

IN THE HIGH COURT OF SOUTH AFRICA

(CAPE OF GOOD HOPE PROVINCIAL DIVISION)

CASE NO:

A354/2002

DATE:

13 SEPTEMBER 2002

5 In the matter between:

DERECK KOTE

Appellant

and

THE STATE

Respondent

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JUDGMENT

(Appeal against Conviction and Sentence)

MOTALA, J

15 The appellant and two others were charged in the Court *a quo*
with the theft, on 31 January 1997, of a motor vehicle. All three
accused pleaded not guilty. One of the accused, accused
number 2 at the trial, was discharged at the end of the State
case. Appellant and the other accused, Christo Bell, were found
20 guilty and sentenced to seven years imprisonment each.

Appellant appeals against both the conviction and the sentence.

The salient facts relevant to whether appellant was guilty or not were not in dispute, either at the trial or before us. They are as follows:

5 The complainant's vehicle, a red Ford Escort XR3, was stolen sometime between 7.00 am and 4.00 pm on 31 January 1997. The complainant asked a friend, Gavin Williams, to be on the lookout for the car. On 4 February 1997 Williams went to a place where, to his knowledge, Fords are regularly dealt in. There he concluded an agreement with Bell in terms of which he agreed to
10 buy the body of a red Ford Escort. Williams suspected, quite rightly, as other evidence proved, that the body was that of the complainant's car. He advised the police and told the police that he was going to tow the car the next day and told the police of the route he was going to follow. The next day Williams went
15 with Bell, as arranged, to the residence of the appellant, where the vehicle was parked and towed it away. Along the route they were stopped by the police, who had been waiting for them, as arranged with Williams. Bell was in the Escort, sitting on a box as the seats had been removed. He was steering the wheel with
20 a vice grip as the steering wheel had also been removed. The police then went to the appellant's premises. There the police found, *inter alia*, that the wheels of the stolen car were mounted on a black panel van belonging to the appellant. They found also that the seats and other parts of the stolen car had been

transferred to a car belonging to Bell's brother. The seat in Bell's brother's car were in appellant's van.

Appellant's version is that he was asked by one Kritzinger, whom he knew for about a year, to park the vehicle on his premises, as it was not in order and he had to push it in and out of his premises each day in order to allow the other members of his family to enter or to leave the premises. Kritzinger told him he could not afford to pay for the parking, but appellant could swap the wheels of the car with the wheels of his van and that a mechanic would come to the premises to repair the car. According to appellant two or three days later Bell came to work on the car. He came on two or three days, during which times he virtually stripped the car of many of its parts.

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On 5 February, the car was towed away as testified to by Williams. According to appellant, the car was towed away so that it could be worked on on a better surface than the surface in his yard from which it was difficult to retrieve things like screws which had fallen.

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The Magistrate concluded that the version of the appellant was not reasonably and possibly true. His reasons for coming to that conclusion are set out in his judgment, at page 226, and need not be repeated here. There are in fact many other reasons for

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rejecting appellant's evidence, but I do not find it necessary to set them out. The magistrate applied the doctrine of recent possession and in my view he was correct in doing so. On appellant's own version, even overlooking the mistake he made in saying that the vehicle was there for about a week, and on the undisputed facts of this case, that the vehicle was stolen on 31 January and was on his premises for several days before being towed away, he must have taken possession of the vehicle, either on the day it was stolen, or soon thereafter. He was clearly in possession of recently stolen property, and was required to give an innocent explanation therefore i.e. an innocent explanation which was reasonably and possibly true. In my view, as I have already indicated, he failed to do so.

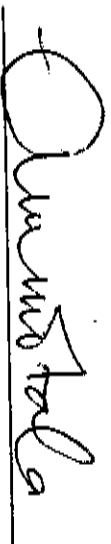
I turn now to the question of sentence. It is trite that sentencing is a matter for the discretion of the trial court. In my view, the magistrate has not misdirected himself in any way, nor does the sentence induce a sense of shock. The appellant has many previous convictions for offences involving dishonesty, including one for robbery, for which he was sentenced to six years in jail. He was released on 5 April 1991. The following year he again committed theft – of goods to the value of R6 000. On 4 November 1992 he was sentenced to three years imprisonment, two years of which was suspended for five years on condition that he was not convicted of theft during the period of

suspension, which means that he committed this offence when the period of suspension had not expired.

Although a sentence of seven years is a severe sentence I cannot find in the circumstances of this case that the magistrate erred in imposing a sentence of seven years.

I would accordingly DISMISS THE APPEAL AND CONFIRM THE CONVICTION AND THE SENTENCE.

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MOTALA, J

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WILLIAMS, AJ: I agree, and it is so ordered.

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WILLIAMS, AJ