

SOUTH AFRICA / JUDGMENT

Sweetman v S (CA&R 240/09) [2010] ZAECGHC 29 (30 April 2010) [2010] ZAECGHC 29

COURT

Eastern Cape High Court, Grahamstown

BEFORE

E. Revelas, P. Tshiki

CASE / FILE NUMBER

CA&R 240/09

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3

IN THE

HIGH COURT OF SOUTH AFRICA

(EASTERN

CAPE, GRAHAMSTOWN)

CASE

NO: CA&R 240/09

DATE

HEARD: 28 April 2010

DATE

DELIVERED:

In the
matter between
DILON
JAMES SWEETMAN Appellant
And
THE
STATE Respondent

JUDGMENT

REVELAS J:

This is an appeal against sentence only. The appellant was accused number one in the District Court, East London, where he and accused numbers two and three (Bruce Lee Nass and Freddy Labuschagne) were charged with housebreaking with the intention to steal and theft. They pleaded to the charge and were on 30 September 2009 sentenced as follows:

The appellant was sentenced to 36 months imprisonment in terms of section 276(1)(i), whereas Nass and Labuschagne were each sentenced

to 24 months' imprisonment, suspended for five years on condition that they are not convicted again of "Housebreaking

with theft committed during the period of suspension (ii) coupled with 12 months supervision from (sic) Probation officers".

Both the appellant and Nass were born in 1989. Labuschagne was born in 1992. Therefore, when the three of them broke into the house of Mr. Amos (the uncle of a friend) in Beacon Bay and stole several valuable items on 28 January 2009, the appellant and Nass were both nineteen years old. Labuschagne was 16 years old at the time. Both the appellant and Nass each have a previous conviction for the same type of offence. Labuschagne had none. There is no reasoned judgment by the trial magistrate (Ms. Z. Mjali) who presided over the matter in the District Court. It is therefore not clear why there is such a disparity between the sentence imposed on the appellant and the sentence imposed on Nass. On the face of it, they should have been sentenced alike. There also seems to be no reason why Nass and Labuschagne (a first offender below the age of 18) received identical sentences. The magistrate was requested by the State to provide reasons for the order in terms of which the appellant was sentenced. In a letter addressed to the Registrar in Grahamstown, she noted short reasons for the sentence, and only in respect of the appellant.

Presumably the other two accused did not appeal against their sentences.

In her letter, Ms. Mjali said she considered "the triad of the law as per Zinn's case" and that the reasons for the different sentence imposed on the appellant, was the prevalence of the crime, the interests of the community, the seriousness of the crime with the emphasis on the invasion of the victim's privacy, and the fact that the accused was not a first offender.

Whereas some of the scant reasons given in her letter may be sound sentencing considerations, the magistrate had not considered the appellant's personal circumstances. Probation officer's reports in respect of each of the accused (including the appellant) formed part of the evidence before the magistrate. No reference was made to any of these reports by her either. It appears from her letter as if they were not considered at all. She simply did not deal with the separate and different sentences she had imposed.

Whereas magistrates are not expected to write judgments resembling dissertations on the law each time persons are convicted and

sentenced, some measure of determinable reasons should be evident from their pronouncements. Magistrates are obliged to give proper

reasons when they deprive convicted persons of their freedom. As a court sitting on appeal, Ms. Mjali's letter to the Registrar is of little value in deciding whether there is merit in the appeal. The letter does not assist this Court in deciding whether or not, and to what extent, the sentence imposed (which on the face of it appears to be too harsh), should be interfered with. The State has conceded that the sentence is too harsh. Only the magistrate can correct her misdirection. In the circumstances the appellant's sentence should be set aside and accordingly the following order is made:

1. The sentence imposed on the appellant, Dillon Sweetman on 30 September 2009 is hereby set aside.
2. The matter is remitted to the magistrate (Ms. Mjali) to consider the evidence properly and to sentence the appellant afresh.
3. Any sentence imposed by her on the appellant must be antedated to 30 September 2009.

E. REVELAS

JUDGE OF THE HIGH COURT

I agree,

P. TSHIKI

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