

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

CASE NO:

SS118/08

DATE:

11 MAY 2010

5 In the matter between:

THE STATE

and

LUCKY MTHEMBU

Accused 2

MNINAWA PHELA

Accused 3

10 PHUMELE RINKIE VAAIBOOM

Accused 4

CHUMANI SIBANDA

Accused 5

SENTENCE

15 MOTALA, J:

Before I sentence the accused I have to consider whether or not to discharge Bulelani Joseph Vellem.

20 My learned assessor and I considered Vellem's evidence very carefully before judgment. In our view he answered all questions put to him frankly and honestly. Accordingly in terms of Section 204(2) of the Criminal Procedure Act Bulelani Joseph Vellem is discharged from prosecution for the six
25 offences set out in the indictment, or any competent verdict /ds

/...

thereon.

I turn now to the sentencing. Act 105 of 1997 prescribes minimum sentences for certain serious crimes, which must be
5 imposed, unless there are substantial and compelling circumstances justifying the imposition of a lesser sentence. The Act prescribes a minimum sentence of fifteen years imprisonment for robbery with aggravating circumstances.

10 The Act also prescribes a sentence of life imprisonment for certain types of murder, firstly if the murder was planned or premeditated. Defence counsel have submitted that the offences were not planned or premeditated. We do not agree. The robberies were clearly planned by 12 July. The planners
15 must have foreseen or directly intended the deaths of the deceased by then. Although we do not know when each of the accused joined the conspiracy and realised what was intended or clearly foreseeable, there can be no doubt that by the evening of 19 July they must have known that a robbery and
20 the possible murders were planned, indeed that there was a probability that the deceased would be killed. By their conduct that evening they became participants in the conspiracy.

In any event the act also prescribes a sentence of life
25 imprisonment if the victims were law enforcement officers
/ds /...

performing their functions as such, or if the death of the victim was caused in or after committing robbery with aggravating circumstances, or if the murder was committed in the execution of a common purpose. Clearly all those factors are present in
5 this matter.

In determining whether there are circumstances which justify a departure from the prescribed sentences the Court takes into account the personal circumstances of the accused, the
10 seriousness of the offences they have committed and the interests of the community.

None of the accused have previous convictions which counts heavily in their favour. All of them have already spent nearly
15 four years in jail.

Accused no 2 was 24 years old when these offences were committed. He left school after Grade 11 and went to a college but left because of a lack of finance. He was a soccer player
20 with an irregular income.

Accused no 3 had completed Grade 10. He was employed selling fruit and vegetables and earned R300 per week.

25 Accused no 4 was then only 19 years old. He had completed
/ds /...

Grade 12 and was studying Information Technology at a college.

Accused no 5 was nearly 19 years old. He was in Grade 11 at
5 the time.

The seriousness of the offences of armed robbery and murder can hardly be over-emphasized. What the accused did was horrifying. Two police officers, thinking they were responding
10 to a plea for help, were shot in cold blood. Their firearms were taken. The probabilities are that those firearms would have been used to commit other crimes, even if one assumes in favour of the accused that someone else would have done so. Those are aggravating factors.

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The interests of the community is of paramount importance in matters such as this. The community needs protection in view of the prevalence of violent crime. The community has been deprived of two of the officers who provided that protection. In
20 recent times in considering the interests of the community the Court has given increasing weight to the interests of the victims of crime, and in the case of murder the interests of those who survived the deceased. Although there is no direct evidence it is probable that both deceased, who were in the
25 prime of their lives had dependants, relatives, and friends.

They have suffered an irreparable loss.

After careful consideration and taking all factors into account, the fact that the accused are young, that they have no
5 previous convictions, and have been in jail for nearly four years, taken together are circumstances justifying a lesser sentence than the prescribed sentence. In addition all four accused appear to be fairly intelligent. They can, in my view, be rehabilitated. A long period of imprisonment is, however,
10 the only appropriate sentence. However, as the offences form part of one transaction, and the cumulative effect of the sentences must be borne in mind, I intend to order all the sentences I intend to impose to be served concurrently.

15 I hope that the accused will be given the opportunity to further their education in prison, and that they will make the most of those opportunities. I appeal to their families to give them all their encouragement and support.

20 The following sentences are imposed:

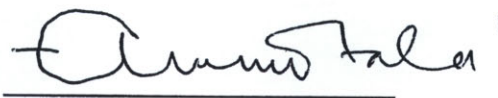
COUNTS 5 AND 6, which are the counts in terms of the Firearms Control Act are taken together for purposes of sentence, EACH OF THE ACCUSED IS SENTENCED TO 3
25 (THREE) YEARS IMPRISONMENT.

COUNTS 3 AND 4, which are the robbery charges, are taken together for purposes of sentence, EACH OF THE ACCUSED IS SENTENCED TO 12 (TWELVE) YEARS IMPRISONMENT.

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COUNTS 1 AND 2, the murder charges, are taken together for purposes of sentence, EACH OF THE ACCUSED IS SENTENCED TO 25 (TWENTY FIVE) YEARS IMPRISONMENT.

10 In terms of Section 280(2) of the Criminal Procedure Act it is ordered that all the sentences are to be served concurrently.



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MOTALA, J