

SOUTH AFRICA / JUDGMENT

S v Mashigo (383/2017) [2018] ZAGPPHC 653 (19 February 2018) [2018] ZAGPPHC 653

COURT

North Gauteng High Court, Pretoria

BEFORE

S A M Baqwa, V V Tlhapi

CASE / FILE NUMBER

383/2017

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IN

THE HIGH COURT OF SOUTH AFRICA

(GAUTENG

DIVISION, PRETORIA)

High

Court Reference No.: 383/2017

Magistrate's

Serial No.: 13/2017

Case

No: A1286/2017

NOT

REPORTABLE

NOT

OF INTEREST TO OTHER JUDGES

REVISED

In

the matter between:

THE

STATE

and

SHAUN

MASHIGO

REVIEW

JUDGMENT

Baqwa J

[1] The accused, a 21 year old male pleaded guilty in terms of section 112 (2) of Act 51 of 1977 (the Act) in the Magistrate's Court, Benor, to a charge of housebreaking with intent to steal and theft. He was thereafter convicted and sentenced. He was legally represented during the proceedings.

[2] The charge sheet was endorsed to the effect that the accused is sentenced as follows:

" Accused is fined R5 000.00 (five thousand rand) alternatively 4 (four) months imprisonment of which R2 500.00 (two thousand five hundred rand) alternatively 2 (two) months imprisonment is suspended for 5 (five) years on condition that the accused is not convicted of section 262 (1) and 264 Act 51 of 1977 - Housebreaking with intention to steal and theft, which offence is committed during period of suspension. In terms of section 60 of 2000 the accused is not declared unfit to possess a firearm."

The accused paid the fine.

[3] The acting Senior Magistrate, whilst conducting judicial oversight control duties inspecting finalised cases, noted that the sentence imposed in this matter did not seem to be in accordance with justice hence the referral of the matter to this court for a special review.

[4] Section 262 of the Act deals with cases in which the accused is charged with the crime of housebreaking with intent to commit an offence to the prosecutor unknown. However, in the event that the State succeeds to prove a specific crime, the court may convict the accused of such a crime.

[5] On the other hand, section 264 deals with the crime of theft but if during the proceedings the State proves the crime of receiving stolen property or possession of suspected stolen property the court may convict the accused of such crimes.

[6] In the present case neither sections 262 nor 264 were applicable but when imposing sentence, the presiding Magistrate saw fit to impose a partially suspended sentence which made reference to these sections as part of the conditions which the accused had to adhere to. This was a misdirection on the part of the trial court rendering the sentence to be not in accordance with justice.

[7] As mentioned above, the accused paid the fine and the change of conditions of suspension as requested by the acting Senior Magistrate will not cause any prejudice to the accused.

[8] In the circumstances an order is made in the following terms:

ORDER

(a) The conviction and sentence imposed by the learned Magistrate are confirmed.

(b) The sentence is amended by the deletion of the reference to section 262 (1) and section 264 of Act 51 of 1977. The sentence is to read as follows:

" The accused is fined R5 000.00 (five thousand rand) alternatively 4 (four) months imprisonment of which R2 500.00 (two thousand five hundred rand) alternatively 2 (two) months imprisonment is suspended for 5 (five) years on condition that the accused is not convicted of housebreaking with intent to steal and theft, which offence is committed during the period of suspension . In terms of section 103 of Act 60 of 2000 the accused is not declared unfit to possess a firearm."

S. A. M. BAQWA

JUDGE OF THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

I agree.

V. V. TLHAPI

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