THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

CASE NO: 386/96 In

the matter between:

FUZILE MHLAKAZA 1st Appellant

FUNANI FILEMON BUKHANI 2nd Appellant

and

THE STATE Respondent

CORAM: SMALBERGER, HARMS and ZULMAN JJA

HEARD: 25 FEBRUARY 1997

DELIVERED: 13 MARCH 1997

J U D G M E N T

HARMS JA/

HARMS JA:

This appeal concerns the question whether sentences of imprisonment which are cumulatively far in excess of 25 years, are proper. In particular, on a number of counts, appellant No 1 was sentenced cumulatively to 62 years of which 15 years were suspended; No 2, who was similarly sentenced to 62 years, had 20 years of this sentence suspended and a further two years were ordered to run concurrently. The so-called effective sentences were thus 47 and 38 years respectively.

The facts that gave rise to the convictions and sentences can be stated in fairly simple terms. On a Sunday evening during August 1994, a gang of five men, driving a stolen vehicle, attacked a small police charge office at Delft on the Cape Flats. The object of the exercise was to get their hands on the firearms and ammunition kept at the office. The office was manned by Constable Fielies. A friend. Miss Yolanda Wakefield,

waited in the public area for him. The vehicle stopped in front of the building and three members of the gang, including the two appellants, entered the office. They requested Fielies to assist them since they were allegedly being molested. As Fielies exited the rear part of the office, he was shot at, first with a hand weapon and then with a machine gun. Wakefield attempted to hide behind the counter, but was also hit by the fire. Fielies fell onto her in an obvious attempt to protect her, and yet further shots were fired at him. The attackers then proceeded to remove a trunk containing an automatic weapon and ammunition from the building.

Some security guards driving past the scene, heard the shooting and decided to stop and investigate. Members of the gang shot at them, wounding the one guard in the head and another in the leg. The robbers then fled, abandoning the weapons cache. The appellants were apprehended a week later, still driving the stolen vehicle,

No 1 in possession of the hand weapon used at the scene, and another occupant of the car in possession of another firearm. Fielies died as a result of the gunshot wounds. In consequence of these events, the appellants were convicted and sentenced as follows:

Charge	No 1	No 2
Murder	25 years	25 years (7 suspended)
Attempted Murder (three counts)	15 years (5 suspended)	15 years (5 suspended)
Attempted Robbery	10 years	10 years (5 suspended)
Possession of firearm and ammunition	2 years	2 years to run concurrently with
Possession of machine gun	10 years (5 suspended)	10 years (5 suspended)

The trial judge (Van Deventer J) in the former Cape Provincial Division dismissed an application for leave to appeal. Pursuant to a petition addressed to the Chief

Justice, leave to appeal was granted to this Court only in respect of the cumulative effect of the sentences imposed by the trial court. The individual sentences were thus not the subject of any debate before this Court, and it has to be assumed that they are proper.

As far as the seriousness of the crimes are concerned. Van Deventer J expressed himself thus:

> "Deur so 'n voorafbeplande, koelbloedige aanval as wat hierdie bende uitgevoer het, word die Staatsgesag uitgedaag en die gemeenskap geterroriseer.
>
> Die aanvallers stuur die boodskap uit dat hulle geen respek vir die Staatsgesag het nie en dat die owerheid nie in staat is om sy onderdane te beskerm nie. Dit is minagtende en uittartende misdaad teen die gesag van die owerheid. Dit is 'n voorbeeld van die koelbloedige terreur waardeur aanvalle op polisiemanne uitgevoer is en honderde polisiemanne in die laaste paar jaar vermoor is.
>
> Hierdie aanvalle op die polisiediens behoort gesien te word as 'n oorlog teen wet en orde deur hierdie groep beroepsmisdadigers wat geen agting het vir beskaafde standaarde en demokratiese regstelsels nie; wat geen gewete het nie, geen beskaafde of morele standaarde eerbiedig nie en gewoonlik geen rehabilitasiepotensiaal het nie.

> Van die optredes wat tot die skuldigbevindings van [appellants] gelei het, lei ek af dat hulle misdaad as 'n beroep gekies het en aan die voornoemde groep behoort het, dit is die inherent-bose misdadige wese waarmee die Howe deesdae al hoe meer te doen kry, naamlik die soort onmens wat glo dat hy geregtig is om enige mens te vermink of dood te maak om sy goed te vat, selfs al is die buit maar net 'n paar rand werd."

