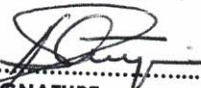


REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO.: A35/16

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED.
	
SIGNATURE	4.05.2018
PP	DATE

In the matter between:

OUPANYANA JOEL MELK

Appellant

versus

THE STATE

Respondent

JUDGMENT

MPHAHLELE J

[1] The appellant was arraigned before the Regional Court Magistrate, Klerksdorp on a count of robbery with aggravating circumstances in terms of section 1 of the Act 51 of 1977 read with the provisions of section 51 (2) of Act 105 of 1997, in that upon or about 20 December 2014 and at or near Klerksdorp he did unlawfully and intentionally assault Elizabeth Crouse and did then with force took the items to the

estimated value of R39 000-00 from her, her property or property in her lawful possession, aggravating circumstances being the complainant was severely assaulted.

[2] The appellant pleaded guilty and was accordingly convicted as charged. He was sentenced to 15 years' imprisonment. He was further declared unfit to possess a firearm.

[3] This appeal is before us in respect of the sentence only. It is trite that in an appeal against sentence the Court of Appeal should be guided by the principle that punishment is pre-eminently a matter for the discretion of the trial court and the Court of Appeal should be careful not to erode that discretion. The appellant is of the view that the trial court erred in finding that there were no substantial and compelling circumstances justifying the deviation from imposing the minimum sentence. Courts are obliged to impose the minimum sentences unless there are truly convincing reasons for departing from them.

[4] The appellant was 27 years old at the time of sentencing. He went to school up to grade 9. He is not married and has no children of his own. He is staying with his mother who is a pensioner and assist in looking after the 3 children of his late sister. He was self-employed. He owned a car-wash business and his income was R180-00 to R200-00 per day.

[5] The appellant has one previous conviction: on 01 August 2013 he was convicted of assault with intent to do grievous bodily harm and was sentenced to 2 years' imprisonment which was wholly suspended for 5 years on condition that the appellant was not convicted of assault with intent to do grievous bodily harm which is committed during the period of suspension. In addition, the appellant was sentenced in terms of section 273 (1)(H) of Act 51 of 1977 to 3 months' correctional supervision and was ordered to perform free community services for a period of 16 hours per month.

[6] The complainant was 80 years old. The appellant knew the complainant very well. The appellant stayed with the complainant and her son for almost a month. The complainant's son helped the appellant to establish the car-wash business. He bought the appellant a vacuum cleaner and a bicycle for the business.

[7] The appellant attacked the complainant and brutally stabbed her 8 times in her own house. He stabbed her several times with a knife


till she fell down and was left for dead. As a result of the injuries sustained, the complainant was admitted to the intensive care unit of the Annoron hospital. He further stole her belongings, some of which were never recovered.

[8] There is no evidence before court that indicates that the appellant was remorseful. As stated before he was well-known to the complainant and it was the complainant who identified him. Clearly there was overwhelming evidence against him. Under the circumstances, his plea of guilty, on its own, cannot be taken as a sign of remorse. Though it was submitted by appellant that he consumed alcohol, there is no evidence that his drunkenness played any role in the commission of the offence.


[9] Under the circumstances, there is no justification for the deviation from the minimum sentence as prayed for by the appellant. Therefore, the appeal against the sentence stands to fail.

[10] In the result, the following order is made:

The appeal against the sentence is hereby dismissed and the sentence of the court *a quo* is hereby confirmed.


PP. **S S MPHAHLELE**
JUDGE OF THE HIGH COURT

I agree,


J J STRIJDOM
ACTING JUDGE OF THE HIGH COURT