MARY SITHOLE
and
NOTICE VENGAI
versus
THE STATE

HIGH COURT OF ZIMBABWE
CHATUKUTA AND TAGU JJ
HARARE, 10 September 2014

Criminal Appeal

S Chikotora, for the applicants
T Mapfuwa, for the respondent

TAGU J: This is an appeal against conviction and sentence. The appellants were convicted on their own pleas of guilty on a charge of contravening s 4(1) as read with s 4(2) of the Firearms Act [*Cap 10:09*], that is, possession of a firearm without a licence. They were sentenced to 18 months imprisonment of which 6 months imprisonment were suspended for 5 years on the usual condition of future good conduct.

Dissatisfied with both conviction and sentence, they appealed to this Honourable court. The appeal was opposed by the respondent.

On 10 September 2014, Mr *Chikotora* who appeared on behalf of the appellants withdrew appeal against conviction. He proceeded to argue his case against sentence only. After perusal of the documents filed of record, and hearing submissions from Mr *Chikotora* and Mr *Mapfuwa,* we delivered an ex-tempore judgment and dismissed the appeal against sentence.

We have now been asked to furnish full written reasons for judgment for purposes of appealing to the Supreme Court. These are the reasons.

The appellants were found in possession of a firearm, namely a.22 Webley Revolver serial numbers A15011 at Total Service Station, Kuwadzana 2, Harare, without a firearms certificate. They pleaded guilty to the charges. The withdrawal of appeal against conviction by Mr *Chikotora* is laudable because there were no prospects of success on appeal against

conviction. The conviction is confirmed.

In respect of the sentence we are of the view that the sentence imposed by the court a quo was appropriate. The appellants had the firearm in a public place and at a place where cash is often kept. It is notorious fact that service stations are often the target of robberies. Mr *Mapfuwa* referred the court to the case of *S* v *Mphumelelo Moyo* HB 09/11 where a sentence of 12 months imprisonment was held to be appropriate for the unlawful possession of a firearm. In our view the sentence imposed on the appellants does not induce a sense of shock. It is within the range of sentences for similar offences. The appeal court can only interfere with the sentence where it is found to be inappropriate. It is trite that a judicial officer who presides at the trial has discretion in sentencing the offender. That discretion should not be lightly interfered with by the court of appeal. It is only where there is misdirection or where the discretion has not been judiciously exercised that a higher court could interfere. In *casu,* there is no misdirection at all. See *S* v *Nhumwa* SC 40/88 and *S* v *de Jager and Another* 1965 (2) SA 616 (A).

In the result, it is ordered that-

Appeal against sentence be and is hereby dismissed.

CHATUKUTAJ agrees……

Rubaya and Chatambudza, appellant's legal practitioners
Prosecutor- General's Office, respondent's legal practitioners