

IN THE HIGH COURT OF SOUTH AFRICA(CAPE OF GOOD HOPE PROVINCIAL DIVISION)DATE:

2 JUNE 2006

CASE NUMBER:

A82/2004

5 In the matter between:

EDWARD LE ROUX

Appellant

And

STATE

Respondent

10

JUDGMENT

(Appeal against Sentence)

NDITA, J:

15 On 4 March 2003 the appellant and Omar Benjamin were convicted in the Regional Court, Parow, of robbery with aggravating circumstances on the first count and unlawful injury to property in the second count. He pleaded not guilty to both counts and after evidence was led he was convicted as charged and sentenced to 15 years' imprisonment on the first count, and two years' imprisonment on the second count, to be served concurrently. He enjoyed legal representation throughout the trial. He now appeals against sentence.

20

25 The essential facts which have resulted in the appellant's conviction can be summarised as follows. On 8 July 2002,

Jacobus Prinsloo, a taxi driver, had parked his vehicle opposite the Food World stores at Elsie's River and proceeded to the medical centre in Owen Street to enquire about his spectacles. Inside the vehicle he left Donovan, who is the taxi conductor. When he returned to his vehicle he observed that
5 eight young men had surrounded it. The appellant and Omar were amongst the group. The appellant stood at the driver's side of the vehicle whilst Benjamin demanded money and threatened to stab the complainant with a knife, which he took
10 from the pocket of his pants.

The complainant tried to run away from the car but the group of young men pursued and caught up with him. A struggle ensued between him and the group as he was trying to escape.
15 At that stage the appellant threatened him with a knife. The incident happened near the Rasta house but people came out of the flat and tried to intervene on the complainant's behalf. A sum of R240.00 was stolen from the complainant in the course of the struggle. He also observed that his watch,
20 valued at R160.00 had been removed from his wrist.

When he returned to his vehicle he observed that two of the vehicle tyres had been slit with a knife. Donovan was still inside the vehicle. They both went to the police station to
25 report the matter.

Donovan testified, *inter alia*, that a group of men, including appellant and his co-accused, approached appellant's taxi. Appellant's co-accused asked for money and appellant got into the taxi. The appellant got inside the taxi and threw out some documents from the (indistinct) and took out a watch belonging to the appellant.

In terms of section 51 of the Criminal Law Amendment Act 105 of 1997, the minimum sentence of robbery with aggravating circumstances is 15 years, but the courts may impose a lesser sentence if it is satisfied that substantial and compelling circumstances exist which justify an imposition of such a sentence. The magistrate was of the view that no substantial and compelling circumstances existed in this case which justified the imposition of a lesser sentence. He accordingly sentenced the appellant to 15 years' imprisonment and it has been argued on behalf of the appellant that the trial court misdirected itself in finding that there are no substantial and compelling circumstances that justify a departure from the otherwise prescribed minimum sentence of 15 years.

I have given careful consideration to the question of sentence and I have come to the conclusion that the magistrate erred in finding that there are no substantial and compelling circumstances in this case which justify the imposition of a

lesser sentence. Clearly, the offence is a serious one and warrants the imposition of a heavy sentence. However, this factor must be weighed against the following mitigating factors;

5 a) that although the appellant is not a first offender, all his previous convictions relate to the possession of firearms and ammunition without being a holder of a licence to possess the same. Now having said that I am mindful of the fact that these previous convictions are
10 relevant to the facts of this case.

 b) The appellant has awaited trial in custody from 14 October 2002 to 4 March 2003 when
15 he was eventually sentenced.

 c) The amount of money stolen was certainly considerable in his circumstances, but relative to the amount sometimes robbed in other
20 cases in that it was not enormous.

 d) Although the complainant was threatened with a knife, he was not actually stabbed and he did not sustain any serious injuries during the robbery.
25

e) At the time of the commission of the offence the appellant was 21 years old.

f) Of greater importance is that the sentence of 15 years in respect of Benjamin Omar, who was 17 years eight months at the time of the commission of the offence, has been set aside on appeal and replaced with six years' imprisonment.

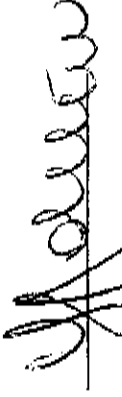
10

On a basis of disparity of sentences, in my view, the sentence should be reduced. In this regard, see the judgment of my Brother Davis, J in Hansen v Regional Magistrate, Cape Town 1992 SACR 430. However, it should be stated that the degrees of participation of Benjamin and the appellant differ. The appellant was the main aggressor. He was the one who used the knife and was much older than Benjamin. For these reasons he deserves a heavier sentence, in my view.

20 Having regard to the cumulative effect of these factors, they do qualify, in my view, as substantial and compelling circumstances justifying the imposition of a lesser sentence than 15 years' imprisonment. In all the circumstances I am of the view that a sentence of 10 years' imprisonment would be
25 appropriate.

I therefore propose that the appeal be upheld and the sentence of 15 years' be replaced 10 years' imprisonment.

5



MOTALA, J

MOTALA, J: The appeal is upheld. The sentence of the
magistrate is set aside and replaced by the following sentence:

"The accused is sentenced to 10 years' imprisonment."

15

MOTALA, J