It was not submitted that the learned Judge had erred in this assessment of the seriousness of these crimes. His forceful expression was fully justified in the circumstances of the case. Cf S v Mokoena 1990 (1) SACR 296 (A) 298i-299c; S V Mungati 1992 (1) SACR 550 (A) 556.

Concerning the public interest, the learned Judge said:

> "Gewapende roof is ongetwyfeld die mees gevreesde en veragtelike misdaad. 'n Vonnis moet uitdrukking gee aan die wetsgehoorsame gemeenskap se gevoel van verontwaardiging oor 'n bepaalde misdryf. Hoe afskuweliker 'n misdaad in die oe van die ordentlike publiek is, hoe swaarder moet die straf wees. Die gemeenskap moet kan aanvoel dat dit by die Howe 'n saak van erns is om veilige lewenstoestande te handhaaf. As ons die nuwe en brose demokrasie in hierdie land wil laat oorleef, en sosio-ekonomiese ontwikkelingsprogramme 'n kans wil gee om vir ons minderbevoorregte gemeenskappe 'n hoër

> lewenskwaliteit te skep, om onder andere eko-toerisme, wat ons grootste bedryf kan word te bevorder en deur al hierdie doelwitte vir die miljoene honger en werklose mense in ons land 'n lewenstog te skep, moet die plaag van wetteloosheid en geweld en die reuse bedryf van diefstal, gewapende roof en bose geweld nou vir eens en vir altyd end kry. Die belange van die gemeenskap moet nou absolute voorkeur verleen word.
>
> Ons het 'n stadium bereik waarin die polisiediens die enigste skans is tussen die gemeenskap en anargie. ... Misdadigers wat hulself vry voel om geweld teen die polisie, en dus die owerheid, te gebruik moet nou kennis neem, dat die Howe aanvalle op die polisie met die swaarste vonnisse sal straf wat die Wet toelaat."

Although these views, as formulated, cannot be criticized, it is necessary to express a general note of caution. The object of sentencing is not to satisfy public opinion but to serve the public interest. (Cf Ashworth & Hough Sentencing and the Climate of Opinion [1996] Crim LR 776; S v Mafu 1992 (2) SACR 494 (A) 496g-j.) A sentencing policy that caters predominantly or exclusively for public opinion is inherently flawed. It remains the court's duty to impose fearlessly an appropriate and fair

sentence, even if the sentence does not satisfy the public. In this context the approach expressed in S v Makwanyane & Another 1995 (2) SACR 1 (CC) par 87-89 (per Chaskalson P) applies mutatis mutandis: public opinion may have some relevance to the enquiry, but, in itself, it is no substitute for the duty vested in the court; the court cannot allow itself to be diverted from its duty to act as an independent arbiter by making choices on the basis that they will find favour with the public. That, in the words of Schreiner JA in R v Karg 1961 (1) SA 231 (A) 236B-C, does not mean that it is

> "wrong that the natural indignation of interested persons and of the community at large should receive some recognition in the sentences the Courts impose, and it is not irrelevant to bear in mind that if sentences for serious crimes are too lenient, the administration of justice may fall into disrepute and injured persons may incline to take the law into their own hands".

But, he added, "righteous anger should not becloud

judgment". A similar point was made in Reg v Sargeant [1974] 60 Cr App Rep 74:

> "... There is however another aspect of retribution ... it is that society, through the courts, must show its abhorrence of particular types of crime ... The courts do not have to reflect public opinion. On the other hand the courts must not disregard it. Perhaps the main duty of the court is to lead public opinion."

The personal circumstances of No 1 that, according to counsel's argument, have a bearing on sentence are his age (25 years at the trial), the fact of his having two children and his lack of previous convictions. No 2, it was pointed out, was 22 when the crimes were committed and was also a first offender. The submission was that these personal considerations had not been properly or sufficiently taken into account during sentencing because the cumulative effect of the sentences excludes the possibility that the appellants may be rehabilitated. There is, additionally, no motivation left for the

appellants to become rehabilitated, because, even if they do, they will still have to serve a lengthy period of imprisonment. It should be pointed out that Van Deventer J stated that his main objects in sentencing the appellants in this case were first to ensure that they do not repeat their crimes, and also to deter others from committing similar or other serious crimes. Rehabilitation, the judgment implies, was a minor consideration.

