

FREE STATE HIGH COURT, BLOEMFONTEIN
REPUBLIC OF SOUTH AFRICA

Case No.: 49/2011

In the review between:

THE STATE

and

THAMSANXA JACKSON ZULU

CORAM: MOCUMIE, J *et* SINGH, AJ

JUDGEMENT: SINGH, AJ

DELIVERED ON: 17 FEBRUARY 2011

[1] This matter is before me on automatic review in terms of section 303 of the Criminal Procedure Act, 51 of 1977. The accused was charged with two (2) counts of housebreaking with intent to steal, theft Botshabelo district magistrate's court. The accused was acquitted on one count. In respect of the second count the accused was convicted and sentenced to undergo 12 months imprisonment in terms of section 276(1) (b) of the Criminal Procedure Act 51 of 1977. The accused was unrepresented at the trial.

[2] The issue to be decided by me is whether the trial magistrate committed any irregularities and/or illegalities which were prejudicial to the rights of the accused to a fair trial which has resulted in a failure of justice.

[3] I have perused and considered the record of the trial proceedings in the court *a quo* and I find that the conviction of the accused is in order. I turn now to deal with whether the sentence imposed upon the accused is in order.

SENTENCE

[4] The trial magistrate, in sentencing the accused, failed to consider all the material facts including the personal circumstances relevant for purposes of imposing a suitable sentence and also failed to blend the sentence with any mercy whatsoever. Consequently, it is within my power to interfere with the sentence to correct the prejudice done to the accused.

[5] The personal circumstances considered by the trial magistrate

are as follows. The accused was gainfully employed and resided with his pensioned grandmother, girlfriend and their 4 month old child. Nothing further was considered hence the sentence of imprisonment. However, the fact of the matter is that the accused told the said magistrate that he was employed at chicken wholesale, Bloemfontein and earned sixty rands (R60-00) per day. The trial magistrate neglected to probe the personal circumstances of the accused who may well have access to monies, whether from savings or other means, and may well be able to pay a fine. The magistrate also overlooked the fact that the accused is fairly youthful capable of rehabilitating himself, and is a first offender.

- [6] In the circumstances, the sentence is unduly harsh, shockingly inappropriate and falls to be corrected.

In the result I make the following order as follows:

- 1. The sentence imposed by the trial court is hereby set aside and replaced with a sentence of a fine of R1 000,00 (one thousand rand) or 1 (one) year**

imprisonment.

- 2. This order is in accordance with Section 282 of the Criminal Procedure Act 51 of 1977 and will be effective from 26 November 2010.**

S. SINGH, AJ

I concur.

B. C. MOCUMIE, J

/eb