



THE SUPREME COURT OF APPEAL REPUBLIC OF SOUTH AFRICA

MEDIA SUMMARY - JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal
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Please note that the media summary is for the benefit of the media and does not form part of the judgment of the Supreme Court of Appeal.

Bhola & others v The State (800/18; 123/2018; and 346/18) [2018] ZASCA 121 (21 September 2018)

Today, the Supreme Court of Appeal (SCA) upheld an appeal brought by Mr Bhola, Mr Mnthungwa and Mr Khoza, respectively (the appellants) against a judgment of the Gauteng Division, Pretoria (De Vos and Basson JJ concurring) sitting as court of appeal.

The issue at the centre of this appeal concerned the question as to whether the offence of attempted robbery with aggravating circumstances attracted a minimum sentence within the ambit of s 51(2) of the Criminal Law Amendment Act 105 of 1997 (the Minimum Sentences Act) and arising out of the first issue was whether the sentences imposed by the trial court were appropriate.

The facts giving rise to this matter are as follows. In the late afternoon of 25 February 2013, the three appellants' attempt to carry out an armed robbery at a jewellery store in Piet Retief was thwarted when the wife of the store owner pressed the panic button of the alarm system, thereby activating the siren. Upon hearing the sound of the alarm, the three perpetrators fled the jewellery store empty-handed. The next morning, the three appellants were arrested by the police at a nearby filling station. They subsequently appeared before the trial court and were charged with attempted robbery with aggravating circumstances. They all pleaded not guilty and were subsequently convicted.

The trial court found that the offence of attempted robbery with aggravating circumstances attracted a minimum sentence within the ambit of s 51(2) of the Minimum Sentences Act. Having found no substantial and compelling circumstances justifying deviation from the applicable minimum sentences, it sentenced the second and third appellants to 15 years' imprisonment. It found that the first appellant's previous convictions warranted a harsher sentence and thus sentenced him to 20 years' imprisonment.

Aggrieved by the decision, the appellants applied to the trial court for leave to appeal against their convictions and sentences, but they were unsuccessful. They subsequently petitioned the Gauteng Division of the High Court, Pretoria (high court), which granted them leave to appeal against their sentences only. The high court, however, dismissed the appeal against their sentences on the basis that there were no substantial and compelling circumstances warranting deviation from the applicable minimum sentences

Following the court a quo's dismissal of the appeal, the appellants directed their applications for special leave to appeal to this court. The court granted the appellants special leave to appeal limited to the issues set out above. This court unanimously found that the offence of robbery with aggravating circumstances is not included in the list of the offences specified in Part II of Schedule 2 and that the trial court erred in the sentencing of the appellants on the basis that minimum sentences were statutorily prescribed by the Minimum Sentences Act. This court held that the sentence imposed by the trial court on the appellants is totally disproportionate to the gravity of the offence they have been convicted of. This court then considered the sentences afresh.

Having considered the circumstances of this case, the court upheld the appeal and accordingly set aside the order of the high court. The sentences imposed by the trial court were set aside and replaced with a sentence of 8 years' imprisonment in relation to the second and third appellant. The court held that the first appellant was a recidivist and deserving of a harsher sentence than the second and third appellant. In this regard the first appellant's sentence was substituted with a sentence of 13 years' imprisonment.