Given the current levels of violence and serious crimes in this country, it seems proper that, in sentencing especially such crimes, the emphasis should be on retribution and deterrence (cf Windlesham Life Sentences; The Paradox of Indeterminacy [1989] Crim LR 244 251). Retribution may even be decisive (S v Nkwanyana and OtAers 1990 (4) SA 735 (A) 749 C-D). In the words of Van den Heever JA in S v Mungrati supra at 556 h-i,

> "[i]n 'n geval soos hierdie moet rehabilitasie en

> voorkoming as oogmerke by vonnisbepaling terugstaan vir afskrikking en veral vergelding. Hierdie koelbloedige sluipmoord op 'n polisieman wat in ordentlikheid sy plig om wet en orde te probeer handhaaf gedoen het, net gekalwe aan die fondamente van die geordende samelewing."

Deterrence has two aspects: deterring the prisoner and deterring others. The effectiveness of the latter is unclear(Walker & Padfield, Sentencing Theory, Law and Practice, 2nd ed (1996) 101) but, according to judicial precedent, it remains an important consideration (R V Swanepoel 1945 AD 444 453-455 and the debate in S v Nkambule 1993 (1) SACR 136 (A)). As far as deterring the accused is concerned, it should be borne in mind that there is no reason to believe that the deterrent effect of a prison sentence is always proportionate to its length (S v Skenjana 1985 (3) SA 51 (A) 54I-55A). [My emphasis.] Whether long term imprisonment has any rehabilitive effect, has also been doubted. Hiemstra Suid-Afrikaanse Strafproses 5th (Kriegler) ed 663, for instance, states

that "[d]ie hervormingspotensiaal van gevangenisstraf is grootliks 'n mite". Whether or not this scepticism is fully justified, the point is that the object of a lengthy sentence of imprisonment is the removal of a serious offender from society. Should he become rehabilitated in prison, he might qualify for a reduction in sentence, but it remains an unenviable, if not impossible, burden upon a court to have to divine what effect a long sentence will have on the individual before it. Such predictions cannot be made with any degree of accuracy.

To revert to the argument under consideration. It seems to me that the learned Judge may well have overemphasised deterrence of others as a main sentencing object. On the whole it does, however, appear that his aim was rather the removal, more or less permanently, of the appellants from society. That was a proper consideration. He did not, merely for the sake of deterring others, impose a sentence grossly in excess of what would have otherwise

been fair (S v Khulu 1975 (2) SA 518 (N) 521E-522C). The

downgrading of rehabilitation does therefore not, in the circumstances of this case, amount to a misdirection.

Van Deventer J, in imposing the sentences as he did, expressed the wish to impose something less than life imprisonment. This raises the question whether a sentence of, say, 47 years is a lesser sentence than life imprisonment. The question, it seems, is often posed but either not answered, or answered incorrectly (e g by the unnamed judge referred to by Erasmus J in S v Smith 1996 (1) SACR 250 (E) 254h-j). It also raises the issue of the respective roles of the judiciary and the executive in sentencing. These are not new problems and what I am about to say about them, though not novel, requires restatement.

In S v Masala 1968 (3) SA 212 (A) the appellant was sentenced to life imprisonment. This Court was of the view that 10 years' imprisonment would have been an appropriate sentence. It then sought to establish whether

the latter sentence was substantially less than that imposed - a question that had to be answered in the affirmative before the imposed sentence could be substituted. From enquiries made by the Court, it was established that, in some instances of life sentences, prisoners were released on parole even before ten years had been served; in most cases ten years was the minimum term, but there were instances of considerably longer terms. In practice (and in law, I presume), however, a life sentence was regarded as authorising the detention of the prisoner for an indeterminate period which might have ended only upon death (at 217H).

