

Reportable: Yes / No Circulate to Judges: Yes/No Circulate to Magistrates: Yes/No

IN THE HIGH COURT OF SOUTH AFRICA

NORTHERN CAPE HIGH COURT, KIMBERLEY

CASE NO: CA&R 28/2011

HEARD: 22/08/2011

DELIVERED: 26/08/2011

In the matter between:

COLLIN BLOM

APPELLANT

and

THE STATE

RESPONDENT

CORAM: LACOCK, J et HUGHES-MADONDO, AJ

JUDGEMENT

HUGHES-MADONDO, AJ

1] The appellant, Collin Blom, was charged with malicious injury to property. On 9 February 2011 he was convicted, in the District court of Kimberley, and was subsequently sentenced to three

(3) years imprisonment. Leave to appeal was granted by the court below against sentence.

2] On 26 March 2011 the appellant caused damage to the windows, toilet bowl, sink and zinc sheets of the dwelling belonging to Emmanuel Onyewuchi. The total amount of the damages was R3 960-00. The appellant was seventeen (17) years of age at the time that the offence was committed.

3] At the outset I should explain that both parties were *ad idem* that the sentence imposed by the Magistrate of three (3) years imprisonment was shockingly inappropriate.

4] Both parties argued that the Magistrate overemphasised the seriousness of the offence and the interest of the community over that of the personal circumstances of the Appellant.

5] At the time that the offence was committed the appellant was a minor. He is single with no children and lived with his grandparents and uncle. He attended school until standard seven and thereafter he was employed temporarily earning a salary of R840-00 per month. He is a first offender and had spent eight (8) months in custody awaiting trial.

6] I am mindful of the principles set out in **S v PILLAY 1977 (4) SA 531 (A)** at 535E-G, "*As the essential inquiry in an appeal*

against sentence, however, is not whether the sentence was right or wrong, but whether the Court in the imposing it exercised its discretion properly and judicially, a mere misdirection is not by itself sufficient to entitle the Appeal Court to interfere with the sentence; it must be of such a nature, degree, or seriousness that it shows, directly or inferentially, that the Court did not exercise its discretion at all or exercised it improperly or unreasonably. Such a misdirection is usually and conveniently termed one that vitiates the Court's decision on sentence".

7] In the court below, Ms. Deetlefs on behalf of the state requested that the appellant be given a suspended sentence of five years, coupled with the appellant being declared unfit to possess a firearm. Mr. Mabaso for the appellant concurred that a "*stiff suspended sentence*" be imposed together with the declaration that the appellant was unfit to possess a firearm.

8] Ponnann AJA in **BARANT v S [2005] 2 ALL SA 1 (SCA)** at **paragraph 18** held that the principle that detention of juveniles is a matter of last (and for the shortest appropriate period of time) is the *leitmotif* of juvenile justice reform.

In **S v SILIMELA 1999 (20) SACR 7 CPD** at **paragraph (g)** Van Heerden AJ held:

"Although it appears from the case law that a first offender cannot expect as a matter of right to receive a sentence that does not involve direct imprisonment, it is nevertheless a salutary and important principle of punishment that, wherever possible, a first offender should not be sent to prison."

9] It is so that the appellant was convicted of a serious offence in that the damages he caused to the dwelling resulted in the business of the complainant being affected, that is, the tavern that he operated from this dwelling. However, having regard to the age and the personal circumstances of the appellant it is my view that direct imprisonment should have been avoided.

10] Be that as it may, the appellant has already served six (6) months and seventeen (17) days in custody after being convicted. He also spent a period of eight (8) months in awaiting trial before he was released on bail prior to his conviction. Taking into account the time spent in awaiting trial and the period spent after his conviction cumulatively the appellant has been incarcerated for a period of fourteen (14) months and seventeen days.

11] At this stage the appropriate step would be to antedate the

sentence that I consider would have been the appropriate sentence under the circumstances. In doing so I take into account the period he has already served imposed by the court below.

In the circumstances the following order is made:

- 1. The appeal against sentence is upheld.**
- 2. The sentence of three (3) years imprisonment is set aside and is replaced with a sentence of six (6) months and seventeen (17) days.**
- 3. This sentence is antedated to 9 February 2011.**

**W HUGHES-MADONDO
ACTING JUDGE**

NORTHERN CAPE DIVISION

(i) costs of such proceedings

(ii)

I concur

H LACOCK
JUDGE

NORTHERN CAPE DIVISION