

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

CASE NUMBER: A552/2012

In the matter between:

28/5/2013

ALFRED DIALS

APPELLANT

and

DELETE WHICHEVER IS NOT APPLICABLE	
(1) REPORTABLE: YES /NO.	
(2) OF INTEREST TO OTHER JUDGES: YES /NO.	
(3) REVISED.	
28.05.2013 DATE	 SIGN/

THE STATE

RESPONDENT

STRIJDOM AJ

DOSIO AJ

DATE OF HEARING: 28 MAY 2013

DATE OF JUDGMENT: 28 MAY 2013

COUSEL FOR APPELLANT: ADV LA VAN WYK

COUNSEL FOR RESPONDENT: ADV MD MATJOKANA

JUDGMENT

INTRODUCTION:

1. On 25 October 2011 the Appellant pleaded guilty and was convicted in the Regional Court Klerksdorp, on three counts of housebreaking with the intent to commit theft and theft.
2. The Court *a quo* took all the counts together for the purpose of sentence and sentenced the Appellant to a period of twelve years imprisonment.
3. Leave to Appeal against the sentence imposed was granted on 6 July 2012.

SUMMARY OF EVIDENCE:

4. The Appellant pleaded guilty based on the following facts:
 - 4.1. During June 2011 he broke in at Glass Fit. He stole R450.00 cash. He gained entry through a window of which he had removed the window strips.

- 4.2. On 29 August 2011 he broke in at Master Motors and stole the two fax machines, a drill machine and a grinder with a total value of R7,700.00.
- 4.3. During September 2011 he broke in at Cars for Africa and stole a keyboard and a computer screen. It is not clear what the value of the stolen items were.

SENTENCE:

- 5. The aspects placed in dispute by the Appellant can be enumerated as follows:

- 5.1. The Trial Court did not consider the cumulative effect of the sentences, and the value of the stolen items.
- 5.2. The Trial Court misdirected itself in not considering the proportionality of the sentence and the cumulative effect of the imposed sentences.
- 5.3. It is submitted by counsel for Appellant that an effective period of imprisonment would be three years.

6. The Court *a quo* took into consideration the following personal and mitigating factors:

6.1. Appellant is 30 years old.

6.2. He is single but the father of three children.

6.3. The children and mother resides with the uncle.

6.4. At the time of the arrest Appellant was temporarily employed and earned R70.00 per day.

6.5. The items stolen in respect of count 3 were recovered.

7. In considering the aggravating circumstances the Court *a quo* considered the following factors:

7.1. The Appellant is not a first offender. He was previously found guilty of theft.

7.2. Appellant was released on parole.

7.3. The offence of which the Appellant has been convicted is prevalent in the Regional Division of Klerksdorp.

7.4. He has been convicted on three counts of housebreaking with the intent to steal and theft.

8. In **S v Moswathupa 2012 (1) SACR 259 SCA** it was held that:

"Housebreaking is an extremely prevalent offence and it is in the general public interest that sentences imposed in these matters should act as a deterrent to others. The message needs to go out to the community that people who commit these types of offences will be dealt with severely by the Courts."

9. The personal circumstances of the Appellant allude to above, were taken into account by the Trial Court. However, pertaining to the personal circumstances of

an accused in matters as serious as the crime in question, the following was stated in the case of **S v Vilakazi 2009 (1) SACR 552 SA at 574 par [58]**:

"In cases of serious crime the personal circumstances of the offender, by themselves will necessarily recede into the background."

10. In assessing whether an Appellant Court should interfere with a sentence the disparity criterion is not always the appropriate measure by which to determine whether Appellate interference is competent. The crucial factor which allows for the applicability of the approach is the Appellate Court's being able to arrive at a definite view as to what sentence it would have imposed.

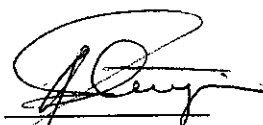
See: S v Matlala 2003 (1) SACR 80 SCA

11. The Trial Court took all the relevant principles in regards to sentence as well as the facts of the matter into consideration. There is no reason to find that the Trial Court misdirected itself in any way or that the sentence imposed is unjust or inappropriate in the circumstances.
12. In assessing all the mitigating and aggravating circumstances I do not agree that the sentence induces a feeling of shock.

ORDER:

13. Consequently the Appeal against sentence is dismissed.

SIGNED AT PRETORIA ON THIS THE 28th DAY OF MAY 2013



JJ STRIJDOM

ACTING JUDGE OF THE HIGH COURT



DOSIO AJ

ACTING JUDGE OF THE HIGH COURT