

SOUTH AFRICA / JUDGMENT

Venter v S (A686/15) [2016] ZAGPPHC 121 (29 March 2016)

[2016] ZAGPPHC 121

COURT

North Gauteng High Court, Pretoria

BEFORE

DT Skosana, N Janse Van Nieuwenhuizen

CASE / FILE NUMBER

A686/15

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IN

THE HIGH COURT OF SOUTH AFRICA

[GAUTENG

DIVISION, PRETORIA]

CASE

NO: A686/15

DATE:

29 MARCH 2016

MARKO LUDEWIKUS

VENTER.....Appellant

And

THE

STATE.....Respo

ndent

JUDGMENT

SKOSANA AJ

- [1] The appellant in this case has brought an appeal only against the sentence imposed on him by the judgment of the learned magistrate, Mr Le Roux.
- [2] The appellant pleaded guilty and was found guilty of house breaking with intend to steal and theft. She was then sentenced to five years direct imprisonment.

- [3] The relevant facts are that the appellant went to the property of one Anne Smith on 09 March 2015 at 15h00. He had gone to visit the complainant and discovered that there was no one at the house, he noticed that there was a washing machine in the garage and decided to steal it.
- [4] He opened the garage door took out the machine and sold it at a nearby pawn shop. After being arrested, the machine was recovered from the pawnshop and returned to the complainant. The value of the machine was R2 631-00.
- [5] The appellant was 21 years of age at the time of the commission of the offence, he was unmarried but had impregnated his girlfriend and had one previous conviction for a similar charge where he had been sentenced to 4 years imprisonment and had already started serving the sentence at the time of the judgment under consideration. 4 years' imprisonment he received for the other offence was being served under correctional supervision in terms of section 276(1)(l) of the Criminal procedure Act no. 51 of 1997.
- [6] It appears that after the appellant had been given the sentence of 5 years' imprisonment, the correctional services informed him that the total number of years he has to serve is now 9 years and the correctional supervision has fallen away. In other words, he must serve 9 years direct imprisonment
- [7] In paragraph 1.6 of her heads of argument, counsel for the State also regards the sentence of 5 years direct imprisonment to be uon the heavier side". He also submits that the appellant was already serving a 4 year sentence on a similar charge but that does not seem to have played a significant role in the reasoning of the magistrate when imposing the 5 years imprisonment sentence.
- [8] It seem to me that, though the circumstances of the previous similar conviction are unknown, they may either be similar or less severe than the circumstances of the present case. In fact, in the absence of information in this regard, one has to assume in favour of the appellant or give the appellant a benefit of doubt in this regard.
- [9] Further there was a clear expression of remorse on the part of the appellant in that he not only pleaded guilty but disclosed all circumstances under which the offence was committed. He was also only 21 years of age at the time and in my view, he should not be completely deprived of the opportunity to repent or rehabilitate. It must also be noted that there was no force used in committing the offence and apparently no damage was caused either to the stolen item or through forced entry at the complainant's house.
- [10] In my view, it could not be said that the appellant was non-repentant in the light of the previous conviction. Such conviction clearly took place after the commission of the present offence. To me it seems appropriate to have ordered that the sentence in the present case or a portion thereof should run concurrently with the sentence imposed in the previous similar conviction.

[11] In the circumstances it is my view that the sentence of 5 years imprisonment is so severe that it warrants interference by this appeal court, taking into account that the appellant will otherwise have to serve a sentence of 9 years in total as indicated above.

[12] In the circumstances, I suggest that the following order be made:

[a] The appeal is upheld.

[b] The appellant's sentence is reduced to 2 years imprisonment, one year of which he is suspended for two years on condition that the appellant is not found guilty of an offence involving dishonesty.

DT SKOSANA

Acting Judge of the High Court

I concur and it is so ordered.

N JANSE VAN NIEWENHUIZEN

Judge of the High Court

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