



IN THE NORTH GAUTENG HIGH COURT, PRETORIA /ES
(REPUBLIC OF SOUTH AFRICA)

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: YES / NO.

(2) OF INTEREST TO OTHER JUDGES: YES / NO.

(3) REVISED.

11/11/2013
DATE

SIGNATURE

12/11/2013.
CASE NO: 83/13

DATE OF HEARING 13/08/2013

IN THE MATTER BETWEEN:

PHENIUS RAMELE

APPELLANT

AND

THE STATE

RESPONDENT

JUDGMENT

1. This appeal is against sentence only. The Appellant was convicted of three counts of housebreaking with intent to steal. All three counts were

taken as one for the purpose of sentence. Appellant was sentenced to an effective 12 years imprisonment.

2. The approach to be adopted by the court of appeal when dealing with sentence was again set out thus by Mthiyane AJ in the matter of S v Packersammy 2004 (2) SACR 169 SCA at 171 f-g.

“Punishment is pre-eminently a matter for the discretion of the trial court. The court of Appeal is not to erode such discretion; on appeal no general right exists to interfere with a sentence imposed by the Trial Court. It will interfere with a sentence only if the discretion has not been judicially and properly exercised. This will only be so where the sentence is vitiated by an irregularity or misdirection or is disturbingly inappropriate”.

GROUND FOR APPEAL

3. The appellants appeal against sentence is based on the ground that the court *a quo* exercised its discretion improperly or unreasonably because it was argued that;

“In light of appellants personal circumstances and other mitigating factors infra (12 years imprisonment is ...) unduly harsh to the point of being shockingly inappropriate and this court is entitled to interfere”.

4. It was submitted that the court *a quo* erred in that;

- 4.1 The Magistrate should have requested a pre sentence report which dealt more fully with his personal circumstances. The following examples were given:

- 4.1.1 was he employed or not at the time of his arrest;

4.1.2 if he was employed, how much was he earning;

4.1.3 if he was employed and earning well above R4000.00 per month maybe that would have persuaded the Magistrate to consider an option of a fine or compensation;

4.1.4 Was he attending school or not;

4.1.5 When did his parents pass away.

5. Appellant was represented by Ms. Votano at his trial who called him to the witness stand to give his evidence in mitigation of sentence under oath. Ms. Votano asked the appellant whether he was employed prior to his incarceration and his answer was that he was unemployed. This answer negates the examples set out in paragraph 4.1.1 – 4.1.3 above.
6. The appellant told the court that his highest education was grade ten and told the court that he intends to go back to school so that he could finish his schooling. This answer negated paragraph 4.1.4 above.
7. The remaining example is left unanswered and it is not known when his parents passed away. Appellant does however give his address as his grandmother's house and acknowledges that he was supported by his grandmother. The Magistrate specifically says to Ms Votano that he has not heard anything about the appellant's parents and asks her the question what happened to the accused parents. It is in reply to this

question that we learn from the appellant that both his mother and father are deceased. It cannot be said that this circumstance was not considered by the Magistrate when deciding sentence.

8. In addition to the above the Court a quo took the following personal circumstances of the appellant into account:

- 8.1 that he was 22 years old at the time of the offence;

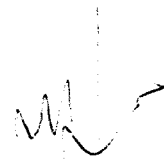
- 8.2 He has a child who lives with its mother but that he wanted to take care of his child as well as his sister.

9. In these circumstances I cannot find that the sentence is unduly harsh in the light of the appellant's personal circumstances on the grounds of appeal raised on behalf of the appellant. The court a quo was cognisant of the fact that the appellant was a first offender.
10. It was submitted that the court a quo erred further in that the magistrate failed to take the 15 months the appellant spent in custody awaiting trial into account. Mr Matlapeng referred to the case of *S v Brophy and Another* 2007 (2) SACR 56 WLD at 596 where it was held that a period spent in custody is equivalent of a sentence twice that length.
11. However in the case of *Radebe v State* 2013 ZASCA 31 it was held that when determining an appropriate sentence of imprisonment, the period

spent by an accused in detention while awaiting trial, conviction and sentence should not be assessed mechanically in reducing the period of imprisonment to be imposed. I therefore find that the Court *a quo* did not err in failing to take *S v Brophy and Another* into account when considering sentence.

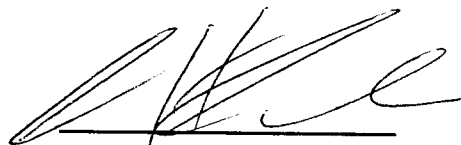
12. There is no reason to interfere with the sentence imposed by the Court *a quo* and the following order is made:

Order: The appeal is dismissed.



VRSN Nkosi
Acting Judge of the High Court

I agree,



C Cambanis
Acting Judge of the High Court