

SOUTH AFRICA / JUDGMENT

S v Motingwe (311/2017) [2017] ZAGPPHC 884 (1 November 2017) [2017] ZAGPPHC 884

COURT

North Gauteng High Court, Pretoria

BEFORE

C Pretorius, C J van der Westhuizen

CASE / FILE NUMBER

311/2017

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IN

THE HIGH COURT OF SOUTH AFRICA

(GAUTENG

DIVISION, PRETORIA)

Case

number:

Date:

NOT
REPORTABLE
NOT
OF INTEREST TO OTHER JUDGES
REVISED.
1/11/2017
THE
STATE V JOSEPH MOTINGWE
HIGH
COURT REF.NO. : 311/2017
MAGISTRATE'S
SERIAL NO. : RW01/2017
MAGISTRATE'S
CASE NO. : RC15/2015
REVIEW

JUDGMENT

PRETORIUS J.

- (1) This matter was placed before court as a special review. The accused was charged in the Regional Court, Christiana with two counts of housebreaking with the intent to steal and theft. He pleaded guilty in terms of section 112(2) of the Criminal Procedure Act[1].
- (2) The court, subsequently, convicted him of two counts of housebreaking with the intent to steal and theft.
- (3) The accused, who is 21 years old, has no previous convictions. Both a pre-sentence report and a correctional services report were obtained. On 19 July 2017 the accused was sentenced as follows:

"On each count in terms of section 276(1)(i) of the Criminal Procedure Act 51 of 1977 the accused is sentenced to eight years' imprisonment. Both sentences are ordered to run concurrently in terms of section 280(2)

of the Criminal Procedure Act 51 of 1977."

- (4) He was further declared unfit to possess a firearm in terms of section 193(1) of Act 60 of 2000. The Regional Magistrate had sent the matter on review as he had exceeded his sentencing jurisdiction on section 276(1)(i) of the Criminal Procedure Act[2], by imposing eight years' imprisonment.

- (5) Section 276(1)(i) of the Criminal Procedure Act[3] provides:

"Subject to the provisions of this Act and any other law and of the common law, the following sentences may be passed upon a person convicted of an offence, namely –

- (i) Imprisonment from which such a person may be placed under correctional supervision in the discretion of the Commissioner or a parole board."

- (6) Section 276A(2) of the Criminal Procedure Act[4] provides:

"Punishment shall, subject to the provisions of section 77 of the Child Justice Act, 2008, only be imposed under section 276(1)(i) -

- (a) If the court is of the opinion that the offence justifies the imposing of imprisonment, with or without the option of a fine, for the period not exceeding five years; and
- (b) For a fixed period not exceeding five years."
- (7) It is thus clear that the maximum sentence that may be imposed in terms of section 276(1)(i) of the Criminal Procedure Act[5] is 5 years. The sentence of 8 years is thus not a competent sentence and should be set aside, as it is not in accordance with justice.

- (8) This court is in the same position as the Regional Court as to aggravating and mitigating circumstances. After considering the pre- sentence report, the correctional services report as well as the aggravating and mitigating factors this court is of the opinion that the accused should be sentenced to 5 years imprisonment in terms of section 276(1)(i) of the Criminal Procedure Act[6].
- (9) In the result the following order is made:
1. The sentences imposed by the Regional Court Magistrate, Christiana, in terms of section 276 of the Criminal Procedure Act 51 of 1977 dated 19 July 2017, is set aside;
 2. The accused is sentenced in terms of section 276(1)(i) of the Criminal Procedure Act 51 of 1977 to a period of imprisonment of 5 years on each of the two counts.
 3. The sentences are to run concurrently in terms of section 280(2) of Criminal Procedure Act 51 of 1977.

Judge C Pretorius

I agree.

Acting Judge C J van der Westhuizen

[1] Act 51 of 1977

[2] Supra

[3] Supra

[4] Supra

[5] Supra

[6] Supra

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