

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

Review No. : 690/2005

In the review between:

THE STATE

versus

TSHEPO JACOB THAHANE

CORAM: WRIGHT J *et* H.M. MUSI J

JUDGMENT: H.M. MUSI J

DELIVERED ON: 17 JUNE 2005

[1] This is an automatic review. Having read the record of the proceedings I ordered that the accused be released from prison forthwith and indicated that judgment will follow. The accused, who is 18 years old, was arraigned before the magistrate's court at Ficksburg on 23 May 2005 on a charge of housebreaking with intent to steal and theft. He had allegedly broken into a bottle store and removed a quantity of

liquor valued at R1 095,00. The accused pleaded guilty to the charge and following questioning by the court in terms of section 112 of the Criminal Procedure Act, he was found guilty as charged. He was sentenced to 18 months imprisonment of which 8 months was suspended for 4 years on certain conditions.

[2] The conviction is clearly in order. However, the sentence imposed was, in my view, so shockingly inappropriate that it warranted the unusual step of setting it aside without first seeking the magistrate's reasons for it. Granted that the offence of which the accused has been convicted is serious and is also generally prevalent in the Free State, nonetheless there are weighty reasons in this matter that rendered direct imprisonment wholly inappropriate.

[3] Firstly, the accused readily acknowledged his wrong doing and pleaded guilty. This signifies that he is a good material for rehabilitation, for acknowledgement of one's guilt is a good foundation for rehabilitation. The complainant has not

sustained any serious damage in that entry into the premises was obtained without any serious damage thereto and the bulk of the stolen liquor was recovered. The recovery was in large measure thanks to the co-operation that the accused gave to the police. He led them to the places where the liquor had been stored. Most importantly, the accused is a youth who was still attending school. He informed the court that he was in standard 9 and there is nothing on the record to show that this was not so. It was in the interests not only of the accused but also of society as a whole that he should be allowed to further his education. Direct imprisonment holds the potential not only of destroying his chances of becoming a useful member of the community but would also expose him to negative influences that may destroy his future. Finally, the accused is a first offender and I can find no reason why he should not have been spared direct imprisonment.

- [4] This is a typical case where a wholly suspended sentence should have been imposed. The following order is made:

The conviction is confirmed. The sentence imposed is set aside and substituted with a sentence of 18 months imprisonment which is wholly suspended for 4 years on condition that the accused is not convicted of housebreaking with intent to steal and theft, or theft, committed during the period of suspension.

H.M. MUSI, J

I concur.

G.F. WRIGHT, J

/sp