



IN THE HIGH COURT OF SOUTH AFRICA

/MF

(GAUTENG DIVISION, PRETORIA)

(1) REPORTABLE: YES / NO
(2) OF INTEREST TO OTHER JUDGES: YES / NO
(3) REVISED.

23/3/18

Appeal Case No: **A697/2016**

Court *a quo* Case No: **SH489/2015**

Date of hearing: **5 February 2018**

Date of judgment: **23 March 2018**

In the appeal between:

THAMI MAXWELL SIMELANI

Appellant

and

THE STATE

Respondent

JUDGMENT

DIEDERICKS (AJ)

[1] This is an appeal against the sentence imposed on the Appellant on a charge of housebreaking.

- [2] The appeal was heard following leave granted to appeal against the sentence only, which leave was granted on petition in terms of Section 309(c) of Act 51 of 1977, by Judges L.M. Molopa-Sithosa (J) and P.L. Nobanda (AJ) on 13 September 2016.
- [3] On the 16th of March 2016 the Appellant was charged on a charge of housebreaking in that on the 16th of October 2015, in the Regional Division of Gauteng, he unlawfully and with intent to steal, broke open and entered a business premises of one Hein de Swart, where he stole the following items, i.e. four Lenovo computers, one monitor and one radio, the property in the lawful possession of the said Hein de Swart.
- [4] The Accused pleaded guilty on this charge on the 16th of March 2016, and was found guilty as charged on the same day.
- [5] The case was then postponed to the 7th of April 2016 for a correctional supervision report.
- [6] Having heard the evidence of the Accused and without a correctional supervision report, the Appellant was sentenced to eight years imprisonment.
- [7] The reasons advanced by the Department of Correctional Services for not providing a report was that the person living at that address, a certain Mr.

Thobane, mentioned that the Accused is unknown to him. Mr. Thobane only knows the Appellant's caregiver, a certain Mr. Mosa Zwawa, who was a tenant at the said address and who also no longer lives there.

[8] The following common cause facts pertaining to the crime committed as well as mitigating- and extenuating circumstances were considered by the Magistrate:

1. Personal circumstances of Appellant:

- (a) He was 23 years of age on the day of his sentence, obtained Grade 12 education and was held in custody since the 15th of October 2015 (then already five months);
- (b) He is not married, but has three children, i.e. a set of twins aged 5 years and a third child aged 9 months;
- (c) He was a first offender and there were no other cases pending against him;
- (d) He did not have permanent employment and earned a living by doing "piece jobs" earning approximately R150.00 to R250.00 per day.

2. Stolen goods:

(a) All stolen goods mentioned in the Charge Sheet were retrieved and handed back to the owner;

(b) The value of the stolen goods is unknown.

[9] In view of the above facts I considered the sentence of 8 (eight) years imposed on the Appellant.

[10] This Court considered sentences in comparable cases, in particular the following cases:

***S. v. Skhosana*, 2016(1) SACR (GJ);**

***S. v. Beyi*, 2011(2) SACR 23 (ECG);**

***S. v. Shiburi*, 2004(2) SACR 314 (VV).**

[11] The case of ***S. v. Shiburi*** mentioned above has many similarities, compared to the case *in casu*.

[12] The following were taken into consideration in mitigation in the case of ***S. v. Shiburi***:

1. Appellant was a first offender;
2. The Appellant was in custody for a month;

3. The stolen radio was returned;
 4. The Appellant was gainfully employed while his wife was not;
 5. The Appellant was married and had dependants.
- [13] The majority of the Full Court in **S. v. Shiburi** found a sentence of 5 (five) years imprisonment appropriate.
- [14] It is trite that this Court will only interfere with the sentence of the Court *a quo* in the event that this Court finds that the sentence is inappropriate. **S. v. Vilakazi**, 2012(6) 353 SA (SCA).
- [15] Having regard to the circumstances *in casu*, I am of the view that the sentence of 8 (eight) years imposed on the Accused inappropriate.
- [16] In my view, a sentence of 5 (five) years would be appropriate.
- [17] The appeal therefore succeeds against the sentence and the following order is made:
1. The appeal against the sentence is upheld;

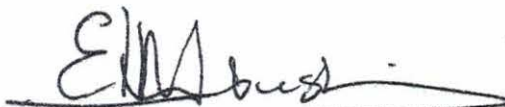
"The Accused is sentenced to 5 (five) years imprisonment."



F. DIEDERICKS

ACTING JUDGE OF THE GAUTENG DIVISION, PRETORIA

I agree



E.M. KUBUSHI

JUDGE OF THE GAUTENG DIVISION, PRETORIA

Advocate for Appellant: Adrian Thompson

Advocate for Respondent: Phyllis Vorster