

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

**CASE NUMBER:**

A226/2012

**DATE:**

17 AUGUST 2012

5 In the matter between:

**MICHAEL SPELE**

Appellant

and

**THE STATE**

Respondent

10

**J U D G M E N T**

**GOLIATH, J**

The appellant was convicted on 1 July by the Regional  
15 Magistrate, Cape Town on a charge of robbery with  
aggravating circumstances. He was sentenced to 15  
imprisonment.

The appellant applied for leave to appeal against conviction  
20 and sentence which was dismissed by the Court *a quo*. The  
appellant subsequently petitioned the Judge President of this  
division and leave to appeal against sentence was granted.  
The appellant now appeals against his sentence.

25 On 19 March 2011 the complainant, George Matere, was at the  
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Dunoon tavern with his younger brother at approximately 10 o'clock in the evening. He decided to leave and walked home. On his way home he was suddenly attacked by two or more men. He was robbed of his cell phone and R85,00.

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However, the complainant resisted when they wanted to take his wallet. As a result one of the perpetrators stabbed him on his wrist and arm. The attacker landed on top of him. Fortunately the police arrived on the scene and arrested the  
10 appellant. The appellant was identified as the person who stabbed the complainant and was found on top of the complainant.

The sentence of 15 years imposed is the minimum sentence for  
15 robbery where aggravating circumstances were present as described by Section 51 of Act 105/1977.

Counsel on behalf of the appellant argued that the Magistrate misdirected himself in overemphasising the seriousness of the  
20 offence at the expense of the appellant's personal circumstances.

Counsel on behalf of the state submitted that the sentence imposed is neither severe nor shockingly inappropriate and  
25 should therefore not be tampered with.

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It is trite that a Court of Appeal will only interfere with the sentence of the Trial Court in certain limited circumstances. The powers of the Court of Appeal are limited to those where the sentence is vitiated by irregularity or misdirection or where  
5 there is a striking disparity between the sentence passed and that which this Court would have passed.

In this regard see S v Malgas 2001(1) SACR 469 at 478(f-h). The Court considered the provisions of the Criminal Law  
10 Amendment Act and with reference to S v Matiti 2001(1) SACR 40 (SCA) the Magistrate held that he cannot find truly convincing reasons to depart from the minimum sentence. In this regard it is evident that the Magistrate erroneously believed that the accused had a previous conviction related to  
15 a robbery charge. The Court therefore by implication found that there are no substantial and compelling circumstances to deviate from the prescribed minimum sentence.

The appellant is originally from the Eastern Cape. He  
20 subsequently moved to the Western Cape for employment opportunities. He lost his parents at an early age and was raised by his grandmother. He managed to complete standard 4 at school. At the time of conviction he was 29 years old, unmarried and the father of one child. He is in a relationship  
25 for the past six years. He is in casual employment in the /RV

carpentry industry erecting Wendy houses. He earned R600,00 per Wendy house at the time of his arrest. He supports his minor child as well as his grandmother who is a pensioner. He has one previous conviction for housebreaking  
5 committed in 2003.

Although convicted of a serious offence, the extent of the complainant's injuries is unclear. It is evident that the complainant was admitted to Somerset hospital after the  
10 incident and discharged the following day.

In my view the above factors should have been taken into account in considering whether there are substantial and compelling circumstances.

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In this regard I refer to S v Malgas *supra* at 482c referred to earlier in which the following was said:

20 "All factors traditionally taken into account in sentencing (whether or not they diminish moral guilt) thus continue to play a role; none is excluded at the outset from consideration in the sentencing process. The ultimate impact of all the circumstances relevant to sentencing must be  
25 measured against the composite yardstick

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(‘substantial and compelling’) and must be such as cumulatively justify a departure from the standardised response that the Legislature has ordained.”

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In my view the cumulative effect of the above factors justify a departure from the prescribed minimum sentence. Furthermore, there is a marked disparity between the sentence imposed by the Trial Court and that which this Court would have imposed, sufficient to warrant interference.

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In my view the imposition of the minimum sentence will under these circumstances bring about an injustice to the appellant. I find all these factors to be substantial and compelling.

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I am however of the view that direct imprisonment is the only appropriate sentence for this particular offence.

I agree with the appellant’s counsel that 15 years imprisonment is inappropriate. In the result I make the following order:

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The appeal **SUCCEEDS** and the sentence imposed by the Trial Court is set aside and substituted with the following sentence:

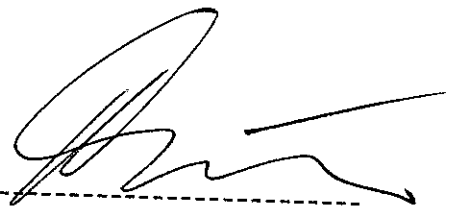
25 The accused is sentenced to 10 years imprisonment of which  
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two years are suspended for five years on condition that the  
accused is not convicted of robbery, theft or assault with intent  
to cause grievous bodily harm within the period of suspension  
and for which he is sentenced to direct imprisonment without  
5 the option of a fine.

I agree

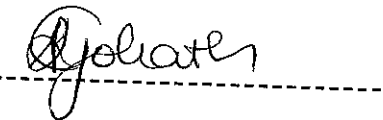
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STELZNER, J

It is so ordered.

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A handwritten signature in black ink, appearing to be 'J. Goliath', written over a horizontal dashed line.

GOLIATH, J