

SOUTH AFRICA / JUDGMENT

S v Tsamai (06/2015) [2016]

ZANWHC 53 (30 November 2016)

[2016] ZANWHC 53

COURT

North West High Court, Mafikeng

BEFORE

A.M. Kgoele, R.D. Hendricks

CASE / FILE NUMBER

06/2015

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IN THE HIGH COURT OF SOUTH AFRICA

NORTH WEST HIGH COURT, MAFIKENG

HIGH COURT REF: 06/2015

In the matter between:-

THE STATE

AND

CONDO STANDFORD TSAMAI

REVIEW JUDGMENT

KGOELE J.

[1] The accused was convicted of theft of 3 t-shirts of which the total value thereof were R149,95 (R49,95 each). He was sentenced in terms of Section 276 (1) of the Criminal Procedure Act 51 of 1977 to two (2) years imprisonment and further declared unfit to possess a firearm on the 4/11/2013.

[2] When this matter was received on automatic review it was under cover of a minute from the Presiding Magistrate couched as follows:-

“The procedure for automatic review is aimed at protecting unrepresented accused persons against injustices. This accused was sentenced on the 4/11/2013 and I overlooked and neglected to refer the matter for Review. The accused has most certainly served his minimum sentence and released on parole.

The error is regretted and shall never be repeated.

The matter is hereby referred to your honorable office for Review purposes”.

- [3] I immediately sent a query to the Presiding Magistrate raising some concerns regarding the conviction of the accused in relation to whether he/she ought or not have been convicted of attempted theft. The said query was couched as follows:-

“[1] The typed record of proceedings has not been corrected and signed by the presiding officer. There are places where one cannot discern what was said. Only the presiding officer can do that. Please rectify.

- [2] The questioning i.t.o. Section 112 (1) (b) Inquiry reveals that although the accused admitted that he was hiding the articles with the intention to steal them, he threw the articles to the ground inside the shop and walked out when he realised that an employee in the shop had noticed him. The impression that I get is that he passed the till after having left the articles where he dropped them to the ground and was apprehended by the security out of the shop.

2.1 Was the presiding officer satisfied that the answers given by the accused were sufficient to satisfy the elements that are necessary to constitute an act of appropriation?

2.2 Should the accused not have been convicted of attempted theft?”

- [4] The Presiding Magistrate replied and conceded that in hindsight, he/she agrees that the accused should have been convicted of attempted theft instead. The concession is in my view correctly made. However the length of time that passed since the accused was convicted and before this matter can be decided by way of automatic review is of a great concern to me. It took the Presiding Magistrate a year and some few months, to be precise, from the 4/11/2013 to 12/02/2015 for the case to be sent on automatic review. I am saying this because the Magistrate’s office stamp is dated 12/02/2015. Although a scanty explanation was attached from the Presiding Magistrate for this anomaly, it also appears from the same letter that contained his/her explanation that the matter took a further three (3) months to reach this Court as the

High Court Registrar’s date stamp reflects 2/6/2015. As if it was not enough, my query was sent out on the 8/12/2015, but the reply was received by the office of the Registrar of this Court according to the date stamp on the 19/10/2016 (ten months later). This time there is no explanatory letter for this delay from the Presiding Magistrate.

- [5] The handling of reviewable matters in this manner is completely a dereliction of duty and shoddy work that cannot be tolerated in offices that are required to dispense justice. This amounts to conduct which is unbecoming on the part of Presiding Officers including Clerks of the Courts and also a failure of justice at its best form. It must be condemned in the strongest possible terms simply because the accused who should have served a lenient sentence or not served any sentence at all ended up enduring the punishment which was meted out because of a wrong conviction. The review

procedure is designed to protect unrepresented accused of possible injustice in a speedy manner. This also brings the administration of justice into disrepute.

[6] Although the delay is inordinately long and it is apparent that the accused in this matter has probably served the said sentence and released, the setting aside of the conviction is still necessary.

[7] The accused pleaded guilty to the charge. Although the theft conviction will be set aside and replaced with the one of attempted theft, the record reveals that the accused has three recent previous convictions of theft. He was sentenced on the 31/7/2013, 12/8/13 and 29/8/13 respectively. The value of the items stolen in this matter is not high and the items were all recovered. He was 35 years of age at the time of conviction and sentence and he was unemployed. The fact that the accused had already served the sentence in this matter will also be taken into account for the purpose of sentencing.

[8] The following order is thus made:-

8.1 The conviction of the accused by the trial Court of theft is set aside and is substituted with a conviction of:-

“ATTEMPTED THEFT”

8.2 The accused is sentenced to Two (2) years imprisonment which is wholly suspended for a period of five (5) years on condition that the accused is not found guilty of Theft or Attempted Theft committed during the period of suspension.

8.3 The Registrar of this Court must forward a copy of this judgment to the Magistrate Commission.

A.M. KGOELE

JUDGE OF THE HIGH COURT

I agree

R.D. HENDRICKS

DATED: 30 NOVEMBER 2016

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