

Circulate to Magistrates: Yes / No

Reportable: Yes / No
Circulate to Judges: Yes / No

IN THE HIGH COURT OF SOUTH AFRICA
(Northern Cape Division)

Case no: B 5456/03

DATE DELIVERED: 16/01/2004

In the matter between:

THE STATE

versus

PIET VAN WYK

ACCUSED

JUDGEMENT ON REVIEW

MAJIEDT J:

1. The accused had been convicted in the Magistrate's Court on a count of housebreaking with the intent to commit an offence unknown to the State as well as on a count of trespassing. He was sentenced to 6 months' and 3 months' imprisonment respectively on these counts.
2. My brother, Olivier J, has raised two matters on automatic review, namely whether the convictions do not amount to a

splitting of charges and, if not, why the Magistrate had not ordered that the sentences imposed should run concurrently. The Magistrate has furnished full reasons for her decisions on these two aspects.

3. As far as the convictions are concerned, I am in agreement with the Magistrate that there has in fact not been any splitting of charges herein. In applying the so called single intention and evidence tests and on the basis of sound reasoning and one's basic sense of fairness, I am satisfied that the evidence adduced at the trial clearly establishes that two distinct offences had been committed.

See generally: *S v Davids* 1998(2) SACR 313(C) at 316 d; Du Toit et al, Commentary on the Criminal Procedure Act at 14 – 7.

The convictions are therefore in order.

4. The sentence is quite a different matter. The explanation proffered by the accused is reasonably acceptable. Even if it is not, it seems to me that it would be quite harsh to have the accused serve an effective nine months' imprisonment for a seemingly harmless breach of the complainant's domestic privacy. Consequently I am of the view that the Magistrate has erred in failing to order that the sentences should run concurrently.

5. The following order is issued:

The accused's convictions and sentences are confirmed. It is further ordered that the

sentences imposed on counts 1 and 2 are to run concurrently.

S A MAJIEDT
JUDGE