

IN THE HIGH COURT OF SOUTH AFRICA**(WESTERN CAPE HIGH COURT, CAPE TOWN)****CASE NUMBER:**

A654/2010

5 **DATE:**

29 APRIL 2011

In the matter between:

MFUNDO TOM1st Appellant**ZIMISELE PUYIMANI**2nd Appellant10 **SIKELLELA NYENGANA**3rd Appellant

and

THE STATE

Respondent

J U D G M E N T

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ERASMUS, J:

In this matter the appellants were convicted in the Wynberg
20 Regional Court on charges of robbery, attempted robbery and
attempted murder, stemming from a failed cash in transit heist
and thereafter the robbery of a person whose vehicle they
wanted to use to flee the scene. All three of the appellants
were relatively young, in fact two of them were under 18 at the
25 time of the commission of the offence and were sentenced to
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an effective term of 18 years imprisonment by the Regional Court magistrate, as he then was.

On the facts of the case it was clear that the appellants would
5 have planned the event, armed themselves with, including a
shotgun, an automatic machine gun, in an attempt to commit
the offences. They were caught almost red-handedly and
immediately arrested. They spent approximately two years as
awaiting trial prisoners.

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The magistrate *a quo* obtained professional reports and
inquired into the background and the possibility of
rehabilitation of the appellants. He nevertheless came to the
conclusion that the sentence imposed was an appropriate
15 sentence and may I add, expressed his disappointment that he
could not be of further assistance to these youthful offenders.

Sentence is always a difficult aspect of a criminal trial and
more so, as Mr Pothier, on behalf of the appellants, correctly
20 pointed out when one deals with youthful offenders. One must
have regard to the fact that young persons often commit
offences, because of their youthful exuberance and sometimes
not properly thinking it through. One must always have regard
to the fact that a person to be sentenced is mere human
25 material that can change his ways and rehabilitate and must be

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given an opportunity, in appropriate circumstances, to effectively make a contribution to society upon his or her release.

5 It is, however, unfortunate on the other hand that numerous of the serious offences that occur and that appear in these courts, are committed by young people. In this instant case, it was not a case of young persons not thinking their actions through, that have encountered criminality upon their way, but
10 rather young persons who have planned to go out and commit these serious offences. It is common cause that a term of imprisonment was appropriate. The only complaint from the appellants are that the term was too lengthy.

15 When a court of appeal deals with sentence, the first principle is that sentence is in the discretion of the court *a quo* and a court of appeal will not easily interfere with the imposed sentence unless it is clear that there are misdirections as to the facts or the law and the circumstances being taken into
20 account for the imposition of the sentence. Alternatively where the sentence imposed by the trial court is excessive and that the sentence considered by the court of appeal would be substantially different to the one imposed by the trial court.

25 In this instance I am of the view that neither of these aspects

are applicable and that even if I had sat as a court of first instance, I would not have imposed a sentence which would have been materially less than what was imposed by the court *a quo*. I have referred to the fact that the learned magistrate
5 has taken into account all factors and I must compliment him for the fact that he obtained far more information that is normally being done in cases of this instance.

In my view, there is no merit in the appeal on sentence and the
10 sentence should be confirmed, it being an appeal only against sentence.


VAN STADEN, AJ: I agree.

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VAN STADEN, AJ

ERASMUS, J: It is so ordered, the sentence imposed by the Regional Court is confirmed and the appeal dismissed.

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ERASMUS, J