



IN THE HIGH COURT OF SOUTH AFRICA

(NORTH AND SOUTH GAUTENG HIGH COURT. PRETORIA)

Date: 2 September 2009

Not reportable

High Court Ref No.: 1998

Magistrate's Serial No.: 22/2008

Case No.: A328/2008

MAGISTRATE

MANKWENG

THE STATE V ELLEN MAPHELA MAMABOLO

REVIEW JUDGMENT

SOUTHWOOD J

- (1) On 19 August 2008 the accused was found guilty of housebreaking with intent to commit an offence unknown to the state in the Mankweng magistrates' court and on the same day was sentenced to 12 months imprisonment, half of which was suspended for 5 years.

- (2) On 3 November 2008 (some 2 months late) the matter came before this court on review in the ordinary course. The review judge queried whether the facts admitted by the accused (he had pleaded guilty) covered all the elements of housebreaking and theft and whether the sentence was not shocking. On 5 August 2009 (after the accused had served his sentence of 6 months imprisonment) the presiding magistrate furnished his response.
- (3) The presiding magistrate correctly points out that the accused entered the house, by pushing open a window, and had the intention of stealing a music system, but was apprehended before he could do so. He contends that the accused should have been found guilty of housebreaking with intent to steal and attempted theft. He contends that the sentence is not excessive. The Director of Public Prosecutions agrees with both contentions and so do I. I also agree with the Director of Public Prosecutions that the conviction can be amended as the accused cannot be prejudiced.

Order

[4]

I. The conviction of housebreaking with intent to commit an offence

unknown to the state is set aside and replaced with a conviction of housebreaking with intent to steal and attempted theft;

II. The sentence is confirmed.

B.R. SOUTHWOOD JUDGE OF THE HIGH COURT

I agree

G. WEBSTER JUDGE OF THE HIGH COURT

