

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

Review No. : 1284/2005

In the review between:-

THE STATE

versus

TSHEPO MOFOKENG

CORAM: HANCKE J *et* WRIGHT J

JUDGMENT BY: WRIGHT J

DELIVERED ON: 10 NOVEMBER 2005

[1] The accused, a seventeen-year old boy, was found guilty of housebreaking with intent to steal and theft and sentenced to 36 (thirty six) months imprisonment.

[2] It appears that the State proved no previous convictions at that stage. The accused requested forgiveness for his conduct. After that he was questioned by the court and at a later stage the evidence of the social worker, Jacoba

Petronella Prinsloo, was led. She mentioned, *inter alia*, the following during her evidence:

- “1. Accused has no background at all as far as I have investigated the matter.
2. No one is prepared to take the responsibility.
3. At least if the court can impose a direct imprisonment, that sentence can be suitable for him.
4. At least he will get a shelter, a meal everyday.
5. He will be away to the situation of getting himself in committing crimes.
6. He will be referred to Juvenile Prison.
7. He will have the opportunity to attend the school while in Juvenile Prison and when he leaves the place – will be able to stand on his own feet,
8. At the Juvenile cells everything that can be suitable for him will be made and he will be monitored on each and every step he takes.
9. If he cannot cope at school mentally there are other opportunities that are available like hand-craft etc.
10. We set programmes that will enhance him in his life, like Psychiatrics who will rehabilitate him in drug abuse as he is using drugs.
11. The section programmes I have mentioned are suitable for Prisoners that are sentenced from 2 years and above.”

[3] Evidence was led on 8 September 2005 and at a later stage on 15 September 2005 when the State did prove two previous convictions which were admitted by the accused. At that stage he was not told that he can lead further evidence if required with regard to sentence.

[4] The two previous convictions both date from 2004 and refer to housebreaking and theft and stock theft respectively. The

other aggravating factor is that an amount of R6 100,00 was involved in the present matter.

- [5] Mitigating factors are that the stolen goods were recovered and most important that the accused was only a seventeen-year old boy when the crime was committed. The social worker mentioned many other mitigating factors which the magistrate refers to in paragraph 3 of his reasons which reads as follows:

“The sentence might seem to be drastic by its nature. The court considered the personal circumstances of the offender that he is not born and bred in the area he is currently residing, family members cannot be traced, has no guardian, no visible means of support, is not schooling, not working, he is mentally neglect, furnishing false information to protect himself, he is not under proper control so to be disciplined, he is a victim of outside forces, and is capable of being manipulated by outside circumstances as a result of his upbringing. He is not removed from his family members but is removed from the tendency of vicious boys, from the community he disturbs the balances of legal order which may lead to the evil, that those immediately

affected by the crime decide to take the law into their hands and punish him.”

[6] In view of all the circumstances I come to the conclusion that the sentence is sufficiently inappropriate to necessitate interference. The main factor here is of course the age of the accused and the mitigating factors mentioned in the report.

[7] The conviction is accordingly confirmed but the sentence set aside and replaced with the following:

Twenty four (24) months imprisonment.

The sentence must be deemed to have been imposed on 15 September 2005.

G.F. WRIGHT, J

I agree.

S.P.B. HANCKE, J

/sp