

A583/2009

IN THE HIGH COURT OF SOUTH AFRICA
 (WESTERN CAPE HIGH COURT, CAPE TOWN)

CASE NUMBER:

A583/2009

DATE:

30 APRIL 2010

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In the matter between:

JONATHAN PIYOOS

Appellant

and

THE STATE

Respondent

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J U D G M E N TMEER, J:

15 The Appellant was convicted in the Bellville Regional Court on
 a charge of robbery with aggravating circumstances. On 9
 May 2007, he was sentenced to the minimum sentence of 15
 years, prescribed for a first offender as per Section 51(2)(a)(i)
 of Act 105 of 1997 ("the Act"). Appellant appeals against his
 20 sentence only. The grounds of appeal, in essence, are that
 the court *a quo* erred in failing to find substantial and
 compelling circumstances, justifying a lesser sentence than
 the prescribed minimum.

In this regard it is emphasised that the Appellant is a first
 25 offender, was 18 years of age when the offence was committed

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and the Complainant was not seriously injured. The Appellant has also been in custody for six months before sentence and, it was pointed out, had displayed remorse. Today, however, it was conceded that the remorse was opportunistic in the light of a letter written by Appellant after sentence, in which he denies his involvement in the offence.

Appellant contends that the Magistrate emphasised the seriousness of the crime and the interests of the community to the detriment of those of Appellant and was not sufficiently astute to his personal circumstances. The Appellant comes from a disadvantaged background. He was 23 at the time of sentence, married with two children aged 1 and 4 and his wife was expecting their third child. The Appellant was the sole breadwinner and supported his family with a monthly income of R800,00 to R900,00 from odd jobs. He has never had fixed employment since leaving school in Standard 6, due to financial problems. Appellant and his family lived with his mother, who helped them.

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The circumstances under which the robbery was committed, are typical of so many house burglaries, of what can almost be regarded as a pandemic in our country. The Complainant, a young girl, opens the front door in response to the doorbell, was held up with a firearm, locked in the toilet, Appellant

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keeping guard outside, whilst he and his Co-Accused ransacked the house of mostly electrical equipment to the value of just under R20 000-00. Once the burglars had left, the Complainant escaped through the toilet window. She has
5 understandably been traumatised by the event. The stolen goods, it appears, were later recovered.

In sentencing the Appellant, the Court *a quo* took cognisance of Appellant's personal circumstances, the seriousness of the
10 crime and indeed the impact thereof on the Complainant. Whilst it is so that robbery with aggravating circumstances is rampant in our society, and the Magistrate did well to emphasise this, the Court *a quo*, in my view, failed to attach due weight to Appellant's youth, or in any event that fact was
15 not sufficiently, in my view, reflected in the sentence actually imposed. Equally, the Court, in my view, did not attach sufficient weight to the fact that there was a minimum of violence used.

20 It should be borne in mind, with regard to the Appellant's youth, that had Appellant been even a day younger than his 18 years at the time the offence was committed, the minimum sentence would not have been applied in quite the same way. In terms of Section 51(3)(b) of the Act, the Court would have,
25 in those circumstances, had to furnish reasons for imposing

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the minimum sentence, which would not automatically have been applicable.

Moreover, as controversial a proposition as this is likely to be,
5 this was not the worst type of robbery, given that the
Complainant, as aforementioned, was not seriously physically
injured. These considerations, together with the fact that
Appellant is a young man, with young dependants,
cumulatively, in my view, constitute substantial and compelling
10 circumstances, which militate against the minimum sentence in
the interests of Appellant's young family to whom he must fulfil
his commitments.

I would in the circumstances grant the appeal and substitute
15 the minimum sentence imposed in the Court *a quo* with the
following sentence. The Accused is sentenced to TWELVE
YEARS (12) IMPRISONMENT, of which FOUR (4) YEARS are
SUSPENDED for a period of FIVE (5) YEARS on condition he
is not convicted during the period of suspension on any charge
20 of robbery, fraud, theft or any crime of dishonesty or violence,
for which he is sentenced to direct imprisonment.



MEER, J

MEYER, AJ: I agree.

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MEYER, AJ