

SOUTH AFRICA / JUDGMENT

Helmie v S (CA&R345/2016) [2017] ZAECHGC 33 (16 March 2017)

[2017] ZAECHGC 33

COURT

Eastern Cape High Court, Grahamstown

BEFORE

NG Beshe, GH Bloem

CASE / FILE NUMBER

CA&R345/2016

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IN THE HIGH
COURT OF SOUTH AFRICA
(EASTERN
CAPE DIVISION, GRAHAMSTOWN)
CASE
NO.: CA&R345/2016
In

the matter between: MICHAEL
 HELMIE
 Appellant
 And
 THE
 STATE
 Respondent

JUDGMENT

BESHE J:

- [1] This is an appeal against sentence with leave to appeal having been granted in the court a quo.
- [2] The appellant was charged with four counts of theft out of motor vehicles. He pleaded guilty to all four charges and was accordingly

convicted on the basis of his pleas of guilty in respect of all four counts. He was sentenced to three (3) years' imprisonment in respect of each count. The offences were committed during the period 23 June 2013 to 24 June 2013. Items with values ranging from R1 900.00 to R4 180.00 would be removed from complainants' vehicles after one of the motor vehicles' windows was broken.

[3] From appellant's evidence in mitigation of sentence the following emerged:

He was released from prison where he was serving a sentence a few days before he committed the offences in question. Upon his release from prison he was confronted with a brother who was very sick and had no place to stay. This prompted him to commit the offence under consideration so that he can raise money to pay for his brother's accommodation.

It also transpired that he was forty (40) years old. He was not married and has seven (7) children.

Appellant had a string of previous convictions dating as early or as far back as 1987, mostly for housebreaking with intent to steal or commit robbery.

The last of such convictions was on the 16 November 2012 when he was convicted of theft and sentenced to two (2) years' imprisonment.

[4] The gist of the appeal against the sentence imposed is that the effective sentence of twelve (12) years' imprisonment is disproportionately harsh and does not take the cumulative effect of the sentences into account. It is also submitted that the fact that the offences are relatively closely connected to each other in time and place was not taken into account when sentencing. In *S v Maseole*[1] the appellant was sentenced to an effective forty three (43) years' imprisonment in respect of various offences. On appeal against the sentences it was held that the cumulative effect of the sentences was so harsh and disproportionate that the appellate court was entitled to interfere and substitute the discretion of the sentencing court. In *S v Moswathupe*[2] the following was stated:

"Where multiple offences need to be punished, the court has to seek an appropriate sentence for all offences taken together. When dealing with multiple offences a court must not lose sight of the fact that the aggregate penalty must not be unduly severe."

[5] The cumulative effect of multiple sentences can be ameliorated by ordering the sentences to run concurrently, by reducing the sentences or by taking various counts as one for the purpose of sentencing.

[6] The Magistrate does not seem to have taken the cumulative effect of the sentences into account especially in view of the fact that appellant had shown remorse. In my view the appeal should succeed.

[7] Accordingly the following is added to the sentence imposed in the court a quo:

In terms of Section 280 (2) of the Criminal Procedure Act 51 of 1977 it is ordered that the sentences imposed in respect of counts 3 and 4 should run concurrently with the sentences imposed in respect of counts 1 and 2.

NG BESHE

JUDGE OF THE HIGH COURT

BLOEM J

I agree.

GH BLOEM

APPEARANCES

For the Appellant : Adv: DP Geldenhuys

Instructed by : LEGAL AID SOUTH AFRICA /

GRAHAMSTOWN JUSTICE CENTRE

69 High Street

GRAHAMSTOWN

Ref.: Mr Geldenhuys

Tel.: 046 – 622 9350

For the Respondent : Adv: H Obermeyer

Instructed by :

NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS

94 High Street

Ref.: Ms Obermeyer

Tel.: 046 – 602 3000

Date Heard : 15 March 2017

Date Reserved : 15 March 2017

Date Delivered : 16 March 2017

[1] 2010 (2) SACR 311 (SCA).

[2] 2012 (1) SACR 259 (SCA).

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