



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

**IN THE HIGH COURT OF SOUTH AFRICA
(NORTHERN CAPE DIVISION, KIMBERLEY)**

**CASE NO.: CA&R 64/2024
Date delivered: 12-11-2024**

In the matter between:

THE STATE

and

DAVID MIAS

CORAM: WILLIAMS J et LEVER J:

JUDGMENT ON SPECIAL REVIEW

WILLIAMS J:

1. This matter has been submitted on special review for a determination as to whether the sentence imposed by the magistrate, Philipstown is in accordance with justice.
2. The accused pleaded guilty to one count of stock theft in that he admitted to stealing and slaughtering one Dorper ewe, the property of another and which was valued at R2800,00. He was convicted accordingly.
3. It transpired during the sentencing proceedings that the accused was not a first offender but had been convicted previously of multiple serious offences including, during 2018 a conviction on a charge of stock theft for which he was sentenced to 6 months imprisonment wholly suspended for a period of

3 years subject to certain conditions and a further conviction on a charge of stock theft during 2021, for which he was sentenced to 3 years imprisonment.

4. In light of his previous convictions the prosecutor applied for the committal of the accused for sentencing by the regional court in terms of s114 of the Criminal Procedure Act 51 of 1977. The magistrate apparently refused the application, his response thereto having been transcribed as *"indistinct"*, and proceeded to sentence the accused to 4 years imprisonment on the basis that *"The form of mercy that the court is going to give you is not to send you to regional court, but as the court can give you a sentence, a higher sentence at least in such matters. . ."*
5. Upon enquiry as to the competence of the sentence imposed, after a judicial quality assessment was conducted at the Phillipstown Magistrates Court, the magistrate indicated that he had no additional statements or comments to make in this regard. As a result I do not see the need to direct any further inquiries to the magistrate.
6. The magistrate's court is a creature of statute and its powers and sentencing jurisdiction are set out in the Magistrate's Courts Act, 32 of 1944 S 92(1)(a) thereof states as follows:

"(1) Save as otherwise in this Act or in any other law specially provided, the court, whenever it may punish a person for an offence—

(a) by imprisonment, may impose a sentence of imprisonment for a period not exceeding three years, where the court is not the court of a regional division, or not exceeding 15 years, where the court is the court of a regional division;"
7. I may add that s14 of the Stock Theft Act, 57 of 1949 similarly limits the penal jurisdiction of the magistrate's court in respect of an offence under the Stock Theft Act.

8. The sentence imposed in the magistrate's court was beyond its jurisdiction and as such it must be set aside. The normal order in such a case would be to refer the matter back to the trial court to impose sentence afresh. However due to the delay of about 17 months in sending this matter on review since the sentence was imposed and having all the relevant facts before us for consideration, it would be in the interests of justice that this court determine the matter finally.
9. The accused was 37 years old when the offence was committed. He was unemployed. He is single and has a daughter who was 9 years old at the time. He passed grade 7 at school. Whilst it is so that stock theft is prevalent in the rural areas of the Northern-Cape and has a negative effect on the economy of the province, presiding officers should be mindful to not impose progressively heavier sentences merely because the accused is a repeat offender. The personal circumstances of each offender must be taken into account.
10. *In casu* the accused is unemployed and has a family to maintain. All indications are that he stole the sheep with the intention of slaughtering it for the pot. In fact in his written guilty plea he stated that he slaughtered the sheep and only took some of the meat as he could not carry the whole sheep. There is no indication that he stole the sheep for financial gain.
11. Whilst it is so that a firm position should be taken on the issue of stock theft, given the prevalence of this offence, an accused should not be sacrificed on the altar of deterrence. The accused has pleaded guilty and did not waste any time or resources in this matter.
12. Taking all the relevant circumstances into consideration I am of the view that a sentence of 3 years imprisonment is appropriate. Taking into account the circumstances in which this matter was sent on review it would be appropriate to ante-date the above sentence to the date of original sentence, being 3 May 2023.

In the circumstances the following order is made:

- a) The conviction is confirmed.
- b) The sentence imposed is set aside and replaced with the following:
"The accused is sentenced to 3 (three) years imprisonment."
- c) The sentence is antedated to 3 May 2023.


CC WILLIAMS
JUDGE

I concur


L LEVER
JUDGE