

IN THE HIGH COURT OF SOUTH AFRICA(CAPE OF GOOD HOPE PROVINCIAL DIVISION)CASE NO:

A320/2006

DATE:

9 MAY 2008

5 In the matter between:

ENRICO ADAMS

Appellant

and

THE STATE

Respondent

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J U D G M E N T

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STEYN, A.J.:

[1] The appellant in this matter was found guilty of robbery  
15 with aggravating circumstances in the Wynberg  
Magistrate's Court on 17 January 2005. He was  
sentenced on the same day to 15 years' direct  
imprisonment. On 18 May 2006 the appellant applied for  
leave to appeal against sentence only and such leave  
20 was granted. Accordingly, the appeal today is against  
sentence only.

[2] As far as the crime is concerned, the accused and  
another robbed the claimant of property with a total  
25 estimated value of R31 400 and a BMW motor vehicle. A

firearm was involved. The complainant was under the influence of alcohol and vulnerable. The accused pretended that he wanted to assist the claimant and then, after forcing him to take him and his accomplice to his apartment, robbed him of his belongings after tying him up. The robbery took place on 21 June 2002. The appellant was 17 years of age on this date.

5 [3] As regards sentence it is trite law that a court of appeal  
10 will only interfere with the discretion of the trial court in the event of a misdirection or in the event that the sentence imposed could be described as shockingly inappropriate. The magistrate found that the provisions of section 51 of Act 105 of 1997 applied to the present  
15 matter prescribing a minimum sentence of 15 years' imprisonment and that no substantial and compelling circumstances existed which justified the imposition of a lesser sentence than the prescribed sentence.

20 [4] It was submitted on behalf of the appellant who, as mentioned above, was 17 years of age when the crime was committed, that the magistrate was misdirected when he sentenced the appellant without any regard to the provisions of section 51(3)(b) of Act 105 of 1997.

Section 51(3)(b) of Act 105 of 1997 provided as follows in January 2005:

"If any court referred to in subsection (1) or (2) decides to impose a sentence prescribed in those subsections upon a child who was 16 years of age or older but under the age of 18 years at the time of the commission of the act which constituted the offence in question, it shall enter the reasons for its decision on the record of the proceedings".

It is also and in any event submitted on behalf of the appellant that the magistrate was misdirected in not giving sufficient weight to the youth and immaturity of the appellant at the time of the commission of the offence. He refers to the Court to the case S v Nkosi 2002(1) SACR 135 (W). In that judgment it was held that youthfulness of an offender is a weighty factor in considering the culpability of an accused.

[5] The magistrate considered the age of the appellant at the time of the trial when he was 20 years old and the fact that he had a young child. However, the magistrate found that the aggravating circumstances of the matter were more important than these mitigating factors. The age of the appellant at the time of the offence and the provisions of section 51(3)(b) of Act 105 of 1997 give the

trial court a discretion to award any appropriate sentence or to award the prescribed minimum sentence but prescribes that the reasons for the decision to award the prescribed minimum sentence should be entered on the record.

[6] The trial court disregarded these provisions and the age of the appellant at the time the crime was committed. Accordingly, it is the view of this Court that the magistrate committed a misdirection and the sentence imposed is inappropriately harsh in the circumstances. The Court is accordingly empowered to interfere with the sentence which was imposed by the trial Court.

[7] I would amend the sentence to eight years' imprisonment. The order is back-dated to the date of sentencing by the magistrate in terms of the provisions of section 282 of the Criminal Procedure Act. The order declaring the appellant unfit to possess a firearm remains in force.



STEYN AJ

VELDHUIZEN, J.: I agree. The appeal is upheld. The conviction is confirmed, the sentence is set aside and replaced with the one suggested by my learned colleague.

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VELDHUIZEN, J.