

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

Appeal No. : A145/2004

In the appeal between:-

ISAAC LELALA MARUMO

Appellant

and

THE STATE

Respondent

CORAM: C.J. MUSI J *et* MATHEBULA AJ

HEARD ON: 20 FEBRUARY 2006

JUDGMENT BY: MATHEBULA AJ

DELIVERED ON: 9 MARCH 2006

[1] The appellant is appealing against sentence. He pleaded guilty before the regional magistrate Welkom, on five charges. The charges are as follows:

Charge 1: Deurdat op of omtrent 4 - 5 Januarie 2001 en te
of naby Nirvana Hof in die distrik van Welkom en
binne die Regsgebied van die Streekafdeling

Vrystaat, die beskuldigde wederregtelik en opsetlik, die huis van Pieter Jacobus Horn oopgebreek en binnegegaan het met die opset om die goed daarin te steel en toe en daar wederregtelik items soos per aangehegte lys ter waarde van R1 300,00 die eiendom van Pieter Jacobus Horn of in die regmatige besit van Pieter Jacobus Horn gesteel het.

Charge 2: Deurdat op of omtrent 4 – 5 Januarie 2001 en te of naby Nirvana Hof in die distrik van Welkom en binne die Regsgebied van die Streekafdeling Vrystaat, het die genoemde beskuldigde wederregtelik en opsetlik 'n motorvoertuig Nissan Sentra met registrasienommer BJY 655 FS die eiendom van of in die regmatige besit van Pieter Jacobus Horn gesteel het.

Charge 3: Deurdat op of omtrent 3 September 1998 en te of naby Dagbreek in die distrik van Welkom en

binne die Regsgebied van die Streekafdeling Vrystaat, het die genoemde beskuldigde wederregtelik en opsetlik 'n motorvoertuig Citi Golf met registrasienommer OKE 127 395 die eiendom van of in die regmatige besit van Mnr J P Claassen gesteel het.

Charge 4: Deurdag op of omtrent 25 – 26 Oktober 2000 en te of naby 29 Utopia in die distrik van Welkom en binne die Regsgebied van die Streekafdeling Vrystaat, die beskuldigde wederregtelik en opsetlik die huis van Carlos Menino oopgebreek en binnegegaan het met die opset om die goed daarin te steel en toe en daar wederregtelik soos per aanhangsel ter waarde van R4 000,00 die eiendom van Carlos Menino of in die regmatige besit van Carlos Menino gesteel het.

Charge 5: Deurdag op of omtrent 25 – 26 Oktober 2000 en te of naby 29 Utopia in die distrik van Welkom en

binne die Regsgebied van die Streekafdeling Vrystaat, het die genoemde beskuldigde wederregtelik en opsetlik 'n motorvoertuig Mazda Sting met registrasienommer BXB 822 FS die eiendom van of in die regmatige besit van Carlos Menino gesteel.

[2] He was sentenced as follows:

Charge 1	-	3 (Three) years imprisonment
Charge 2	-	5 (Five) years imprisonment
Charge 3	-	5 (Five) years imprisonment
Charge 4	-	3 (Three) years imprisonment
Charge 5	-	5 (Five) years imprisonment

It was further ordered in terms of section 280 of the Criminal Procedure Act 51 of 1977 as amended (the Act) that the sentences be served concurrently and that the effective sentence be 12 (twelve) years imprisonment.

[3] In terms of section 112(2) of the Act the following facts were admitted:

The appellant on 4 or 5 January 2001 broke into No. 16

Nirvana Court by entering through a window with the intention of stealing the contents. In the process of doing so he removed the keys of a Nissan Sentra motor-vehicle (registration number BY5 655 FS) as well as the vehicle together with the other items.

On or about 3 September 1998 at No. 8 Nirvana Court, the appellant unlawfully and intentionally removed a Volkswagen Citi Golf with registration number OKE 127 397.

Again on 25 – 26 October 2000 at No. 29 Utopia Flats, the appellant broke into a third flat by entering it through a window and with the intention of stealing the contents. In the process of removing the contents he also took the keys of a Mazda Sting motor-vehicle as well as the motor-vehicle itself.

- [4] All the motor-vehicles were recovered and returned to its rightful owners. It is not clear as to whether the other household contents that the appellant stole on various occasions were recovered.

