



**IN THE HIGH COURT OF SOUTH AFRICA,
FREE STATE DIVISION, BLOEMFONTEIN**

Reportable:	YES/NO
Of Interest to other Judges:	YES/NO
Circulate to Magistrates:	YES/NO

Review No: 87/2017

In the matter between:-

THE STATE

STATE

and

K M

ACCUSED

CORAM:

MBHELE, J et MHLAMBI, J

DELIVERED ON:

29 JUNE 2017

SPECIAL REVIEW

MHLAMBI, J

- [1] This case came before us by way of special review to determine whether the sentences passed by the learned Magistrate were reasonable and appropriate.
- [2] The accused was charged in the magistrate's Court at Phuthaditjhaba with the crime of theft **(Read with the provisions of section 51(2) of the Criminal Law Amendment Act 105 of 1997)** in that upon or about 14 November 2015 and at Mandela Park, in the Regional Division of Witsieshoek, the accused did unlawfully and intentionally steal the following items, to wit 1x packet cigarettes to the value of R 17.00, the property or in the lawful possession of Mpho Lethojane.(It is not clear why the reference was made to the minimum sentence legislation as it is not relevant in the given circumstances).
- [3] The transcribed record reflected the following:
- "Prosecutor: As it pleases Your Worship, State calls CJ30/2015, the State versus K. M. The Presiding Judicial Officer is Mrs Radebe; public prosecutor Mr Marawa; the accused person is defended by Mr Nhlapo; our court interpreter is Mr Lephoto; our court clerk is Mr Pontso Mongalo. We are proceeding Your Worship, may I put the charge?*
- Court: You may proceed.*
- Persecutor: As it pleases, Your Worship.*
- PROSECUTOR PUTS CHARGE TO ACCUSED**
- COURT: Thank you Mr M, do you understand the charge as put to you by the prosecutor?*
- ACCUSED: I understand the charge, Your Worship.*
- COURT: Thank you and how do you plead?*
- ACCUSED: I plead guilty, Your Worship.*
- ACCUSED PLEADS GUILTY TO CHARGE**

COURT: Thank you. Mr Nhlapho?

MR NHLAPHO: Your Worship, I do confirm appearance on behalf of the accused. I also confirm that the plea of guilty is indeed in accordance with the client's instructions. And Your Worship, we will humbly request that we proceed in terms of Section 112 (1)(a) of Criminal Procedure Act, Your Worship as it pleases the Court.

COURT: Do you also accept the Plea?

PROSECUTOR: As it pleases Your Worship, we accept it.

COURT: Thank you.

JUDGEMENT

And the child offender is found **GUILTY** of theft he has already pleaded guilty in terms of section 112(1)(a) of the Criminal Procedure Act 51 of 1977.

PROSECUTOR: As it pleases, Your worship no previous convictions.

NO PREVIOUS CONVICTIONS PUT TO THE ACCUSED

COURT: We may then postpone the matter for pre-sentence report?

MR NHLAPHO: For pre-sentence report?

COURT: Yes. It takes six weeks/

PROSECUTOR: As it pleases, Your Worship.

COURT: Okay, we are looking for a date in August?"

- [5] The court adjourned and resumed on 8 December 2016 for the purposes of sentence. The transcribed record reads as follows:

SENTENCE

"When it comes to sentencing, the Court is just going to be very brief. The Court will take into consideration that the accused pleaded guilty to the charge as a sign of remorse. He did not waste the Court's time. The value of the item stolen is R 17.00. And that the child is still 17 years old and no previous convictions. It was also recommended by

the probation officer that the child be given a postponed sentence or a wholly suspended sentence.

But again, it is also the duty of the Court to protect the interest of the community. That justice is not just supposed to be done, but must be seen to be done in public. So today the child offender will be **FINED R 300.00 OR SIXTY DAYS (60) IMPRISONMENT, WHOLLY SUSPENDED FOR THREE YEAR,** on condition that the child must not be found guilty or convicted of theft or attempted theft during the period of suspension.

INTERPRETER: The accused understands the sentence, Your Worship.

COURT: Thank you

COURT ADJOURNS.

- [6] Section 112 of the Criminal Procedure Act 51 of 1977 reads as follows:

“Where an accused at a summary trial in any court pleads guilty to the offence charged, or to an offence of which he may be convicted on the charge and the prosecutor accepts that plea-

- a) the presiding judge, regional magistrate or magistrate may, if he or she is of the opinion that the offence does not merit punishment of imprisonment or any other form of detention without the option of a fine or of a fine exceeding the amount determined by the Minister from time to time by notice in the Gazette, convict the accused in respect of the offence to which he or she has pleaded guilty on his or her plea of guilty only and-*
- (i) impose any competent sentence, other than imprisonment or any other form of detention without the option of a fine or a fine exceeding the amount determined by the Minister from time to time by notice in the Gazette; or*
- (ii) deal with the accused otherwise in accordance with law;”*

[7] The lawfulness of the conviction and sentence are not in issue as the imposition of the sentence of a fine of R 300.00 or 3 months imprisonment is beneath the maximum fine or imprisonment provided for. The magistrate was competent to impose that sentence. However, the question that arises is whether the magistrate would have convicted and sentenced the accused to the same sentence had she not requested evidence of a probation officer before sentence.

[8] The accused was defended, and the state accepted the plea and that the matter should be finalised on the basis of that plea. With minor offences, courts convict on a mere plea of guilty without evidence as it must be obvious that the sentence must be less than a certain level and that the conviction can take place without the need for an address on sentence¹. In my view, the magistrate was influenced by the evidence of the probation officer. She had not applied her mind to the prescripts of the section; and, had she done so, would have, in the given circumstances, imposed a much lesser sentence².

[9] The following order is therefore made:

¹ Hiemstra's Criminal procedure Service issue 7, May 2014; 17-2: S v Addaba, S v Ngema, S v Van Wyk 1992 (2) SACR 325 (T).

² S v Onesmus, S v Amukoto, S v Mweshipange 2011 (2) NR 461 (HC) at 17; Liebenberg JS comments on 17-6; Commentary on the Criminal Procedure Act: Du Toit et Alii, Revision Service 53, 2014.

ORDER:

1. The sentence of R 300.00 or 3 months imprisonment is set aside and is substituted with the following sentence: the accused is cautioned and discharged.

J.J MHLAMBI, J**I concur**

N.M MBHELE, J

S.Radigomo