

SOUTH AFRICA / JUDGMENT

S v Motlokwa (R11/2020) [2020] ZAFSHC 15 (6 February 2020)

[2020] ZAFSHC 15

COURT

Free State High Court, Bloemfontein

BEFORE

Jordaan, Van Rhyn

CASE / FILE NUMBER

R11/2020

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IN THE HIGH COURT OF SOUTH AFRICA

FREE STATE DIVISION, BLOEMFONTEIN

Review No.:R11/2020

In the matter between:

THE STATE

versus

GIFT MPHO MOTLOKWA

CORAM: JORDAAN, J et VAN RHYN, AJ

JUDGMENT BY: I VAN RHYN, AJ

DELIVERED ON: 6 FEBRUARY 2020

- [1] This matter was referred to the Reviewing Judge for consideration by the Head of the Office, Magistrates Court Sasolburg, Mr Deon van Rooyen, in terms of the provisions of Section 304(4) of the Criminal Procedure Act, 51 of 1977 (“the Act”) subsequent to a Judicial Quality Assessment conducted by him.
- [2] The accused, a 28 year old male was charged with house breaking with intent to steal and theft in that on 17 October 2016 at Taylor Park in the district of Sasolburg, the accused unlawfully and intentionally and with the intent to steal, broke open and entered the house of Paulos Rhadebe and then wrongfully and intentionally stole the following items, to wit: tool box set, 1x amplifier, 1 x grinder, 1 x sports bag, the total value of the items amounting to R1 500, the property or in the lawful possession of Paulos Rhadebe.

[3] The accused was legally represented and pleaded guilty to charge. A statement in terms of the provisions of section 112 (2) of the Act was read into the record by the accused's legal representative. The accused confirmed the contents of the statement. The prosecutor accepted the plea. The presiding officer concluded that the accused admitted all the elements of the charge against him. The accused was convicted as charged and was sentenced to eight (8) months imprisonment.

[4] After perusal of the record, Mr. Van Rooyen was concerned whether the section 112(2) statement disclosed the offence of housebreaking with intent to steal and theft and whether all the elements of the offence were indeed admitted by the accused. In his letter dated 10 December 2019, Mr. Van Rooyen refers to paragraph

(3) of the section 112(2) statement and opines that it is clear from

the statement that the accused entered the house of the complainant through a window. The accused however did not explain whether he opened the window or removed or displaced any part of the window or any other obstacle to gain entry to the house of the complainant.

[5] Paragraph 3 of the section 112(2) statement reads as follows:

"My attorney of record has explained to me the consequences of my plea which I fully understand."

It is evident that Mr. Van Rooyen in fact refers to paragraph (4) (iii) of the statement which reads as follows as quoted in his letter:

"On the day in question I went to the complainant's house, entered through the window, my intention was to steal food but after I entered I then decided to take the said items as per charge sheet and I sold the items and received an amount of R700.00"

[6] The definition for housebreaking with the intent to commit a crime consists in unlawfully and intentionally breaking into and entering a building or structure, with the intention of committing some crime inside the structure or building.[1] The elements of the crime are the following: (a) breaking and (b) entering (c) a building or structure (d) unlawfully and (e) intentionally. The "breaking" consists of the removal or displacement of any obstacle which bars entry to the house or structure. In *S v Letuka*

[2] it was held that it was not necessary that the obstruction had to be of an immovable nature. The mere moving of blinds in an open window in gaining access to a house was sufficient to constitute house breaking. To push open a partially closed door or window[3] will amount to "breaking" into the property.

[7] It is therefore necessary to consider the contents of the section 112

(2) statement in order to ascertain whether the elements of the offence had been admitted by the accused. In paragraph 4 (ii) of the statement the accused explained his conduct as follows:

“ I admit that I did unlawfully and intentionally and with the intent to steal, break open a house of Paulose Rhadebe and did then and there wrongfully and intentionally steal the following ...” (my underlining)

In paragraph 4 (iv) he elaborated upon his conduct and intention as follows:

“I admit that it was my intention to forcefully enter the complainant’s house, steal the said items as per the charge sheet, thereby deprive the owner permanently of ownership.” (my underlining)

[8] In my view the accused admitted that he forcefully broke into the house of the complainant. He forcefully broke open the window in an effort to gain entry to the complainant’s house. The written statement handed in as an exhibit and containing the accused’s

section 112 (2) statement, even though the facts could have been more precise, contains the factual details and covers all the elements of the offence he was charged with and subsequently convicted of.

[9] The presiding magistrate did not clarify any issues with specific reference to whether the glass panel in the window was “broken”

of whether the frame of the window was “broken”, however, it is evident that the accused admitted that some form of obstruction was broken to forcefully gain entrance to the house in question. I am therefore satisfied that the section 112

(2) statement contains the necessary factual basis for the conviction even though the accused and/or his legal representative could have set out the facts admitted more completely and/or clearly.

ORDER:

[10] In the result I propose that the following order be made:

10.1 The conviction on the charge of housebreaking with the intent to steal and theft is confirmed.

10.2 The sentence of eight (8) months imprisonment is confirmed.

I. VAN RHYN. AJ

I concur and it is so ordered:

JORDAAN, J

[1] C R Snyman: Criminal Law, (Sixth Edition) Lexis Nexis p 543.

[2] S v Letuka 1991 (2) SACR 221 (C).

[3] Maelangwe 1999 (1) SACR 133 (NC) 146.

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Prepared on 9 October 2026 · Esheria