When, during 1990,the statutory regime relating to the death penalty was changed, the concept of life imprisonment was expressly introduced into the Criminal Procedure Act 51 of 1977. At the same time s 64 of the Prisons Act 8 of 1959 was amended to provide that a prisoner upon whom a life sentence has been imposed, shall

not be released unless certain special provisions concerning ministerial control had been complied with and "with due regard to the interests of society". (S v Mdau 1991 (1) SA 169 (A) esp 176D-177A: "Die plig en die verantwoordelikheid om die gemeenskap teen so 'n moordenaar te beskerm berus dus in die eerste en in die finale instansie by die Minister.") The Prisons Act, renamed the Correctional Services Act, was substantially amended by the Correctional Services Amendment Act 68 of 1993. For present purposes, it provides as follows:

(1) every prisoner who has been sentenced by any court has to undergo that sentence in the manner directed in the warrant. This is, however, subject to other provisions of the Act (s 31);

(2) a prisoner shall be released upon the expiration of the term of imprisonment imposed upon him (s 65(1));

(3) a prisoner may earn credits amounting to no more than half of the period of imprisonment which he has served (s 22A(1));

(4) a prisoner serving a determinate sentence shall not be considered for parole until he has served half of his term of imprisonment, save that the date can be brought forward by the number of credits earned (s 65(4)(a));

(5) a prisoner sentenced to life may be released on parole by the Minister upon a recommendation of the National Advisory Committee. The recommendation is made after considering a report of the parole board, and having regard to the interests of the community (s 65(5) and (6)). A strange aspect of this provision is that no minimum period is laid down before a release on parole can be considered or take place;

(6) the President may at any time authorize parole or the

unconditional release of any prisoner, and may remit any part of a sentence (s 66(1));

(g) the Minister may advance the date of the placement on parole if the overpopulation of any prison requires it (s 67).

The net effect of all this is that all sentences of imprisonment imposed by courts are, in a sense, indeterminate sentences. The function of a sentencing court is to determine the maximum term of imprisonment a convicted person may serve. The court has no control over the minimum or actual period served or to be served. A life sentence is thus a sentence that may, potentially, amount to imprisonment for the rest of the prisoner' s natural life; and a sentence of 47 years may, potentially, be for the full period. That means that in law a life sentence is potentially (depending upon the life expectancy of the offender) more onerous than one of, say, 47 years.

The lack of control of courts over the minimum sentence to be served can lead to tension between the judiciary and the executive because the executive action may be interpreted as an infringement of the independence of the judiciary (cf Blom-Cooper & Morris The Penalty for Murder: A myth exploded [1996] Crim LR 707 716). There are also other tensions, such as between sentencing objectives and public resources (see Walker & Padfield op cit p 378). This question relating to the judiciary's true function in this regard is probably as old as civilization (windlesham Life Sentences; law, practice and release decisions, 1969-93 [1993] Crim LR 644. Our country is not unique. Nevertheless, sentencing jurisdiction is statutory and courts are bound to limit themselves to performing their duties within the scope of that jurisdiction. Apart from the fact that courts are not entitled to prescribe to the executive branch of government as to how and how long convicted persons should be detained

(see the clear exposition by Kriegler J in S v Nkosi (1), S v Nkosi (2), S v Mchunu 1984 (4) SA 94 (T)) courts should also refrain from attempts, overtly or covertly, to usurp the functions of the executive by imposing sentences that would otherwise have been inappropriate. In this regard I regard as commendable and correct the approach of Erasmus J in S v Smith supra 254-259. I quote some extracts from this judgment:

> "Die Konstitusionele Hof het skaars drie weke gelede, in die saak van S v Makwanyane 1995 (2) SASV 1 (CC), beslis dat teregstelling strydig met die Grondwet is. Daarmee is die doodvonnis effektiewelik afgeskaf. Die amper instinkmatige reaksie daarop is vir die Hof om te verklaar dat onder die ou bedeling the Hof nie sou gehuiwer het om die doodvonnis op te lê nie, en om dan na 'n paslike alternatiewe vonnis te soek. Die benadering is egter, na my oordeel, onvanpas. Die doodvonnis behoort aan die verlede. Selfs die herinnering daarvan het geen plek in die gedagtes van die Hof nie. Ook die publiek moet die nuwe bestel aanvaar: hoe gouer hoe beter. Die veroordeelde moet gevonnis word op die basis van die Hof se huidige vonnisbevoegdhede, met inagneming van die algemene oogmerke van straf. Die beginsels bly onveranderd. ...

Daar is dus by lewenslange gevangenisstraf wel paroolmoontlikheid, maar dit blyk dat daar 'n deeglike ondersoek geskied — deur die paroolraad, die Nasionale Adviesraad, en dan die Minister by wie die finale besluit berus. Dit is so dat ons nie weet wat die beleid met betrekking tot parool by lewenslange gevangenisstraf is nie; maar, met eerbied, dit is geen rede om nie die vonnis op te lê nie.

