

A292/2011

**IN THE HIGH COURT OF SOUTH AFRICA****(WESTERN CAPE HIGH COURT, CAPE TOWN)****CASE NUMBER:** A292/20115 **DATE:** 9 SEPTEMBER 2011

In the matter between:

**DLUDLA SKUMBUZO** Appellant

and

10 **THE STATE** Respondent

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**J U D G M E N T**15 **LE GRANGE, J:**

The appellant, together with two other accused, was charged before the Regional Court, Cape Town, on a charge of robbery with aggravating circumstances. The state withdrew the charge against accused 2 due to the fact that he is deceased. The appellant pleaded guilty in terms of section 112(2) of the Criminal Procedure Act 51 of 1977 and was sentenced to a term of 15 years' imprisonment. The appellant now appeals only against his sentence.

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The appellant, in his plea of guilty, admitted that he and his co-accused, the deceased, decided to go to Pick n Pay, Cape Town for the purpose of committing the robbery. They then lied to the security guard stationed at the entrance and told him that they were promised jobs and wanted to see the manager. The security guard called a person by the name of Stewart to attend to them. Upon the arrival of Stewart, he then asked them to leave, since he did not know them. The appellant then pointed a firearm and forced the security guard and Stewart to open the safe in the office and instructed Stewart to put the money into bags.

The appellant admitted that he used force by taking the money from the complainant and that he threatened him with a firearm with the intention that he was going to cause him grievous bodily harm. The appellant also admitted they took an amount of R30 000 from the complainant and that he was arrested a few days later.

At the time of the robbery, the appellant was 29 years of age. He was employed at a construction company and it is unknown as to what was his income there. He has two minor children that he maintained from his income. According to the evidence of the appellant, he suffered from TB and received antiretroviral medication for his HIV status. The matter was

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postponed by the trial court on a number of occasions to verify this information, but none was forthcoming from the appellant. The appellant is a first offender.

5 The trial court, in my view, gave due consideration to all the relevant factors pertaining to sentence. Inasmuch as the appellant is a first offender and may suffer from tuberculosis or be HIV positive, there is no supporting evidence to confirm this. Even at this late stage, there was no application by the  
10 appellant to bring forth any information that might assist the court to come to a different conclusion. On the mere say so of a person saying that he or she is HIV positive, it places the presiding officer, or the sentencing officer, in an extremely difficult position as to taking that into account as a mitigating  
15 factor.

In view of the trial court's approach to sentence, I can find no misdirection on the part of the court. This is a serious offence and robberies of business premises with firearms have become  
20 prevalent in our society. On the facts of this matter, and taking into account the appellant's personal circumstances, the trial magistrate correctly found that no substantial and compelling circumstances exists and justifies the imposition of a lesser sentence. The imposed sentence, in my view, does  
25 not induce a sense of shock and it is also not disproportionate

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to the appellant's personal circumstances, the interests of society and the seriousness of the offence. It follows that the appeal against sentence cannot succeed.

5 In the result the following order made is: **THE APPEAL IS DISMISSED.**

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LE GRANGE, J

I agree.

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DOLAMO, AJ