

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

Review No.: 619/2004

In the review between:

THE STATE

and

MPHO BOCHELI

CORAM: **MALHERBE JP**

DELIVERED ON: **1 JULY 2004**

The accused in this case is a 20-year old first offender who was arraigned in the Magistrate's Court at Odendaalsrus on 4 counts of housebreaking with intent to steal and theft. He conducted his own defence and pleaded guilty on all 4 counts. He was duly convicted as charged. Counts 1 and 2 were taken together for purposes of sentence and 3 years' imprisonment was imposed. The same was done in respect of counts 3 and 4. The result is an effective sentence of 6 years' imprisonment. When the case was placed before my brother Rampai on review, he requested the Magistrate to furnish reasons for sentence. This has now been done. I

quote paragraph 2-5 of those reasons:

- “2. The sentence will send a clear and unambiguous message to person(s) of accused’s age that crime does not pay. These offence(s) are mostly committed by person(s) of accused’s age, is serious and prevalent in our district.
3. The sentence will prevent accused from making crime a hobby. The dates on which he committed these offences shows that he was on a housebreaking spree and made it a hobby, if not a sport.

In respect of count 2 and 4, the complainant is same person. The complainant left the key of the home at accused’s place. This is according to accused’s plea explanation. The complainant trusted accused’s family which include accused. Accused breached the position of trust complainant had on his family. Accused disgraced his family. He deserve effective sentence of 6 (six) years.

4. The sentence will restore and maintain the faith of complainant and member of society to criminal justice system and courts. The sentence will debar the victims from deciding to take law into their own hands.
5. The offences, in most instances, are justiciable (sic) in Regional Court wherein possibility exist that accused could have been meted with term

of imprisonment exceeding six years on four counts of housebreaking with intent to steal and theft.

In *S v Olivier en Andere* 1996 (2) SACR 387 (NC), the Regional Court imposed a sentence of effective ten years on three counts of housebreaking with intent to steal and theft. On appeal, the sentence was reduced to effective five years imprisonment.

I did consider other options of sentences available but found that effective sentence of 6 (six) years is the only suitable sentence in the circumstances. I was very merciful and lenient to the accused.”

It appears from the record that the offences were committed on 26 January, 3 March, 19 March and 20 March 2004 respectively. On counts 1 and 3 the accused opened the unlocked doors of the dwellings in question and on counts 2 and 4 he gained entrance to the same house by using a key that the complainant had left in his custody. All the stolen goods were recovered and presumably returned to the rightful owners. The stolen goods were household goods and according to the accused he intended to use some of the clothes that he stole but wanted to sell the more valuable goods ...

“I wanted to use the money to go to school in Gauteng. My parent is

unemployed and did not have money to pay at Wits Technikon.”

There is nothing on record to gainsay this.

The **OLIVIER**-decision upon which the Magistrate relies, is readily distinguishable from the facts of the present case. The 3 appellants in that case were 33, 34 and 42 years old respectively. They were convicted on 3 counts of housebreaking with intent to steal and theft which are described as follows in the judgment:

“Die omstandighede waaronder die misdade gepleeg is, is soos volg:
 ‘n Sekere mnr Visagie, ‘n wewenaar, is die eienaar van die plaas Witteboom in die Prieskadistrik. Op 23 September 1993 is hy Citrusdal toe en het sy huis op die plaas onbeset verlaat. Toe hy teruggekeer het as gevolg van ‘n berig wat hy gekry het, het hy gevind dat daar by sy huis ingebreek was en ‘n aantal goedere vermis was.

Die totale waarde van die goedere wat gesteel was, is ongeveer

R40 000. Die inbrekers het ook probeer om die bankkluis en geweerkluis wat daar was oop te sny, met die klaer se sweistoestel. As gevolg van ‘n verkeerde koppeling was die ligtestelsel van die gebou beskadig, die matte was swart gebrand en volgens die klaer was sy hele huis ‘pikswart van die rook’. Bo en behalwe voormelde was al die kaste se goed uitgegooi en die huis was in ‘n chaotiese toestand gelaat.

Buite die huis in die werf was ‘n waenhuis waarin die klaer sy Isuzu bakkie geparkeer het. Daar was ook ‘n stoor waarin ‘n Ford Cortina bakkie was. Beide die waenhuis en die stoor is oopgebreek, die

voertuie se sleutels is in die kantoor gekry en die twee voertuie is ook gesteel. Die voertuie is eintlik deur die beskuldigdes gebruik om die gesteelde goedere te verwyder. Die waarde van die Isuzu bakkie is

R54 000. Toe dit teruggekry is, was daar R900 se skade daaraan. Die versekeringsmaatskappy het 'n bybetaling van R500 vereis. Die Ford Cortina bakkie se waarde was R15 000. Dit was nie verseker nie en was waardeloos toe dit teruggekry is.

Wat die huis betref, het die assuransie R2 400 uitbetaal vir skade aan die gebou. Sekere teruggevonde goedere is aan die klaer teruggegee en vir die verlies aan die inhoud van die huis het die assuransie R48 500 uitbetaal. Die klaer moes self ook klaarblyklik uit sy eie sak sekere skades herstel.”

In my view the accused's youth in the present matter and the fact that he is a first offender should have been accorded more weight than the Magistrate appears to have done. His plea of guilty is an indication of remorse and the reason why he stole, *viz.* to pay for his studies, cannot be rejected. Although I agree that imprisonment should be imposed, I think that the total period is disturbingly long. Furthermore, this is a case where suspension of part of the sentence can only have a salutary effect on the young accused.

There is no good reason why counts 1 and 2 were taken together and also counts 3 and 4. Each of the offences was a separate offence and for that matter any 2 of the counts could have been taken together for purposes of sentence. I propose to take all 4 of them together.

In the result the conviction is confirmed. The sentences imposed are set aside and replaced by the following:

“The 4 counts are taken together for purposes of sentence.

Accused is sentenced to 5 years' imprisonment of which 2

years are suspended for 3 years on condition that the accused is not convicted of housebreaking with intent to steal and theft, committed during the period of suspension.”

J.P. MALHERBE, JP

/scd