

REPUBLIC OF SOUTH AFRICA

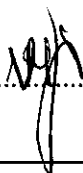


IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, (PRETORIA)

CASE NO: A850/14

19/6/2015

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED ✓


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In the matter between

SHADRACK MAVODZA

APPELLANT

And

THE STATE

RESPONDENT

J U D G M E N T

NKOSI AJ:

INTRODUCTION

[1] The Appellant was convicted of housebreaking with intent to steal and theft and sentenced to 3 (three) years' imprisonment. He was accused no. 2 during the trial. His co-accused (no.1) was also convicted as charged but was

sentenced to 12 (twelve) months imprisonment without a fine with a further 6 (six) months imprisonment suspended for a period of 3 (three) years on condition he is not again convicted on a crime of housebreaking committed during the period of suspension.

- [2] Leave to appeal against sentence was granted on petition.
- [3] Although the appeal is only against sentence a brief synopsis of the facts that led to the Appellant's conviction are essential.
- [4] The Appellant pleaded guilty to the crime of housebreaking with intent to steal and theft.
- [5] In his section 112 (2) of Act 51 of 1977 statement he admitted that he broke into the complainant's house and removed the items mentioned in the charge sheet on the date and place described in the charge sheet.
- [6] The trial court was at the end of the day satisfied that the Appellant and his co-accused admitted all the elements of the crime preferred against them and found them guilty as charged.

Ad SENTENCE

- [7] It was submitted that the sentence imposed on the Appellant induces a sense of shock and that this honourable court is entitled to interfere.

Sentencing is generally a matter to be decided upon by the trial court and the said court has a wide discretion in this regard.

Vide: S v Rabie 1975 (4) SA 855 A

In **S v Petkar 1988 (3) SA 571 (A)** at page 574 the court said the following:

"The court's powers to interfere with a sentence on appeal are circumscribed. It may only do so if the sentence is vitiated (1) by irregularity, (2) misdirection or (3) is one which no reasonable court could have come to, in other words one where there is a striking disparity between the sentence and that which this court considers appropriate." I agree with this view.

In **S V Mutungwa and Another 1990 (2) SACR 1 (A)** the court held that an appeal court cannot simply interfere with a sentence imposed, one or more of

the accepted grounds which justify interference with the sentence on appeal must exist.

- [8] It was submitted that it is trite law that in the assessment of an appropriate sentence the court must have regard to the triad mentioned in the epoch-making decision of **R V Zinn 1969 (2) SA 537 (AD)**.
- [9] It was submitted that the court overemphasised the seriousness of the offence and interests of the society at the expense of and to the exclusion of the Appellant's personal circumstances.
- [10] It was submitted that the trial court committed misdirection in treating only accused no.1 as a first offender. It was submitted that the court should also have treated the Appellant as a first offender regard being had to the fact that his previous conviction of assault is not relevant to the offence of which he has been convicted.
- [11] It is trite that offenders convicted of the same offence should receive equal punishment unless disparity of their sentence is justified. It was submitted that the disparity of sentences in this case was not justified.
- [12] It was submitted that the following factors should have persuaded the trial court to impose a sentence less than the one it imposed on the Appellant:
 - (a) He is also still young, only 24 years of age;
 - (b) It is not known if he has children to maintain;
 - (c) It is also not known if he was employed before the commission of the offence;
 - (d) He pleaded guilty to the offence which itself is a sign of remorse on his part;
 - (e) The television set and its aerial have been recovered. It is only the identity document and the social grant card that have not been recovered therefore the complainant did not suffer a substantial loss;
 - (f) There was no evidence to suggest that this offence was pre-planned;
 - (g) There was no evidence to suggest that the Appellant is not amenable to rehabilitation.

[13] It was submitted therefore that under the circumstances the sentence imposed induces a sense of shock and that this court is entitled to interfere. I agree with this submission. This court has a duty to consider all submissions from both parties. There was no justification to the disparity of sentences. This entitles the court to interfere with the imposed sentence.

[14] Having heard the parties and considered their submissions the court is of the view that the trial court had misdirected itself in failing to consider both accused as equals as they committed and were convicted of the same offence and deserving to be treated the same way on sentencing.

[15] I as a result make the following order:

1. The appeal against sentence succeeds.
2. The sentence of the trial court is set aside and replaced as follows:

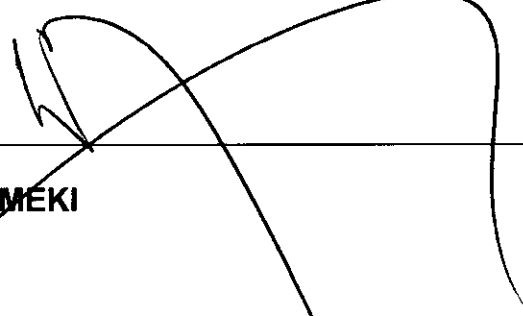
“The accused is sentenced to 12 (twelve) months imprisonment without fine with a further 6 (six) months imprisonment suspended for 3 (three) years on condition that the he is not again convicted of the crime of housebreaking with intent to steal and theft committed during the period of suspension. The sentence is antedated to the date of sentence which is 4 March 2014.”



VRSN NKOSI

ACTING JUDGE OF THE HIGH COURT

I agree and it is so ordered.



W MSIMEKI

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• **JUDGE OF THE HIGH COURT**