

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

Review Nr: 1253/2004

In the matter between:

THE STATE

versus

VALENTIA MAMOLIEHI MOILOA

CORAM: CILLIé J et VAN DER MERWE J

JUDGMENT: CILLIé J

DELIVERED ON: 23 SEPTEMBER 2004

The accused in this matter was convicted of five counts of theft and one count of contravening section 36 of the General Law Amendment Act nr. 62 of 1955. He was sentenced to 6 months imprisonment half of which was suspended for five years on condition that the accused is not found guilty of contravening section 36 of Act 62 of 1955 committed during the period of suspension. It is not clear from the record whether the magistrate took the six convictions together for purposes of sentence but apparently that is what she intended.

When the matter was submitted for review the following query was directed to the magistrate.

“The accused was charged with one count of contravening Section 36

and five counts of theft. He was convicted of all six counts. However it appears as if the items that form the basis of count one are the same items that are the subject of counts 2 – 6. Is this not a duplication of convictions. Reasons for conviction in the light hereof please.”

In response to this the magistrate *inter alia* explained as follows:

“The evidence revealed that the accused was found in possession of stolen goods, that belongs to five 5 people. Although I convicted accused with all 6 counts, and it appeared that the present case satisfied the intention test. It is my submission that, the accused had suffered no injustice, either as far as conviction is concerned. The accused was never sentence on each count, he was only sentenced, 6 (Six) months imprisonment of which 3 (Three) months is wholly suspended.”

This explanation does not make any sense. If ever there was a text book example of a splitting of charges it is the present. The accused should have been found guilty of five counts of theft. All the complainants identified the items found in possession of the accused as their property. The accused’s explanation for this possession was rightly rejected but that does not mean that his failure to supply a satisfactory explanation for his possession thereof amounts to an additional substantive offence

namely the contravention of section 36 of the said Act. After all the fact that the accused stole the items is the explanation for his possession thereof.

As said the Magistrate apparently took all the convictions together for purpose of sentence. Although this was not really the correct approach it is undesirable to interfere with that at this stage.

In the result the following order is made:

- The conviction on counts 1, 2, 3, 4, 5 and 6 are set aside and substituted with convictions of theft on counts 2, 3, 4, 5 and 6.
- The convictions are taken together for purposes of sentence and the accused is sentenced to 6 months imprisonment half of which is suspended on condition that the accused is not found guilty of theft committed during the period of suspension.
- This alteration to the convictions and sentence must be conveyed to the accused by the Magistrate.

C.B. CILLIé, J

I CONCUR:

C.H.G. VAN DER MERWE, J

/ec