

Judgment No. S.C. 132/83

Crim. Appeal No. 334/83

MISHECK MAKOMA SIBANDA v THE STATE

SUPREME COURT OF ZIMBABWE,

HARARE, NOVEMBER 24, 1983.

Before: BECK JA, in Chambers, in terms of s 10(4)

(a) of the Supreme Court of Zimbabwe Act 1981.

The applicant applied for leave to prosecute an appeal in person. He was convicted on three counts of robbery. The evidence is overwhelming and there can be no doubt that he was correctly convicted.

The Regional Magistrate sentenced him to eight years' imprisonment with labour on each count, but ordered the sentence on one of the counts to run concurrently with the sentences on the remaining two, thus imposing on the applicant an effective sentence of 16 years.

At my request the Attorney-General has considered the matter of the sentence that was imposed, because it seemed to me that insufficient regard had been paid to the cumulative effect of the sentences. The Attorney-General has reported that he accepts that a lesser effective sentence should have been imposed.

Although the applicant did not obtain very much from the complainants, he used a firearm with which to threaten them, and the offences occurred in Matabeleland where armed robbery has been a particularly serious problem.

I have no criticism of a sentence of eight years in such a case, even where the amount taken was not great and no actual physical harm was inflicted. Moreover, the applicant

has a recent previous conviction for assault, another for extortion which is seven years old, and a ten year old previous conviction for robbery. All these features call for a severe sentence, but it is my view that 16 years is clearly too severe a sentence for what the applicant did.

Since the Attorney-General agrees, I propose to deal with the matter in the exercise of my powers of review, in terms of s 10(4)(a) of the Supreme Court Act, 28 of **1981**.

The application for a certificate is accordingly refused, but the sentences imposed on the applicant are reduced to six years' imprisonment with labour on each count, and it is directed that the sentence in respect of the last count will run concurrently with those imposed in respect of the other two counts, thus making the effective sentence one of 12 years.

My brother GUBBAY agrees.