

SOUTH AFRICA / JUDGMENT

Freeman v S (A132/2012) [2012] ZAWCHC 308 (12 September 2012)

[2012] ZAWCHC 308

COURT

Western Cape High Court, Cape Town

BEFORE

Gamble, Mantame

CASE / FILE NUMBER

A132/2012

Source: saflii.org · Research copy typeset by Esheria. Not court-issued or certified.

JUDGMENT

IN THE HIGH COURT OF SOUTH AFRICA

(WESTERN CAPE HIGH COURT, CAPE TOWN)

CASE NUMBER: A132/2012

DATE: 12 SEPTEMBER 2012

In the matter between:

ANDREW FREEMANAppellant

and

THE STATERespondent

GAMBLE, J:

This is an appeal against a sentence imposed by the magistrate in Atlantis. The appellant appeared before the magistrate together with two others on a charge of housebreaking with intent to steal and theft. He pleaded guilty of breaking into a suburban house in Melkbosstrand and of stealing about R4 000,00 worth of household appliances. The magistrate imposed a sentence of two years direct imprisonment, but she immediately granted leave to appeal against the sentence. The sentence is a stiff one, but it is not necessarily one that induces a sense of shock, save for that which that is set out hereunder. I agree too with the magistrate that the offence is a serious one. It is prevalent not only in Melkbosstrand but throughout the Peninsula and it is a sentence which would probably justify a period of imprisonment in appropriate circumstances.

The evidence in this matter that is relevant in regard to sentence was presented by a social worker who conducted a detailed investigation into the appellant's personal circumstances. Those circumstances reveal *inter alia* that the appellant has been plagued by a substance abuse problem since about the age of 16. He is now 41 years old. It is possible, judging from the evidence of the social worker, that that problem may have been related to episodes of sexual abuse which he suffered as a child. In *casu* it is clear that the appellant stole to sustain a drug abuse problem and that problem was highlighted in the social welfare report which was placed before the Magistrate.

The appellant had previously held fixed employment and worked on cruise ships in the hospitality industry but it appears that, with the decline in the tourism industry due to the worldwide recession, that he either lost his work or has not been employed as regularly as before. The evidence also establishes that the accused, as I said a 41 year old man, has done nothing to address his substance abuse problem. That is a problem which has been around for more than 20 years.

The failure to address the problem may be for a number of reasons. It may mean that the accused realises that the problem is incapable of being addressed but it may also be that he has simply refused to acknowledge it. We just do not know what the facts are. The problem will not necessarily go away by simply sending the accused to prison for a period of two years. In this regard I consider that the Magistrate failed to properly consider the accused's personal circumstances and in particular that she failed to have regard to the provisions of either section 276(1)(h), or section 296 read with section 276(1)(e) of the Criminal Procedure Act number 51 of 1977; This in the circumstances constitutes a misdirection by the trial court and warrants interference by this court on a appeal.

In my view it is in the interest of all concerned that the accused's substance abuse problem be addressed if at all possible. It is particularly important from a societal point of view because if it is not addressed the accused may well offend again and other people will be affected thereby. The problem could be addressed by either imposing correctional supervision under section 276(1)(h) and attaching conditions thereto, or by employing the provision of section 296 read with 276(1)(e) and referring the appellant to a rehabilitation centre if he is an appropriate candidate.

That requires additional investigation which is not before this Court and which was not before the Magistrate. In my view the matter should therefore be referred back to the Magistrate for a proper enquiry, for consideration as to whether the accused is a suitable candidate for committal for a treatment centre under section 296 of the Criminal Procedure Act or whether he is a suitable candidate for correctional supervision under section 276(1)(h).

In the circumstances I would make the following order:

1. The appeal against the sentence succeeds.
2. The matter is referred back to the magistrate for imposition of sentence afresh in light of the remarks made in this judgment.

GAMBLE, J

I agree

MANTAME, AJ

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.saflii.org/za/cases/ZAWCHC/2012/308.html>

CASE PAGE <https://chat.esheria.ai/case-law/south-africa/freeman-v-s-unknown-topic-awchc-2012>

Prepared on 10 October 2026 · Esheria