

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

CASE NUMBER:

A450/2011

5 **DATE:**

25 NOVEMBER 2011

In the matter between:

TOTO TOM

Appellant

and

10 **THE STATE**

Respondent

J U D G M E N T

15 **SABA, AJ:**

This is an appeal against sentence imposed by a regional magistrate sitting in Wynberg on 12 May 2009. Appellant was legally represented throughout the proceedings. He was
20 convicted on a charge of robbery with aggravating circumstances and sentenced to 15 years imprisonment. With the leave of the court *a quo* he now appeals against sentence.

Evidence led on behalf of the state established that the
25 appellant had, on the evening of 4 February 2008, robbed the
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complainant of his vehicle and other items. Having found no substantial and compelling circumstances justifying a departure from the prescribed minimum sentence, the court imposed a sentence of 15 years imprisonment.

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Counsel for the appellant submitted that the court *a quo* erred in not taking into account the following circumstances sufficiently, that the appellant is a first offender, he had been in custody awaiting trial for a period of one year and three
10 months before he was sentenced, no injuries were inflicted on the complainant and that the motor vehicle was recovered.

I am in agreement with that submission. In my view the court *a quo* misdirected itself in not considering the circumstances I
15 have just mentioned above as substantial and compelling circumstances justifying a departure from the prescribed minimum sentence. That is a misdirection which entitles this court to consider the sentence afresh.

20 In arriving at an appropriate sentence, I have considered the circumstances of the offence and the personal circumstances of the appellant as they appear from the record and for the reasons already stated, I propose the following order:

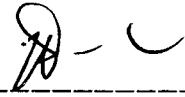
25 1. The appeal against sentence should succeed.

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2. The sentence imposed by the trial court is replaced with the following: **APPELLANT IS SENTENCED TO EIGHT (8) YEARS IMPRISONMENT.**


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SABA, AJ

I agree. The order of court is as follows: The appeal against sentence is successful. The sentence imposed by the court a
10 *quo* is set aside and it is substituted as follows: The appellant is sentenced to eight years direct imprisonment.

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HLOPHE, JP
30/1/2012