Die bevoegdheid ten aansien van parool en begenadiging setel in die uitvoerende gesag. As die dan nie na openbare wense geskied nie, dan moet die saak ministerieel of departementeel reggestel word; of die Wetgewer moet ingryp. 'n Hof kan nie aan die uitvoerende of wetgewende gesag voorskryf nie; of met die uitoefening van die se bevoegdhede inmeng nie, tensy dit op onwettige wyse geskied. Ons kan wel waar paslik kommentaar lewer en selfs kritiek uitspreek. Die konstitusionele skeiding van uitvoerende en regterlike gesag moet egter eerbiedig word.

'n Hof kan nie deur middel van 'n vonnis wil inmeng met die regering se uitoefening van sy magte (of verpligtinge) met betrekking tot parolering nie. Die beginsel word bevestig in die beslissing van S v S 1987 (2) SA 307 (A): ek haal aan van die uitspraak van Appelregter Smalberger te 313H:

> 'Die Verhoorregter se bonding dat die appellant nie deur langtermyn gevangenisstraf effektief uit die gemeenskap verwyder kan word nie vanweë die waarskynlike optrede van die gevangenisowerhede kom op 'n mistasting neer. Ofskoon 'n regsprekende beampte nie noodwendig

> sy oë hoef te sluit vir die feit dat 'n gevonnisde moontlik op parool uitgelaat kan word nie (soos in die geval van R v Govender 1949 (3) SA 589 (N) op 591), bly dit 'n onbekende faktor of 'n gevonnisde in 'n bepaalde geval wel op parool uitgelaat sal word en, indien wel, tot watter mate sy Vonnis verminder sal word en kan sulke gebeurlikhede nie by die bepaling van 'n gepaste straf as ' n waarskynlikheid in aanmerking geneem word nie. (Vgl S v Khumalo en Aadere 1983 (2) SA 540 (N) op 542A.)'

Ek glo nie dat die beslissing van die Konstitusionele Hof enigsins aan die beginsel afbreuk doen nie. Ek meen wel dat meer duidelikheid en oopheid aangaande die betekenis van lewenslange gevangenisstraf aangewese is veral nou dat die doodvonnis as die uiterste strafmaatreël nie meer bestaan nie.

Dit gaan hier nie om ' n soek na ' n gepaste alternatief vir die doodvonnis nie. Dit is dus onreelmatig, meen ek, van ' n hof om paroolmoontlikhede met die doel te wil omvleuel deur die ople van vonnis langer as die beskuldigde se lewensverwagting. Dit kan lei tot klugtige lang vonnisse, in 'n onbetaamlike maneuvrering tussen die howe en die owerheid.

Na my oordeel is lewenslange gevangenisstraf die mees gepaste vonnis waar die hof die samelewing effektiewelik en permanent teen die beskuldigde wil beskerm. Dit is ook die vonnis met die hoogste afskrikkingswaarde."

In relation to the quotation from this Court's judgment in S v S, I wish to add an observation. From what has been said it is apparent that penal policy and enforcement are not static. We are, for instance, aware that there is a bill that will, if enacted, once again change the parole and release regime — now to introduce stricter requirements. The palpable object of the bill is to cater for present political and public opinion. It illustrates the point that if a court attunes a sentence with regard to its understanding of contemporary prison laws or practice, it may result in an unintended injustice to the convicted person. Under similar circumstances in the United Kingdom the Lord Chief Justice felt obliged to issue a practice statement requiring courts to have regard to the fact that it is likely that the actual term served would be, under the then new British regime, substantially longer than under the old system ([1992] 1 WLR 948). Similar problems have arisen in other jurisdictions (see

Henham Back to the future on Sentencing: The 1996 (White Paper [1996] 59 MLR 861).

