

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

**CASE NUMBER:**

A227/2012

5 **DATE:**

17 AUGUST 2012

In the matter between:

**JEREMY CHAUKE**

Appellant

and

10 **THE STATE**

Respondent

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

**GOLIATH, J:**

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The appellant appeared before the regional magistrate at Cape Town on a charge of robbery with aggravating circumstances. The appellant was eventually convicted and sentenced to eight years imprisonment, two of which were suspended for a period of five years. The appellant applied for leave to appeal against sentence which was granted. The appellant now appeals against his sentence.

It appears from the evidence accepted by the trial court that the appellant brazenly robbed the complainant of her cell /NY

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phone at knifepoint. The complainant raised the alarm and alerted members of the community who were in the vicinity. The appellant ran away with the cell phone with members of the community in hot pursuit. He was eventually apprehended  
5 by members of the community and the cell phone was recovered.

The main grounds of appeal are:

- 10      1. That the magistrate having found the existence of substantial and compelling circumstances should have deviated more from the prescribed minimum sentence.
2. That the sentence handed down induces a sense of shock and is inappropriate.

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Counsel on behalf of the State submitted that the sentence is indeed appropriate and should be confirmed.

The appellant was 24 years old at the time and unmarried. He  
20 lives with his partner who is unemployed and one child was born out of this relationship. At the time of the trial he was unemployed but periodically assisted his brother on a casual basis earning R300,00 per week. He has two previous convictions namely theft and assault. On the charge of theft  
25 he was cautioned and discharged and on the charge of assault

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he was fined R100,00. Although this is his second offence involving violence, it would appear that the previous conviction of assault was of a minor nature since a nominal fine was imposed.

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In her judgment on sentence the magistrate referred to the seriousness of the offence and its prevalence, the interests of the community and was of the view that an effective term of six years imprisonment was appropriate. The court of appeal will  
10 not readily interfere with a sentence imposed by the trial court in the exercise of its discretion. Interference will only take place if the sentence imposed is shockingly severe or if a misdirection had been committed by the trial court. The magistrate was correct in taking into account the fact that  
15 robbery of cell phones was prevalent in the area and that the community expected the courts to act accordingly for its protection.

However, in my view the magistrate overemphasised the  
20 interest of the community and the seriousness of the offence against the appellant's personal circumstances. The magistrate has conceded that there are variations in the scale or intensity or seriousness of armed robberies and that each case should be considered on its own merits. This robbery is  
25 not one of the most serious or violent crimes that one would

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find. The complainant sustained no injuries.

The magistrate correctly found on the facts of the case itself that there were indeed substantial and compelling  
5 circumstances. Taking into account the appellant's personal circumstances and the circumstances of the offence, I am persuaded that the sentence imposed is shockingly inappropriate under the circumstances. Furthermore, there is a marked disparity between the sentence imposed by the  
10 magistrate and that which this Court would have imposed. I am however convinced that a direct term of imprisonment in the circumstances is unavoidable.

In the result I make the following order:

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1. The appeal against sentence succeeds.
2. The sentence imposed by the magistrate is set aside and substituted with the following:

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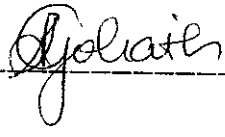
The accused is sentenced to **EIGHT (8) YEARS IMPRISONMENT** of which four years is suspended for five years on condition that the accused is not convicted of robbery, theft or assault with intent to  
25 cause grievous bodily harm within the period of

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suspension and for which he is sentenced to direct imprisonment without the option of a fine.

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GOLIATH, J

I agree and it is so ordered.

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STELZNER, AJ