



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA
MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF
APPEAL

From: The Registrar, Supreme Court of Appeal

Date: 26 September 2022

Status: Immediate

The following summary is for the benefit of the media in the reporting of this case and does not form part of the judgments of the Supreme Court of Appeal

Nhlapo v The State (Case no 835/2021) [2022] ZASCA 125 (26 September 2022)

Today the Supreme Court of Appeal (SCA) dismissed an appeal from the Gauteng Division of the High Court, Pretoria (high court). The appellant was convicted of attempted murder and robbery with aggravating assault in the regional court (trial court), and sentenced to 17 years' imprisonment on the count of robbery and five years' imprisonment on the count of attempted murder. The effective sentence was 20 years' imprisonment. Two years of the sentence for attempted murder was ordered to run concurrent with the sentence for robbery. The appellant applied for leave to appeal his sentence to this Court.

The appellant stabbed and robbed his victim, Mr Ntuli (Ntuli). Ntuli had exited a tavern upon which he and a friend were accosted by the appellant and his co-accused. The friend managed to escape, but Ntuli ran into the yard of a neighbour, who offered to provide assistance. However, the appellant threatened to assault the neighbour if he interfered, upon which Ntuli desperately ran into his house. The appellant and his co-accused rushed into the house and dragged Ntuli outside, whereupon the appellant stabbed Ntuli numerous times in the chest, head, neck and back.

The trial court observed that the circumstances of the present matter were different than the normal robberies it dealt with. The reasoning was that the appellant was not satisfied with merely robbing the victim – he pursued his victim and repeatedly assaulted him after he had fled. The trial court held that the interests of the appellant weighed against the interests of the community as well as the circumstances of the offences, displaced the personal circumstances of the appellant, such as his relatively young age of 20 years. The trial court found that there were no substantial and compelling circumstances to deviate downwards from the prescribed minimum sentence.

It was submitted on behalf of the appellant that the trial court failed to provide appropriate reasons why a sentence in excess of the minimum was imposed. The trial court applied its discretion in light of s 51(2) of the Criminal Law Amendment Act 51 of 1977 and this Court found that, properly interpreted, there was no basis for the contention that the presiding officer ought to have done anything, more than exercise his discretion to determine a suitable penalty, even in excess of the prescribed minimum. Having exercised its inherent jurisdiction, the trial court applied its mind to the aspect of concurrency as a means to ameliorate the impact of a cumulative lengthy sentence. Despite not having the burden to do so, the trial court followed the prudent practice of explaining why it imposed a heavier sentence than the prescribed minimum, stating that the violent manner in which the appellant continued his attack on Ntuli was purely gratuitous. The personal circumstances of the appellant were overshadowed by the seriousness of the crime and the interests of society. Additionally, the appellant displayed no remorse for his conduct. This Court did not find the sentence manifestly unjust, justifying interference.

In the result, the SCA dismissed the appeal.

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