

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

CASE NO: A120/2011

DATE: 16 SEPTEMBER 2011

5 In the matter between:

JEFFREY ANTHONY Appellant

and

THE STATE Respondent

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J U D G M E N T

SAMELA, J:

[1] The appellant appeared in Bellville Regional Court on charges of robbery with aggravating circumstances and attempted murder. The Appellant pleaded not guilty on both counts. The Regional Magistrate found that there were no substantial and compelling circumstances which justified a lesser sentence than the prescribed minimum. The Appellant was sentenced to 15 (fifteen) years imprisonment on the first count. On the second count he was sentenced to 10 (ten) years imprisonment of which 5 (five) years to run concurrently with count 1. The Appellant noted an appeal against the sentence only.

[2] Ms Kuun argued on Appellant's behalf that the court *a quo* misdirected itself by not taking into account or giving sufficient weight to the following:

- 5 (a) there are no substantial and compelling circumstances warranting a lesser sentence than the minimum sentence;
- (b) did not exercise its discretion judicially and properly;
- 10 (c) over-emphasising the interest of the community at the expense of the interest of the Appellant;
- (d) over-emphasising the retributive aspect of the punishment and not giving sufficient consideration to the aspects of deterrence and reformation of the Appellant;
- 15 (e) personal circumstances of the Appellant;
- (f) by not taking properly with consideration the nature of the offence and the prospects of rehabilitation;
- (g) by imposing a sentence of ten years imprisonment in respect of count two: Attempted murder when the  
20 prescribed minimum sentence for such offences is 5 (five) years imprisonment. (See Criminal Law Amendment Act, 105 of 1997, Section 51(2)(c)); and
- 25 (h) sentence is shockingly inappropriate in the given circumstances.

[3] Ms Allchin argued on behalf of the State that the court *a quo* took all the relevant factors as mentioned by Ms Kuun into account. She requested this court not to interfere with the sentence of the court *a quo*, and to dismiss the appeal.


[4] From the court's record it appeared that the following Appellant's personal circumstances were *inter alia* mentioned:

- (a) the Appellant was 27 years;
- (b) was not a first offender;
- (c) he left school after Grade 9;
- (d) he worked in the taxi industry earning R250.00 per week; and
- (e) the Appellant shown no remorse of his deeds.

[5] The imposition of an appropriate sentence falls entirely within the discretion of the trial court. Unless the trial court has misdirected itself, which misdirection should appear *ex facie* the record, a court of appeal would not lightly interfere with the sentence imposed by the trial court. See S v Kibido 1998 (3) ALL SA 72 (A). In the present case there is no basis on which this court can

interfere. There is no misdirection and the sentence is not disturbingly inappropriate.

[6] In the result, I would propose the following order: **THE**  
5 **APPEAL IS DISMISSED.**

  
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SAMELA, J

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I agree and it is so ordered.

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HLOPHE, JP