

SOUTH AFRICA / JUDGMENT

S v Morris (CA 39/10) [2011] ZANWHC 39 (26 May 2011)

[2011] ZANWHC 39

COURT

North West High Court, Mafikeng

BEFORE

A A Landman, R D Hendricks

CASE / FILE NUMBER

CA 39/10

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**IN THE NORTH
WEST HIGH COURT
MAFIKENG
CASE NO.: CA
39/10
In the matter**

between:

MOHAMMED JOSEPH
MORRIS
.....APPELLANT
and
THE STATE
.....RESPONDENT
CRIMINAL APPEAL
HENDRICKS J &
LANDMAN J
DATE OF HEARING
: 13 MAY 2011
DATE OF
JUDGMENT : 26 MAY 2011
FOR THE
APPELLANT : ADV SKIBI
FOR THE
RESPONDENT : ADV RASAKANYA

JUDGMENT**LANDMAN J:**

- [1] The appellant and one Zain Gail were charged with the offence of housebreaking with intent to steal and theft and were arraigned for trial in the Regional Court for the Regional Division of Lichtenburg.
- [2] On 16 March 2009 the appellant pleaded guilty to the offence of housebreaking with intent to steal and theft. There was a separation of trials. The appellant was sentenced to eighteen (18) years imprisonment. Nine (9) years of the sentence were ordered to run concurrently with the sentence of fifteen (15) years which the appellant was serving. The remaining nine (9) years were to be served consecutively after the expiration of the fifteen (15) years imprisonment.
- [3] During the hearing I inquired from Mr Skibi whether the conviction of housebreaking was in order. The plea statement set out that the appellant and his co-accused spotted an open window and climbed into the house. Mr Skibi submitted that if this court was not satisfied about the conviction we could resort to the inherent power of this court to alter the conviction. I am, however, satisfied that the appellant was, in spite of that part of the plea statement to which I have alluded, properly convicted. I say so because of the general tenor of the plea statement, the reference in the statement to a “breaking”, and the fact that the appellant was represented by a legal representative in the Regional Court who drafted the plea statement and appeared on behalf of the appellant.
- [4] I turn to the appeal on sentence serves before us with leave of this court.
- [5] The test, as regards an appeal against sentence, is not whether the appellate court would have imposed another punishment, but whether or not the trial court exercised its discretion properly and reasonably in imposing the sentence which it did. A discretion which is not based on a substantial misdirection, nor manifestly inappropriate, and which does not induce a sense of shock will have been exercised judiciously. See *S v Obisi* 2005 (2) SACR 350 (W).
- [6] The following facts are relevant to sentence:
 - (a) The appellant and his co-accused broke into the house of Sharleen Mangadi and took items listed in the charge sheet with a total market value of R10 230.00. Goods to the value of R8 060.00 were recovered.
 - (b) The accused is 33 years old.
 - (c) He is married with two children.
 - (d) He passed grade twelve (12) at school.

- (e) He has pleaded guilty to the charge.
- (f) The accused is not a first offender.
- (g) The complainant suffered a loss as a result of the incident.
- [7] Mr Skibi submitted that:
- (a) although the appropriate sentence could be one of direct imprisonment (because of the appellant's of previous convictions) a sentence of 18 (eighteen) years imprisonment induces a sense of shock; and
- (b) the sentence imposed by the court a quo is shockingly inappropriate and this court should interfere.
- [8] Ms Rasakanya submitted that it is correct that innocent victims nowadays are reluctant to leave their houses unguarded or to buy valuable property because of criminals who break into their homes and steal their property. If sentence for serious crimes are lenient, the administration of justice may fall into disrepute and the injured persons may be inclined to take the law into their own hand.
- [9] However, she submitted that although the offence of housebreaking with intent to steal and theft is very serious and prevalent in the Republic, and though there is a public outcry that perpetrators convicted of these offences should receive a high but not harsh sentence, the respondent concedes that the sentence which the trial court imposed was "vitiating with anger and without mercy".
- [10] The concession is well made. In my view a sentence even a sentence of 9 (nine) years, which it is intended the appellant must serve, is too harsh. A sentence of 6 (six) years imprisonment which must be served after the expiry of the appellant's current sentence would be more appropriate.
- [11] In the result I would:
1. Uphold the appeal.
 2. Alter the sentence to read:
"Six
(6) years imprisonment which is to run consecutively after the sentence of 15 (fifteen) years imprisonment which the appellant is currently serving."

A A LANDMAN

JUDGE OF THE HIGH COURT

I concur

R D HENDRICKS

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Prepared on 10 October 2026 · Esheria