

IN THE HIGH COURT OF SOUTH AFRICA
(ORANGE FREE STATE PROVINCIAL DIVISION)

Review No. : 746/07

In the review between:-

THE STATE

versus

JOSEPH MOHAPI

CORAM: BECKLEY *et* KRUGER, JJ

JUDGMENT: BECKLEY, J

DELIVERED ON: 25 OCTOBER 2007

[1] The matter came before this Court by way of automatic review.

[2] The accused was correctly convicted by the magistrate, Lindley, of housebreaking with intent to steal and theft.

[3] The magistrate imposed the following sentence:

“3 (Drie) jaar gevangenisstraf ingevolge Artikel 276(1)(b) Wet 51/1977 waarvan 1 (een) jaar opgeskort word vir 4 (vier) jaar op voorwaarde dat beskuldigde nie skuldig bevind word aan diefstal

of huisbraak met die opset om 'n misdryf te pleeg, gepleeg gedurende die tydperk van opskorting nie.”

[4] Hattingh, J sent the following query to the magistrate:

“1. Is die opskortingsvoorwaarde ‘skuldig bevind aan diefstal’ nie te wyd nie?

2. Behoort dit nie gekwalifiseer te word dat vonnis aan 'n latere skuldigbevinding aan diefstal onopgeskorte gevangenisstraf moet wees?”

[5] In his reasons for sentence the magistrate conceded that the condition of suspension relating to theft has been cast too wide, regard having been had to Hiemstra: **Suid Afrikaanse Strafproses**, 6th Edition, p. 763, wherein the cases of **S v VAN ROOYEN; S v JANTJIES EN 'N ANDER**, 1974 (3) SA 319 (NK) were cited with approval, regarding the contents of conditions of suspension.

[6] In the result, the conviction is confirmed.

[7] To salvage the accused from going to jail, in the event of him committing petty theft, the sentence is amended to read as follows:

“3 (Three) years imprisonment in terms of section 276(1)(b) of Act 51/1977, of which 1 (one) year is suspended for 4 (four) years on condition that the accused is not convicted of:

- a) housebreaking with intent to commit any offence;
or
- b) theft, for which the accused is sentenced to direct imprisonment without the option of a fine, or to a fine of more than R2 000,00;
committed during the period of suspension.”

A.P. BECKLEY, J

I concur.

A. KRUGER, J

/sp