

FREE STATE HIGH COURT, BLOEMFONTEIN
REPUBLIC OF SOUTH AFRICA

Special Review No. : 114/2013

In the review between:-

THE STATE

versus

CHARLES ALLEN

CORAM: JORDAAN, J *et* FISCHER, AJ

JUDGMENT BY: JORDAAN, J

DELIVERED ON: 16 MAY 2013

[1] This matter came before us as a special review sent by the acting senior magistrate in Welkom.

[2] The accused was convicted of housebreaking with the intent to steal and theft and sentenced by the trial court as follows:

“12 Months correctional supervision in terms of section 276(1)(h) of Act 51 of 1977 on the following conditions:

- 1) House Arrest
- 2) Community service of 16 hours per month
- 3) Rehabilitation programmes such as life skill, crime prevention and self control
- 4) Consultation”

[3] The reporting acting senior magistrate remarks as follows:

“I am respectfully of the opinion that the sentence passed is vague and ambiguous. It appears that the conditions under which the accused was sentenced was not clearly defined.”

He then refers to certain relevant judgments in support of his contention.

[4] The senior magistrate also mentions that the trial court disposed of the matter without a presentence report in terms of section 71(1)(b) of the Child Justice Act, Act 75 of 2008. Although such report was requested by the magistrate, it was never done.

[5] The learned magistrate then suggests that the sentence be set aside and the matter referred back so that a proper sentence can be imposed.

[6] I am in agreement with the sentiments of the learned senior magistrate and accordingly the following orders are made:

The conviction is confirmed but the sentence is set aside and the matter is referred back to the trial court to, after obtaining a proper presentence report, sentence the accused afresh.

A.F. JORDAAN, J

I concur.

P.U. FISCHER, AJ