

IN THE HIGH COURT OF SOUTH AFRICA
(TRANSVAAL. PROVINCIAL DIVISION)

6 March 2009

Case No : 399/08

High Court Ref No : 2313

Review Case No : MR 5/09

A185/09

THE STATE V EMILY MAHLANGU

REVIEW JUDGEMENT

14.1 The accused, a 52 (fifty two) years old female person was arraigned in the magistrate's court, Carolina, on one count of theft. She pleaded guilty to the charge and a statement in terms of section 112 (2) of the Criminal Procedure Act 51 of 1977 was read into the record and accepted by the magistrate as exhibit "A".

14.2 On the 06 November 2008 was convicted. She was then sentence' to 3 (three) years imprisonment on the 01 December 2008.

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14.3 Certain queries were raised with the magistrate regarding sentence. He was asked to comment in particular, on whether in passing sentence he considered other sentencing options and whether the sentence of 3 (three) years imprisonment imposed on the accused was not too severe.

14.4 After the magistrate responded, the matter was referred to the Director of Public Prosecutions (DPP) for their comment. The Deputy Director of Public

Prosecutions. Advocate H.M. Meintjes commented that the accused should not be sentenced for his previous records but for the offence charged. He referred to the following decisions:

14.5 S v Baartman 1997 (1) SACR 304 (ECD),

14.6 S v Mzazi 2006 (1) SACR 100 (ECD),

14.7 S v Beja 2003 (1) SACR

168 (ECD) and (d) S v Matlotlo

2004 (2) SACR 549 (T).

5. In S v Baartman supra Jones J held;

"In the case such as this it is necessary to be aware of 3 considerations:

14.8 *The accused should be sentenced for the offence charged and not for his previous record;*

14.9 *The public interest is harm" rather than served by sentences that are out of all proportion to the gravity of the offence: and*

(c) While it way be justifiable up to a point to impose escalating sentences on offenders who keep on repeating the same offence, there are boundaries to die extent to which sentences for petty crimes can be increased. "

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14.10 In the present ease the accused stole 5 (five) litres of Flukazole, a cattle dip valued at R2100 - 00 (two thousand one hundred rand). I agree with Advocate Meinjes that this amount cannot be described as petty.

14.11 The accused pleaded guilty to the charge and described to court how she committed the offence. That, at least showed a sign of remorse on the part of the accused.

8. The record shows that she bad a list of previous convictions of theft. Between

1979 and 2006 she was convicted of theft on no less than 9 (nine) occasions. In

respect of most of these previous convictions, she received the option of a fine as

an alternative to imprisonment. She was sentenced to a direct term of

imprisonment for theft committed in 1993. In 1987 she received a term of imprisonment, half of which was

suspended for 3 (three) years on condition that she was not convicted of theft or attempted theft committed during the period of suspension. Between the last conviction of theft in 1987 and 1996 she did not clash with the law. However she resumed her recidivist career of crime in 1997 when sue was again convicted of theft followed by about 4 (four) other convictions for the same offence. *Her* last previous conviction was committed in 2006. The list of previous 'convictions does show the factual details of each conviction.

9. In a litigation of sentence she advised the court that she asked for leniency and forgiveness. She had 5 children to **Support** and no parents. On the record it is not noted whether she was employed or not

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14.12 It is trite that the question of sentence falls within the discretion of the trial court and this court will only interfere with the sentence imposed by the trial court if the trial court failed to exercise its discretion properly, misdirected itself or if the sentence imposed is harsh.

14.13 The personal circumstances of the accused when considered with the nature of the offence she committed, suggest that the sentence imposed by the trial court is too harsh. The magistrate over emphasised the previous convictions of the accused at the expense of her personal circumstances. This court is therefore entitled to interfere with the sentence imposed by the trial court.

14.14 Advocate Meinjes of the office of the DPP recommended that the sentence of the accused be replaced with a sentence of 3 (three) years imprisonment in terms of section 276(1) (i) of the Criminal Procedure Act and the Commissioner be ordered to ensure that the accused undergoes specific therapeutic programmes addressing her tendency to commit crimes involving dishonesty.

14.15 for the reasons stated above, I am of the view that a sentence of 2 (two) years imprisonment in terms of section 276(1) (i) of the Criminal Procedure Act is appropriate in this case.

14.16 i therefore make the following order:

14.17 Conviction of accused is confirmed.

14.18 Sentence imposed on me accused is set aside and is substituted with the following:

- (i) 2 (two) years improsenment in t"fi. j nfs* :>io;t 2750) (!) of

the Criminal Procedure Act 51 of 1977.

(ii) The Commissioner of Correctional Services is ordered to ensure that the accused undergoes specific therapeutic programmes which will address her tendency to commit crimes involving dishonesty.

JUDGE OF THE HIGH COURT. W.L. SERITL.

I agree.

JUDGE OF THE HIGH COURT M.F. LEGODI.