

SOUTH AFRICA / JUDGMENT

Julies and Another v S (A416/2010)

[2010] ZAWCHC 538 (10 November 2010)

[2010] ZAWCHC 538**COURT**

Western Cape High Court, Cape Town

BEFORE

R.D. MacDougall, W.J. Louw

CASE / FILE NUMBER

A416/2010

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IN THE WESTERN CAPE HIGH COURT OF SOUTH AFRICA

(CAPE OF GOOD HOPE PROVINCIAL DIVISION)

Case No: A416/2010

In the appeal between:

Hendrik JuliesAppellant No. 1

Huzzel LukasAppellant No. 2

Versus

The StateRespondent

Judgment

delivered: 10 November 2010 R.D. MacDougall, AJ The present appeal relates to two appellants, Hendrik Julies is the first appellant, Huzzel Lukas is the second appellant. Originally three accused were tried in the court a quo. Both appellants pleaded guilty to four counts of housebreaking with the intention to steal and theft. The amount of the goods involved was the sum of R21 643.60. The second appellant also pleaded guilty to a further count of housebreaking with the intention to steal and theft. The value of the goods in the last mentioned count was R412.00. Both appellants had a number of previous convictions in which housebreaking with the intent to steal and theft prominently featured. The accused were fourteen years old at the time of sentencing and were each sentenced to three years in prison in a youth prison. Miss Square, who had compiled probation reports on behalf of the two appellants informed the court that she recommended postponed

sentences in the case of the two appellants. She testified that at the time that she drew up her recommendations in the reports, she was unaware that both appellants had previous convictions. Miss Square testified that this was her first year as a probation officer and that she was learning every day. Miss Square also testified that the recommended sentence decision also came from a 'House Outeniqua' panel meeting in George. Part of the panel consisted of the appellants and their parents. I do not know what the status of 'Huis Outeniqua' is save that it appears to hold juvenile offenders until they are sentenced. There is one aspect that a person gleans from the evidence of Miss Square and that is that Miss Square was told by the parents of both appellants that they were undisciplined and it clearly appears that their homes are not structured. Both these appellants urgently need disciplined and structured lives. From the evidence before the magistrate it does not appear that the social services available to the appellants in Caiitzdorp would provide the necessary structure for the appellants should they be released back into the community, under their supervision. The learned magistrate asked Miss Square if she was not overlooking the interests of the complainants, i.e. the interests of society in her approach to sentence. Miss Square replied that this was indeed so. I would not have handed down the sentence that the magistrate did. I do not believe that the sentence of three years direct imprisonment was the last resort for the appellants. A sentence of three years imprisonment is clearly inappropriate in this case but so is a postponement of sentence. In the case of *S v R* 1993 (1) SA 476 (A) Kriegler A.J.A. pointed out that the introduction of correctional supervision as a sentencing option had ushered in a new phase in the South African Criminal Justice System. I am of the view that as was suggested by Mr. Theunissen on behalf of the appellants, the appropriate sentence in the particular

circumstances of this case for both appellants would have been 'two years imprisonment in terms of section 276 (1) (i) of the Act 51 of 1977 as amended.' I might add that Ms Ajam. on behalf of the state, agreed that this would, in the circumstances, be an appropriate sentence. This will enable the Commissioner of Correctional Services to place the appellants under correctional supervision. This, in my view, will provide the structured regime which the appellants clearly need and will serve the interests of the community. In the result I would make the following order. The convictions are confirmed but the appeal against sentence succeeds.

The sentences imposed by the magistrate are changed to Two years imprisonment in terms of the provisions of section 276 (1) (i) of Act 51 of 1977, to commence on 3 June 2010.' R.D. MacDougall AJ Acting Judge of the High Court I agree and it is so ordered. W.J. Louw J Judge of the High Court

Judgment

delivered: 10 November 2010

R.D. MacDougall, AJ

The present appeal relates to two appellants, Hendrik Julies is the first appellant, Huzzel Lukas is the second appellant.

Originally three accused were tried in the court a quo. Both appellants pleaded guilty to four counts of housebreaking with the intention to steal and theft. The amount of the goods involved was the sum of R21 643.60. The second appellant also pleaded guilty to a further count of housebreaking with the intention to steal and theft. The value of the goods in the last mentioned count was R412.00.

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sentences in the case of the two appellants. She testified that at the time that she drew up her recommendations in the reports, she was unaware that both appellants had previous convictions.

Miss Square testified that this was her first year as a probation officer and that she was learning every day. Miss Square also testified that the recommended sentence decision also came from a 'House Outeniqua' panel meeting in George. Part of the panel consisted of the appellants and their parents. I do not know what the status of 'Huis Outeniqua' is save that it appears to hold juvenile offenders until they are sentenced.

There is one aspect that a person gleans from the evidence of Miss Square and that is that Miss Square was told by the parents of both appellants that they were undisciplined and it clearly appears that their homes are not structured. Both these appellants urgently need disciplined and structured lives. From the evidence before the magistrate it does not appear that the social services available to the appellants in Caiitzdorp would provide the necessary structure for the appellants should they be released back into the community, under their supervision.

The learned magistrate asked Miss Square if she was not overlooking the interests of the complainants, i.e. the interests of society in her approach to sentence. Miss Square replied that this was indeed so.

I would not have handed down the sentence that the magistrate did. I do not believe that the sentence of three years direct imprisonment was the last resort for the appellants. A sentence of three years imprisonment is clearly inappropriate in this case but so is a postponement of sentence.

In the case of *S v R* 1993 (1) SA 476 (A) Kriegler A.J.A. pointed out that the introduction of correctional supervision as a sentencing option had ushered in a new phase in the South African Criminal Justice System.

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R.D. MacDougall AJ

Acting Judge of the High Court

I agree and it is so ordered.

W.J. Louw J

Judge of the High Court

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