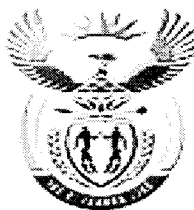


REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

16/02/2015

Case No: A368/2015

In the matter between:

IGNATIUS MKHUBA

1ST APPELLANT

SIPHO KHWELA

2ND APPELLANT

NHLANHLA PLATA

3RD APPELLANT

and

THE STATE

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

Coram: Baqwa J

Heard:

Delivered:

JUDGMENT

BAQWA J

- [1] This is appeal against sentence from the decision of the Regional Court for Regional Court Division of North West sitting at Klerksdorp.
- [2] The appellants were charged and convicted on one count of housebreaking with intent to steal and theft after they had pleaded guilty in terms of **Section 112 (2) of the Criminal Procedure Act 51 of 1977** on the 3rd December 2013.
- [3] The third appellant was granted leave to appeal against sentence only by the trial Court whilst the first and second appellant's filed applications for leave to appeal after the prescribed and simultaneously applied for condonation of the said late filling of their applications.
- [4] The State has not opposed the applications for condonation and the appellant's applications have been granted.
- [5] The conviction and sentence followed an incident where on 28 March 2013 and at or near Kanana, North West the appellants with intent to steal, broke into and entered the house of one Ramaisa where they stole one television set, the property of the said Ramaisa. They had done so upon receiving information that the complainant would not be at home.
- [6] The appellants were arrested some five months later and the television set which they had sold to a third party was recovered and returned to the complainant.

- [7] The appellants were all sentenced to serve a term of five (5) years imprisonment and they based their appeal on the submission that the sentence imposed is too severe and that it induces a sense of shock.
- [8] This submission is based on the fact that all the appellants were first offenders who were in their twenties and who had no previous convictions. Moreover, all the appellants had pleaded guilty which was indicative of remorse on their part.
- [9] Counsel for the appellants submits that no one was injured during the commission of the offence and that the television set in question was recovered and that complainant did not suffer any loss.
- [10] It is trite law that in every appeal against sentence, the Court hearing the appeal should be guided by the principle that punishment is pre – eminently a matter for the discretion of the trial Court and should be careful not to erode such discretion hence the further principle that sentence should be altered in exceptional circumstances.
- [11] Whilst the latter statement of the law is correct, the Court has to take into account any special circumstances of each particular case where such exists. The fact is, the most severe sentence is not necessarily the most appropriate. Most prisoners have to return to society one day and the longer the sentence the more likely society is to be troubled by that person.

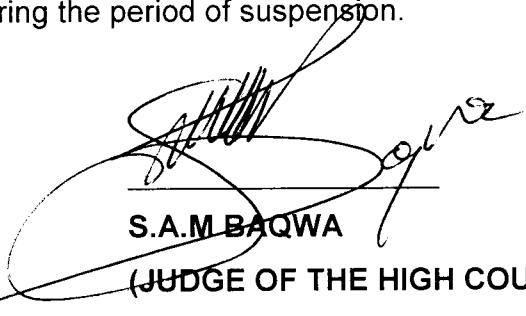
**See: S v Skenjana 1985 (3) SA 51 A at p64
S v S 1997 (3) 830 at 839 G - H**

- [12] Whilst the Court *a quo* seems to have taken cognizance of the mitigating factors mentioned above, it does not seem to have reflected that thereof in the sentence imposed.

- [13] Whilst not minimizing the seriousness of the crime, it does not appear that appellants are persons who pose a serious threat to society as to merit a sentence of five years imprisonment.
- [14] In the circumstances I find it appropriate to temper the sentence with a measure of mercy by imposing a lesser sentence.
- [15] In the circumstances, I accept that this is an appropriate case for the imposition of a no-custodial sentence which would still serve as a deterrent to committing any further similar crimes.
- [16] In the result I propose that the following order is made:

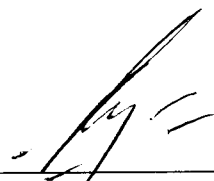
14.1 The appeal against sentence is upheld

14.2 The effective sentence of five (5) years imprisonment is set aside and substituted with a sentence of five years imprisonment which is suspended for the five (5) years on condition that the appellants are not found guilty of committing a similar offence during the period of suspension.



S.A.M BAQWA
(JUDGE OF THE HIGH COURT)

I agree and it is so ordered



N. KOLLAPEN
(JUDGE OF THE HIGH COURT)