

Reportable: Yes / No Circulate to Judges: Yes / No
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Circulate to Magistrates: Yes / No

IN THE HIGH COURT OF SOUTH AFRICA

(Northern Cape Division)

Case no: CA&R 129\05
Date delivered:

In the appeal of:

ANDRIES NKOADIPO

APPELLANT

versus

THE STATE

RESPONDENT

Coram: MAJIEDT J et MOLWANTWA AJ

JUDGEMENT ON APPEAL

MAJIEDT J:

1. The appellant was convicted on his plea of guilty on three counts of theft of a motor vehicle. He appeals with leave of the trial Court against the sentence imposed on these three counts, namely six years imprisonment on each count. The only ground of appeal is

that the cumulative effect of the sentence (i.e. eighteen years imprisonment in total) renders the sentence shockingly inappropriate. On behalf of the respondent Ms Van Dyk has very properly conceded that this is indeed the case.

2. The facts and circumstances pertaining to the commission of the three offences, gleaned from the appellant's plea explanation, can be concisely stated as follows:

- 2.1 On count 1 the appellant admitted that he and a confederate, one Sebakeng, had unlawfully and intentionally stolen a Toyota Venture from its lawful owner, Mr. Moeti. The said vehicle had been stolen from Mr Moeti's premises and the engine was started by Sebakeng using one of a number of keys in his possession. The vehicle was taken to a certain Israel in Taung and thereafter the appellant received an amount of R3 000.00 as remuneration from a person in Johannesburg. The appellant admitted that the Toyota Venture's value was R40 000.00.

- 2.2 On count 2 it was admitted that the appellant had, again with the assistance of Sebakeng, intentionally and unlawfully stolen a Ford Courier from Mr. Molao, its lawful owner. The vehicle was stolen from Mr. Molao's premises and the engine was started with a master key. It was delivered in Taung to a certain Mokwatsi and the appellant was again remunerated in the sum of R3 000.00, this time by certain people in Kimberley. The value of the Ford Courier was admitted by the appellant to be R40 000.00.

- 2.3 With regard to count 3 the appellant admitted that he had

unlawfully and intentionally stolen a Toyota Hi-Ace from its lawful possessor, Mr. Qalinga. The vehicle had been handed to the appellant by the aforementioned Sebakeng and one Sam Mogotsi. The appellant had then taken the vehicle to Taung where he had handed it over to one Tepaku. The appellant did not receive any remuneration for this theft. He admitted that the vehicle was worth R50 000.00.

2.4 The appellant explained further in his section 112(2) statement that he had, either on his own or as part of a syndicate, been involved since 1998 in the theft of motor vehicles. He furnished the names of those involved with him in the syndicate and undertook to assist the police with their investigations in this regard. He expressed regret for his misdeeds and stated that he had decided to turn over a new leaf.

2.5 Finally it bears mention that these offences had been committed between 7 December 2003 and 18 January 2004.

3. The appellant was 38 years old at the time of the commission of these offences. He was unmarried, but his girlfriend was pregnant at the time of sentencing. He had three self-supporting children as well as a child, 6 years old, who was at school. The appellant had attained standard 7 at school. He has a shocking record of crime – twelve offences in total, of which nine involves either crimes of dishonesty or use of a motor vehicle without the owner's consent. It is somewhat surprising that the appellant had not been warned in the trial court in the present matter of the provisions contained in section 286(1) of Act 51 of 1977, relating to the declaration as a habitual criminal. Of further importance is the fact that the appellant had been out on parole at the time of the commission of the offences in the present matter. On the last two previous convictions of theft the appellant had been sentenced to 4 ½ and 3 ½ years' imprisonment respectively.

4. The Regional Magistrate has correctly emphasized the gravity of the offences and Mr. Janse van Vuuren has conceded same in his Heads of Argument on behalf of the appellant.

5. Both legal representatives are *ad idem* that the individual sentences on the three counts are justified, but that the cumulative effect thereof is shockingly excessive. I share this view. The appellant has clearly made a business out of the theft of motor vehicles (in fact he himself says so in his plea explanation) and his offences are undeniably deserving of long term imprisonment. An effective sentence of 18 years imprisonment is, however, disturbingly inappropriate and warrants interference in my view. Compare in this regard:

S v Koutandos and another 2002(1) SACR 219 (SCA), where the Supreme Court of Appeal interfered with cumulative sentences of 15 and 27 years imprisonment imposed on the two appellants respectively. Their offences involved motor vehicle theft and fraud. The Court upheld the appeal and imposed lesser sentences on the basis that:

“when regard is had to the cumulative effect of the sentences imposed on both appellants, the result strikes me as so excessive as to justify interference by this Court,” (per Scott JA at 221 g).

6. I am of the view that, utilising the **Koutandos** decision *supra* as a guideline while bearing in mind that every sentence must be individualised, an effective sentence of 12 years imprisonment in the present case would be appropriate. Such a sentence can be attained by ordering that the sentences imposed run concurrently to an extent. In this manner recognition would also be given to the fact that the appellant has pleaded guilty and has exhibited genuine contrition and remorse in his frank disclosure concerning the *modus operandi*, his involvement in a motor vehicle theft syndicate and the names of his criminal associates.

See: **S v Coales 1995(1) SACR 33 (A)** at 36 d-h.

7. In the premises I issue the following order:

A) THE APPEAL AGAINST SENTENCE SUCCEEDS.

B) THE FOLLOWING ORDER IS ADDED TO THAT OF THE TRIAL COURT: “THE SENTENCE ON COUNT 3 IS TO RUN CONCURRENTLY WITH THAT ON COUNT 2.”

**SA MAJIEDT
JUDGE**

I agree:

**BC MOLWANTWA
ACTING JUDGE**

FOR THE APPELLANT : MR D JANSE VAN VUUREN
FOR THE RESPONDENT : ADV E VAN DYK

DATE OF JUDGEMENT :