

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

Review No.: 953/2004

In the Review between:

THE STATE

and

CHARLES THANKISO KHOARAI

CORAM: **VAN COPPENHAGEN et WRIGHT, JJ**

JUDGMENT BY: **WRIGHT, J**

DELIVERED ON: **29 JULY 2004**

The accused, a 30 year old first offender, was found guilty of theft and sentenced to a fine R1 800,00 or 12 months imprisonment of which two thirds were suspended. According to the record the accused was searched by Mrs K. Joubert and she found shoe polish to the value of R16,99 in his sock. The Magistrate took into consideration that the accused was working at Shoprite-Checkers on the day in question and that he was a “merchandising” for Premier Milling.

It is trite law that every possible step should be taken to keep a first

offender from direct imprisonment if at all possible. In view of the value of the item stolen this was pre-eminently a case for imposing a suspended sentence. The cases to which the Magistrate refers in his reasons do not support his reasons. The case of **S v MOLENBEEK AND OTHERS** 1997 (2) SACR 346 (O) refers to stock theft where different considerations apply. In another case to which the Magistrate refers an amount of R1 367,00 was stolen. The fact that the accused is a 30 year old first offender who probably lost his employment as a result of this crime is of considerable importance and in view of all the circumstances the sentence imposed is shockingly inappropriate.

In view of all the considerations mentioned previously and appearing from the record, the following sentence is apposite.

The conviction is confirmed, but the sentence set aside and replaced with the following:

A fine of R1 500,00 or six (6) months imprisonment wholly suspended for four (4) years on condition that the accused is not found guilty of theft or attempted theft committed during the period of suspension.

G.F. WRIGHT, J

I CONCUR

G. VAN COPENHAGEN, J

/scd