IN THE HIGH COURT OF SOUTH AFRICA

(CAPE OF GOOD HOPE PROVINCIAL DIVISION)

CASE NO: A76/2006

DATE: 15 AUGUST 2008

In the matter between:

R ISAACS

J SOLOMONS APPELLANTS

versus

THE STATE RESPONDENT

JUDGMENT

OLIVIER, A J

In the matter of Isaacs and Solomons, the appellants were charged on 24 November 2004 in the regional court, Strand, on a charge of armed robbery.

Both appellants were represented and pleaded guilty on the alternative charge of robbery.

It appears from their plea explanations submitted in terms of section 112.2 of the Criminal Procedure Act 55 of 1977, that on 26 January 2001 and at a caravan park they had robbed a

woman sitting in a motor vehicle using a toy gun. In their plea explanations, both appellants contend that they were under the influence of drugs. Both appellants confirmed their plea explanation.

The judgment records that the charges pertain to events that took place on 26 September 2002 (which should, I assume, read 2001) which latter date apparently is the correct date.

Both appellants had previous convictions and those were admitted.

On the same day, the magistrate sentenced both appellants to eight years imprisonment.

It is against these sentences that they appeal.

The judgment records that the Court took into account the submissions made by the legal representatives from the bar regarding their personal circumstances. They elected not to testify in this regard. The magistrate, however, did not record in his judgment what these submissions were and they do not appear from the record.

Both appellants in their notice of appeal note as one of three

reasons for their appeals that the magistrate had erred in not taking into consideration their age, and I quote:-

> "His domestic situation with regard to a number of dependants"

in the one instance, and:-

> "Domestic situation with regard to children and other dependants (and age)"

in the other instance.

Mr Isaacs admitted his previous convictions, which included four convictions for theft and two convictions for escaping or attempting to escape.

Mr Solomons, who also admitted his previous convictions, had two previous convictions for housebreaking and one for murder.

The magistrate clearly took into account the respective ages of the appellants. The notices of appeal only reflect that the appellants raised, with regard to their personal circumstances, over and above the fact of their age, the fact that they have dependants and children.

The magistrate had recorded that he took into account all of the submissions made by the legal representatives as to the personal circumstances of the appellants. The appellants did not venture into the witness stand themselves. No evidence was placed before the Court as to their personal circumstances. The appellants do not now contend that other relevant personal circumstances were not taken into account, and the judgment by the magistrate records that those *ex parte* statements were indeed taken into account.

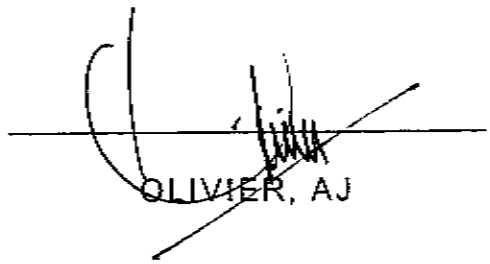
It is a trite principle of our law that the imposition of a sentence is a matter pre-eminently for the discretion of the trial court. A court of appeal will only interfere with the sentencing discretion of the trial court if it has misdirected itself in a material respect or if the sentence is inappropriate or that no reasonable Court would have imposed such a sentence, or where the discretion was not exercised reasonably or properly, S v Rabie, 1975(4) SALR 855 (A) at 857D-E, State v Peters, 1987(3) 717 (A) at 727F-H, and S v Malgas, 2001(2) SA 1222 (SCA) at paragraph 12.

In my view, there is a distinction to be drawn between the two appellants. It appears that Mr Solomons was the one carrying the toy gun and it was he who initiated the robbery, whilst Mr Isaacs, it would appear, decided on the whim of the

moment to join in. Their respective blameworthiness in this regard is not the same. The magistrate, in my view, failed to properly take this factor into account when imposing the sentences.

Both appellants, however, are previous offenders, and even if the prescribed sentences were to be applied, which does not do so in the present instance, the sentence would not appear, on the face of it, to be entirely appropriate.

In the premises, and in view of the lesser role played by the appellant 1 in commissioning of the offence and his slightly less appalling record, I would REDUCE THE SENTENCE OF APPELLANT 1 TO ONE OF EIGHT YEARS IMPRISONMENT, OF WHICH THREE YEARS IS SUSPENDED. For the above reasons, I would firstly CONFIRM THE SENTENCE OF APPELLANT 2, secondly ALTER THE SENTENCE OF APPELLANT 1 TO A SENTENCE OF EIGHT YEARS IMPRISONMENT, OF WHICH THREE YEARS IS SUSPENDED on condition and provided that he is not convicted of robbery or theft during the period of suspension, and he is sentenced to imprisonment without the option of a fine.



OLIVIER, AJ

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MOOSA, J: I agree and the Court orders that the suspension be for a period of five years, subject to the condition as has been set out by my learned brother

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10 MOOSA, J

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