

REPORTABLE: YES/NO CIRCULATE AMONGST JUDGES: YES/NO CIRCULATE AMONGST MAGISTRATES: YES/ NO

IN THE HIGH COURT OF SOUTH AFRICA
(Northern Cape Division)

CASE NUMBER: 18 /2007

DATE DELIVERED: 02-03-2007

In the case of:

THE STATE

And

ISAK AFRIKA

CORAM: KGOMO JP et MOLWANTWA AJ

JUDGMENT ON REVIEW

MOLWANTWA AJ:

1. This is a review matter in terms of section 32 read with 304 of the Criminal Procedure Act of 51 of 1977. (*“the Act”*).The accused was charged with housebreaking with intent to steal and theft. He pleaded guilty and was convicted as charged. He was sentenced to 16 (sixteen) months imprisonment. He was unrepresented.

2. I was of the view that the sentence was unduly harsh and inappropriate and directed a query to the Magistrate which entails the following:

“Comments are requested from the presiding officer with reference to decided cases including **S v Holder** 1979(2) SA 70(A); **S v Quandu en andere** 1989(1) SA 715(A); **S v Collins** 1990(1) SACR 577(A): on the following:

1. *The accused is a first offender, at the age of 45 years and he pleaded guilty.*
 2. *The house was not damaged to any extent that the complainant suffered grave pecuniary loss to repair it or any part of it.*
 3. *The accused was employed at the time of his arrest and thus employable.*
 4. *He had been in custody for two months.*
 5. *Has the presiding officer not overemphasized the interests of the society over the other considerations.”*
3. The Magistrate complied and I thank her for her reasons.
 4. Notwithstanding the reasons advanced I am of the view that in this case the Magistrate overemphasized the interests of the society and did not attach sufficient weight to the strong personal circumstances of the accused. I am therefore entitled to interfere with the sentence in the manner set out below.

In the circumstances I make the following order:

Order

1. **The conviction of the accused is hereby confirmed.**
2. **The sentence imposed by the Magistrate is set aside and substituted with the following:**

“The accused is sentenced to 16 (sixteen) months imprisonment of which 12 (twelve) months imprisonment is suspended for 3 (three) years on condition that the accused is not convicted of housebreaking with intent to steal and theft or attempt thereto or an offence involving dishonesty committed during the period of suspension.”

B C MOLWANTWA
ACTING JUDGE
NORTHERN CAPE DIVISION

I concur

F D KGOMO
JUDGE PRESIDENT
NORTHERN CAPE DIVISION