121117
Counsel for the respondent :	Mr *Singh*
Instructed by :	Director of Public Prosecutions High Court Building, Church Street, Pietermaritzburg

Reference : Mr CL Singh