

IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)

REPUBLIC OF SOUTH AFRICA



Case Number: A226/2016

DELETE WHICHEVER IS NOT APPLICABLE

- (1) REPORTABLE: ~~YES~~/NO
- (2) OF INTEREST TO OTHER JUDGES: ~~YES~~/NO
- (3) REVISED
- DATE: 12.4.2017
- SIGNATURE: _____

12/4/2017

In the matter between:

THABO VUNDLA

Appellant

and

THE STATE

Respondent

JUDGMENT

JANSE VAN NIEUWENHUIZEN J

- [1] The appellant was convicted of housebreaking with the intent to steal and theft and was sentenced to four years' imprisonment.
- [2] This appeal is only against sentence.
- [3] The appellant was 34 years old at the time of the offence. At approximately 12h00 in the afternoon the appellant broke into a flat utilising a screwdriver to force the lock of the door open. He stole a remote control worth approximately R 300, 00. The remote control was recovered and returned to the complainant.
- [4] Ms Moloi, counsel for the appellant, submitted that the four year term of direct imprisonment is shockingly harsh and induces a sense of shock, especially if one has regard to the personal circumstances of the accused and the value of the item that was stolen.
- [5] Ms Coetzee, counsel for the State, referred, quite correctly, to the well-known authority of *S v Rabie* 1975 (4) SA 855 A, in which it was stated

that sentencing is pre-eminently a matter for the discretion of the trial court and that a court of appeal should be careful not to erode such discretion.

- [6] In imposing the sentence of four years the court *a quo* placed great emphasis on the prevalence of the crime in its area of jurisdiction. Although society expects courts to punish criminals harshly, Ms Moloi with reference to two reported cases, submitted that the prevalence of a certain crime in a court's area of jurisdiction should not override the basic principles pertaining to sentence.

- [7] In *S v Mklakaza* 1997 (1) SACR 515 SCA, the Supreme Court of Appeal held as follows at 518e:

"The object of sentencing is not to satisfy public opinion but to serve the public interest."

[8] In overemphasising the prevalence of the crime, the court *a quo* did not exercise its discretion judicially and properly. The aforesaid conduct resulted in the sentence being disturbingly inappropriate and as a result, this court may interfere with the sentence.

[9] In the premises, I propose that the sentence be set aside.

[10] In considering an appropriate sentence, I take into account that the appellant, aged 34 years, was a first offender, pleaded guilty to the charge and showed remorse. The appellant was in custody for five months prior to his conviction and sentence.

[11] The value of the stolen item is relatively small, to wit R 300,00. One should, however, bear in mind that the complainant also had to repair the broken lock of the door.

[12] The crime is, no doubt, serious. The court *a quo* correctly held that innocent hard working members of the community should be protected

against the selfish acts of criminals such as the appellant. Would-be offenders should also be deterred by the sentence imposed.

[13] Ultimately the court should impose a sentence that is proportional to the circumstances under which the crime was committed and that reflects the appellant's moral blameworthiness.

[14] The principle that direct imprisonment for first offenders should, as far as possible, be avoided in order to afford such an offender an opportunity to rehabilitate is specifically appropriate in the present circumstances. Imposing a wholly suspended sentence, complies with the aforesaid principle and has the added benefit that the proverbial "sword is hanging over the appellant's head". Should the appellant not utilise the opportunity to reform, he will eventually serve his sentence.

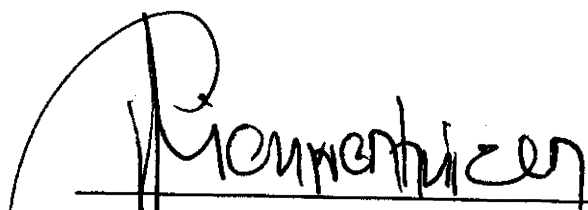
ORDER

In the premises, I propose the following:

1. The appeal against sentence is upheld.
2. The sentence of four years' imprisonment is set aside and replaced by the following sentence:

"The accused is sentenced to four years' imprisonment, wholly suspended for five years on condition that the accused does not commit the offence of housebreaking with the intent to steal and theft in the period of suspension."

3. The sentence is antedated to 15 September 2015.



N JANSE VAN NIEUWENHUIZEN J
JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

I agree



MANYATHLA J
ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

It is so ordered.

APPEARANCES*Counsel for the Appellant:*

Ms M.B. Moloi

Instructed by:

Legal Aid South Africa

Pretoria Justice Centre

(012 401 9200/072 443 0328)

Counsel for the Respondent:

Advocate A. Coetzee

Instructed by:

Director of Public Prosecutions

(084 250 0118/012 351 6700)