

SOUTH AFRICA / JUDGMENT

Heunis v S (CA & R 358/2011)

[2012] ZAECHGC 54 (25 June 2012)

[2012] ZAECHGC 54**COURT**

Eastern Cape High Court, Grahamstown

BEFORE

Chetty, Goosen

CASE / FILE NUMBER

CA & R 358/2011

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Source record**NOT****REPORTABLE****IN THE HIGH COURT OF SOUTH AFRICA****(EASTERN CAPE, GRAHAMSTOWN)****Case No: CA & R 358/2011**

In the matter between:

BRYAN HEUNIS

.....Appellant

And

THE STATE

.....Respondent

Coram: Chetty and Goosen JJ

Date Heard: 6 June 2012

Date Delivered: 25 June 2012

Summary: Criminal

Law – Theft – Sentence

– Appeal heard three years after conviction – Record

erroneously misfiled – Appellant's

drug dependency

currently unknown – May have been rehabilitated – State

conceding that sentence be set aside and substituted

by one wholly

suspended

JUDGMENT

Chetty, J

- [1] On 6 August 2009, the appellant, unrepresented at the time, pleaded guilty to a charge of theft of clothing to the value of R395.00 and during questioning by the magistrate in terms of section 112(1)(b) of the Criminal Procedure Act¹ (the Act) admitted all the essential elements of the offence charged. This was a classic shoplifting case. The appellant entered Edgars stores, examined the items and proceeded to the fitting room where he removed the security tags, concealed the items on his person and nonchalantly left the premises only to be caught and hauled before the Magistrates' Court. The record indicates that the appellant was duly convicted and the matter then remanded pending a pre-sentence report.
- [2] Several weeks later the appellant appeared for sentence but now represented by attorney Burmeister. The State proceeded to prove the appellant's list of unenviable previous convictions, all four of which comprised convictions of theft and the pre-sentence report commissioned by the trial court, was handed in as exhibit B. The report is thorough and provides the basis not only for the present but also his previous convictions. Extrapolated from the report emerges the underlying cause – his drug dependency. It is apparent from the report that whilst it was under preparation, the appellant was undergoing treatment at the Fort England institution in Grahamstown for his substance addiction. It appears that the appellant was admitted to the institution on 31 May 2009 and released on 26 June 2009, a few months prior to the present offence.
- [3] Notwithstanding the recommendations contained in the pre-sentence report the magistrate sentenced the appellant to three years imprisonment in terms of section 276(1)(i) of the Act. On 21 September 2009, attorney Burmeister successfully sought leave to appeal against the sentence imposed and the appellant was released from custody pending the outcome of the appeal. The prolonged delay in the prosecution of the appeal cannot be attributed to the appellant. He had entrusted this task to attorney Burmeister, at whose door, collectively with the magistrates' court staff, the blame must be apportioned. Finally, on 8 November 2011 the matter was placed before magistrate Cannon who set the appeal process in motion. When the matter was finally argued, almost three years had since elapsed. There is consequently a dearth of information concerning the appellant's current circumstances.
- [4] In his reasons for judgment, the trial magistrate has referred to a number of factors considered in regard to the sentence imposed, both aggravating and mitigating, but has, in my view, accorded the appellant's personal circumstances insufficient weight.

Although the pre-sentence report indicates that the appellant was admitted to the substance abuse treatment unit at Fort England the detention, and hence treatment, was of short duration. It is no doubt for this reason that the probation officer in casu, recommended that the appellant be ordered to participate in a rehabilitation program for a two year period as a condition to a

suspended sentence. Such a sentence would have been wholly appropriate at the time but its efficacy now, given the effluxion of

time, doubtful. These imponderables no doubt account for the stance adopted by Mr Els that the only appropriate sentence in the circumstances would be a wholly suspended one.

[5] Notwithstanding the gravity of the offence, the concession is properly made. In the result the following orders will issue –

1. The appeal is allowed.
2. The sentence is set aside and replaced by the following –

“The accused is sentenced to three years imprisonment wholly suspended for five years on condition that he is not convicted of theft or attempted theft committed during the period of suspension and for which he is sentenced to imprisonment without the option of a fine.”

3. The sentence is antedated to 18 September 2009.

D. CHETTY

JUDGE OF THE HIGH COURT

Goosen J,

I agree.

G. GOOSEN

On behalf of the Appellant: Mr Solani, Grahamstown Justice Centre, Grahamstown, Tel: (046) 622 9350

On behalf of the State: Adv Els, National Director of Public Prosecutions, High Street, Grahamstown, Tel: (046) 602 3000

1Act No, 51 of 1977

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