

SOUTH AFRICA / JUDGMENT

Gordon v S (A769/2012) [2014] ZAGPPHC 913 (14 November 2014)

[2014] ZAGPPHC 913**COURT**

North Gauteng High Court, Pretoria

BEFORE

M Beatson, D S Fourie

CASE / FILE NUMBER

A769/2012

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Source record**IN****THE HIGH COURT OF SOUTH AFRICA****(GAUTENG****DIVISION. PRETORIA)****CASE****NO: A769/2012****DATE:**

14 NOVEMBER 2014

NOT

REPORTABLE

NOT

OF INTEREST TO OTHER JUDGES

IN

THE MATTER BETWEEN

JUNAID

MANIE

GORDON.....APPELLANT

AND

THE

STATE.....RESPONDENT

PONDENT

JUDGMENT

BEATSON. AJ (Ms)

- [1] The Appellant was convicted of theft of a motor vehicle and sentenced to seven years imprisonment on 27 January 2011. The Trial Court granted leave to appeal the sentence only.
- [2] The background of the matter is as follows: The complainant came in to work at the Faerie Glen shopping centre on 16 April 2009, leaving his car keys and lunch-box with the receptionist. He then proceeded to work in the workshop where he fitted car radios and immobilisers. Two men came into the reception area and while the receptionist was distracted, the complainant's car keys went missing. Shortly afterwards the complainant saw his motor vehicle being driven away by the Appellant. When confronted and apprehended the Appellant averred that he had picked up the car keys in the parking area and used the immobiliser to identify the vehicle.
- [3] It was argued on behalf of the Appellant that the Trial Court had misdirected itself by imposing a sentence of seven years imprisonment, which was too harsh in the circumstances and induced a sense of shock.
- [4] It was pointed out that the Appellant was a 22 year old student and a first offender who was a breadwinner in a family with one 7 year old child. The complainant suffered no loss as he recovered the vehicle which had not been damaged.
- [5] In a similar case of *S v Furlong* 2012(2) SACR 620 (SCA) the court sought to prevent a situation where the individual is treated harshly in the hope that such treatment would prevent other potential crimes and promote law abiding citizens. In this matter, where the accused was found in possession of a stolen vehicle worth R750 000,00, his sentence was reduced on appeal from seven years to three years imprisonment.

In *Smith v State* (46/2006)

- [2007] SCA 40 (RSA) a sentence of four years for motor vehicle theft was reduced by suspending two years conditionally. The Appellant in this matter was a first offender and stole from her employer.

In *S v Mkhize* (21/2012)

- [2013] ZANWHC 10 (7 February 2013) a police officer, in a position of trust and with previous convictions of motor vehicle theft, received seven years imprisonment on appeal. The case of *Mkhize* further referred to *S v Gerber* 2006(1) SACR 618 SCA where the Supreme Court of Appeal made the following remarks in respect of seven years imprisonment for motor vehicle theft: "... the Appellant certainly deserved a sentence on the high end of those currently imposed ..."

[6] It is so that the Appellant was convicted of a crime that is running rife in Pretoria where motor vehicles are stolen on a daily basis and it is in the general public's interest that sentences imposed in respect thereof should act as a deterrent and send a message to the community that crimes of this nature will be dealt with severely.

[7] However in my view the Trial Court misdirected itself by over-emphasising the gravity of the offence and by holding that the

Appellant was part of a group of offenders who made a livelihood by stealing cars daily and perfecting a crime referred to as "theft

by instruction", without specific evidence to support such a finding. The fact that the Appellant was a first offender was also not considered by the Trial Court.

[8] In reconsideration of the matter and having weighed all the circumstances of the case, the seriousness of the crime, the personal

circumstances of the Appellant, the aggravating factors and interests of society, this court is of the view that the sentence of seven years imprisonment is disproportionate to the crime for the reasons already mentioned and should be substituted with a sentence of 5 years imprisonment.

[9] In the result I propose the following order:

1. Appeal against sentence is allowed.
2. The sentence of seven years imprisonment is set aside and substituted with the following: "The accused is sentenced to five years imprisonment."
3. In terms of section 282 of the Criminal Procedure Act 51 of 1977 the sentence is antedated to 27 January 2011

M.BEATSON

Acting Judge of the High Court

Gauteng Division, Pretoria

I agree and it is so ordered

D.S FOURIE

Judge of the North High Court

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