Against this background I turn then to consider whether, in the circumstances of this case, the cumulative effect of the sentences imposed is so inappropriate that this Court is permitted to substitute its discretion for that of the trial court. Counsel for the appellants referred us again to some venerable dicta to the effect that the maximum sentence imposed in this country was, in practice, not more that 25 years, and then only in very exceptional cases (eg S v Tunadeleni and Otners 1969 (1) SA 153 (A) 189H). These dicta were the subject of close analysis in S v M 1993 (1) SACR 126 (A) where (at 135c-e) Eksteen JA concluded as follows:

> "Bit volg dus myns insiens dat daar nie sprake kan wees van 'n maksimum vonnis nie. Daar moet ook gewaak word teen 'n begrip dat 'n vonnis van 25 jaar slegs in 'uiterste gevalle' of 'besondere ernstige gevalle' opgelê sal word. So 'n begrip sou die diskresie wat 'n Verhoorregter het om 'n redelike en

> billike vonnis op te le op 'n onaanvaarbare manier aan bande kan le (S V Tshozni en 'n Ander 1983 (3) SA 662 (A) op 666E-H). Om te se dat so 'n vonnis slegs in 'buitengewone' of 'uitsonderlike' gevalle opgele sal word, beteken dus niks meer as dat sulke lang tydperke van gevangenisstraf nie algemeen inons Howe voorkom nie maar slegs waar die oortredinge van so 'n aard is dat dit vereis word dat so 'n vonnis in die belang van geregtigheid opgele moet word."

Since this dictum the death penalty has been declared unconstitutional. Sentences of imprisonment in cases where the death penalty would have been imposed before the advent of the new Constitution will inevitably be long and such sentences may become more common. Lengthier sentences may well be justified by the heightened incidence of violence. But whether or not such sentences fall within the bounds of what may be considered proper or appropiate will inevitably depend upon the facts of each particular case. The several convictions resulted from more or less the same event. It is therefore appropriate to assess what sentence I would have imposed for the murderous armed

attack on a police office involving a machine gun and the shooting and wounding of members of the public (cf S v M 1994 (2) SACR 24 (A) 30h-31e; S V Coales 1995 (1) SACR 33 (A) 37a-b). I believe that a sentence of life imprisonment would have been fully justified not only in relation to the combined crimes, but also on the murder count alone (cf S V Tcoeib 1991 (2) SACR 627 (Nm); S V Mhlongo 1994 (1) SACR 584 (A) 589-590) . And, as was pointed out by Hefer JA in S v Nkosi 1993 (1) SACR 709 (A) 717g-i, such a sentence is more realistic and subject to more safeguards than extraordinarily long sentences of imprisonment. Determinate sentences, in any event, run concurrently with a life term (s 32(2) (a)). Since the sentence I would have imposed is in law not less than that imposed by the trial court, interference cannot be justified on that ground.

That does not mean that I approve of all the trial court did. I have already dealt with the fact that

sentences of imprisonment ought to be realistic and should not be open to the interpretation that they have been designed for public consumption or controlling the executive. In addition, the lengthy suspended sentences in conjunction with long effective terms of imprisonment are inappropriate. Reduction of the effective term of imprisonment should be effected in similar circumstances by ordering that the different sentences are to run concurrently. I therefore propose to delete the suspended sentences and, to compensate therefor, to order that more of the imposed sentences are to run concurrently.

Another problem with the sentences imposed arises as a result of the disparity between the effective sentences of the two appellants. There is a nine year difference. The motivation given was that No 2 had made a confession and, even though he recanted, the confession was indicative of the possibility of remorse. Apart from the fact that I fail to detect any remorse at the time of

trial, the supposed remorse cannot justify the discrepancy. On the court's findings the appellants were equal partners in the same criminal activity. Their personal circumstances were very similar. They should have: been treated more or less equally. The discrepancy is disturbingly inappropriate and since the effective sentence imposed upon No 2 is not inappropriate, justice requires that the sentence on No 1 should be interfered with (S v Marx 1989 (1) SA 222 (A); S v Goldman 1990(1) SACR 1 (A) 4d-e). In any event, had I not considered a life sentence to be justified I would have regarded an effective sentence of 47 years as exceeding acceptable limits.

In the result the appeal succeeds to this extent only:

(a) the suspended portions of the sentences imposed upon both appellants are deleted;

(b) the order, in relation to the second appellant, that the sentences for possession of a firearm and ammunition

(counts 10 and 11) are to run concurrently with that for possession of a machine gun (count 12), are set aside; (c) except for thirteen years, the sentences imposed upon both appellants in relation to counts 5,6 and 7 (attempted murder), 9 (attempted robbery), 10 and 11 (possession of a firearm and ammunition) and 12 (possession of a machine gun) are to run concurrently with that imposed on count 4 (murder). (This means that the effective sentence imposed upon both appellants is 38 years.)

L T C HARMS JUDGE
OF APPEAL

SMALBERGER JA)
ZULMAN JA) Concur