- [5] In matters of this nature, the court of appeal is circumscribed to interfere with the findings with the trial court. In **REX v DHLUMAYO AND ANOTHER** 1948 (2) SA 677 (A) at 705, the court held that there must be *inter alia* cognisable misdirection by the trial court to warrant such interference. In my view, it is clear that the regional magistrate overlooked other considerations. Although the appeal is about sentence, it is important to ensure that the convictions were in order to warrant the sanction imposed. Mrs. Liebenberg, for the respondent, submitted that the convictions were in order and referred to paragraphs 2 and 3 of the statement in terms of section 112(2) of Act 51 of 1977 as amended. Paragraph 3 of the aforementioned statement reads as follows:

“This housebreaking and the theft of this motor-vehicle was planned by a certain **Mopeli** who was employed by Telkom and who resided at Nr 8 Villa Fermada in Welkom. He used to identify premises which could be burgled while he performed work at these premises in his capacity as a Telkom worker and I

assisted him and **Motshehi Letsosa** in the execution of the burglary and the theft of the motor-vehicle.”

[6] Her submission is that the appellant only had intention to steal the household contents and not the motor-vehicle because that was planned by somebody else, in particular Moghashane Mopeli. Her view is that the appellant formed a new intention to steal the motor-vehicle when he saw the keys. In that manner the appellant was correctly convicted of two different offences.

[7] Mr. Skibi submitted on behalf of the appellant that the convictions were duplicated as the appellant only had one intent. He broke into the flat in order to steal whatever he could lay his hands on. In that regard it should be regarded as one conviction.

[8] I disagree with Mrs. Liebenberg that convictions on charges 2 and 5 were in order. The appellant had intention to break into premises and steal. He successfully carried out his unlawful actions over a period of time through the assistance

from the aforementioned Moghashane Mopeli. Moghashane Mopeli, according to the statement, had information of the houses that were “soft targets”. This information he gave, among others, to the appellant and they formed a clear intent to break into the flats and steal everything in their way. In **S v TOUBIE** 2004 (1) SACR 530 (W) the court held that the issue is whether the evidence necessary to sustain any one of the acts is indispensable for the purpose of sustaining the others. In the present matter, the unlawful act of breaking into the house, taking the household contents and the car keys, thus removing the motor-vehicle, was one act. All these acts were planned beforehand by the appellant and the said Moghashane Mopeli, as per his statement. If he had formed an intent to steal the motor-vehicle, he would probably have done so without breaking into the house. Conversely, if he only formed an intent to break into the flat and steal, and only later proceeded to steal the motor-vehicle when he found the car keys, they would not have planned it beforehand with Moghashane Mopeli. I am therefore of the view that convictions on charges 2 and 5 were duplication of

convictions with charges 1 and 4. The crime of theft of the motor-vehicle is not a distinct crime on its own. We should therefore use our inherent review powers and review those convictions and sentences.

- [9] It is trite law that the court of appeal should not lightly interfere with a sentence imposed by the trial court. See **S v PIETERS** 1987 (3) SA 717 (AD) at 728 B – C and **S v PILLAY** 1977 (4) SA 531 (AD) at 535 E – F. The court of appeal may interfere if the trial court misdirected itself or the sentence is shockingly inappropriate. I am at liberty to interfere with the sentence imposed by the regional magistrate because of the order I intend making in respect of charges 2 and 5.

- [10] The regional magistrate concluded in his sentence as follows:

“Nou ten einde ook die kumulatiewe effek van hierdie vonnisse in ag te neem word daar dan in terme van die bepalings van artikel 280 van wet 51 van 1977, gelas dat die vonnisse so samelopend uitgedien sal word dat ‘n totale termyn van twaalf jaar gevangenisstraf uitgedien

word.”

[11] This order is unclear and confusing. The regional magistrate does not state which sentences must run concurrently with which one. The matter is further muddled in cases where the appellant is successful on appeal on some charges. It is important that in future when applying the provisions of section 280 of the Criminal Procedure Act 51 of 1977 as amended, the trial court closes any possibility of ambiguity in sentencing.

[12] I make the following order:

12.1 Convictions and sentences on charges 2 and 5 are reviewed and set aside.

12.2 Convictions and sentences on charges 1, 3 and 4 are confirmed.

12.3 In terms of section 280 of the Act, the sentences on charges 1 and 4 will run concurrently so that the

cumulative effect of the sentence is 8 (eight) years imprisonment.

M.A. MATHEBULA, AJ

I agree.

C.J. MUSI, J

On behalf of appellant:	Adv. N.L. Skibi Instructed by: Justice Centre BLOEMFONTEIN
On behalf of respondent:	Adv. E. Liebenberg Instructed by: Director Public Prosecutions BLOEMFONTEIN

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