



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG**

Case No: A154/2016

In the matter between:

TUMELO TAUETSWALA

Appellant

versus

THE STATE

Case Summary: Criminal Law – Theft of articles worth R3 500 from car – Sentence - appropriate case where the appellant, a 33 year old first offender, should be afforded an opportunity of staying out of prison by suspending the whole of the sentence imposed on appeal – Sentence of 18 months' imprisonment imposed by trial court set aside and replaced with a sentence of one year imprisonment, wholly suspended for a period of three years on certain conditions.

JUDGMENT

MEYER, J (KLAAREN, AJ concurring)

[1] Following his plea of guilty, the Regional Court, Kempton Park convicted the appellant, Mr Tumelo Tauetswala, of one count of theft. The charge against the appellant was that he, on 11 September 2015, stole two wheel arches to the total

value of R3 500 from a Volkswagen Tiquan car that was parked at the Emperors Palace, Kempton Park, which car was owned by or in the lawful possession of Ms Zonya Beukes. The appellant admitted that his intention was to on-sell the wheel arches for the sum of R2 500. The appellant, however, was arrested and the wheel arches were recovered by the police before the intended sale had taken place. On 18 February 2016, the appellant was sentenced to eighteen months' imprisonment. This appeal, with the leave of the trial court, is against the sentence imposed upon the appellant.

[2] The personal circumstances of the appellant that were presented to the trial court were that he was 33 years old, a first offender, married with a four year old child and employed by Dimension Data earning a salary of R15 000 per month. In sentencing the appellant the trial court paid lip-service to the principles governing punishment and found as aggravating circumstances that theft is highly prevalent in its area of jurisdiction and that the appellant had 'stolen out of greed and nothing else.'

[3] By finding that the appellant had stolen out of greed the trial court had misdirected itself. There was no evidence from which such inference could have been drawn. The fact that the appellant was employed and that he earned a monthly salary of R15 000 does not give rise to such inference. His financial situation was not explored and there was not a purposeful enquiry into his means by the trial court. Furthermore, the sentence imposed upon the appellant is disproportionate to the crime that he committed, the interests of society and his personal circumstances. This court of appeal is accordingly at large to interfere with the sentence imposed upon the appellant by the trial court.

[4] Having due regard to the objectives of punishment, namely prevention, retribution, deterrence and rehabilitation, and weighing the personal circumstances of the appellant against the seriousness of the crime committed by him and the interests of society, I am of the view that this is an appropriate case where the appellant as a first offender should be afforded an opportunity of staying out of prison by suspending the whole of the sentence which I propose to impose.

[5] In the result the following order is made:

(a) The appeal succeeds.

(b) The sentence imposed by the Regional Court, Kempton Park is set aside and replaced with the following sentence:

‘The accused is sentenced to one year imprisonment, wholly suspended for a period of three years on condition that he is not convicted of theft, robbery, receiving stolen goods knowing it to have been stolen or an offence under section 36 or 37 of the General Law Amendment Act 62 of 1955 committed during the period of suspension.

P.A. MEYER
JUDGE OF THE HIGH COURT

J.E. KLAAREN
ACTING JUDGE OF THE HIGH COURT

Date of hearing: 3 November 2016

Date of judgment:	3 November 2016
Appellant's counsel:	F Phamba
Instructed by:	Machete Attorneys, Kempton Park, Johannesburg
State counsel:	NP Serepo