

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

Review No. : 1231/2006

In the review between:

THE STATE

versus

KABELO DASHE

Accused No. 1

MONYADI SHADRACK MORGEMA

Accused No. 2

CORAM:

H.M. MUSI J *et* KRUGER J

JUDGMENT BY:

H.M. MUSI

DELIVERED ON:

- [1] This is a review in terms of section 302 read with sections 303 and 304 of the Criminal Procedure Act. The two accused are youths of 17 and 18 years respectively. They were charged with robbery in the magistrate's court at Botshabelo. They both pleaded guilty to the charge and pursuant to questioning in terms of section 112(1) of the

Criminal Procedure Act, they were duly convicted as charged. They were each sentenced to three years imprisonment.

[2] When the matter first came before me on 30 October 2006 I requested to be provided with the reasons for the sentences and referred in particular to the pre-sentencing report that had been placed before the magistrate's court. The magistrate has now furnished his reasons, which run into six pages.

[3] For his reasons that the sentences imposed are appropriate, the magistrate cites the seriousness of the offence and points to the high preference of violent crimes and in particular robbery in his area, Botshabelo. He points out that the community needs to be protected against the scourge of violent crime. He expresses his awareness of authority regarding the position of youth in our legal system but then cites the following passage from **S v MAFALADISO EN ANDERE** 2003 (1) SACR 583 (SCA) at 596 g:

“When persons of their ages commit crimes of this nature they must expect to be treated as adults.”

For his decision not to follow the recommendations of the probation officer the magistrate refers to **S v P** 2001 (1) SACR 70 (CPD) where it is stated that:

“A presiding officer should not slavishly follow the recommendations of probation officers”.

- [4] Now the magistrate cannot be doubted when he says that he had seriously pondered the various sentencing options and took into account the triad of sentence in imposing the sentences. Nor can the sentiments he expresses about the unacceptably high incidents of violent crimes, especially in Botshabelo, and the need to counter it with stiff sentences be questioned. However, he seems to have overlooked the fact that sentence is determined lastly by the peculiar circumstances of each case, which include not only the personal circumstances of the accused and the gravity of the offence but also the circumstances surrounding commission

of the offence as well as the manner of its execution.

[5] In this case the complainant sustained no injuries during the robbery and the value of the stolen property is small (R200,00). The accused not only pleaded guilty to the charge but showed remorse as is set out in the reports of the probation officer. They were both juveniles at the time of the offence and first offenders. The probation officer's report show that they have stable family backgrounds, relate well not only to members of their families but also generally to other people. There is nothing to suggest that they were the type that needed to be removed from society. On the contrary, direct imprisonment is most likely to do them more harm than good, especially given their ages.

[6] In my view, this was an appropriate case where the recommendations of the probation officer should have weighed more heavily with the court. Whereas the sentences imposed may be fair to society, they do not, in my view, fit the crime as well as the criminal. I consider that

each of the accused deserves to be given a change and a wholly suspended sentence would better serve the interest of society as well as being a sufficient deterrent.

[7] In the premises, the following order is made:

The sentences imposed on the accused are set aside and replaced with the following:

Each accused is sentenced to three years imprisonment which is wholly suspended for five years on condition that the accused is not found guilty of robbery or any offence involving use of violence committed during the period of suspension.

H.M. MUSI, J

I concur.

KRUGER, J

/sp