

SOUTH AFRICA / JUDGMENT

Van Zyl v S (A.306/99) [2000] ZAGPHC 16 (17 May 2000)

[2000] ZAGPHC 16

COURT

High Courts - Gauteng

BEFORE

Schabert

CASE / FILE NUMBER

A.306/99

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IN THE HIGH COURT OF SOUTH AFRICA

(WITWATERSRAND LOCAL DIVISION)

JOHANNESBURG

17 May 2000

The Magistrate Norwood

CASE NUMBER : A.306/99

In the matter between

VAN ZYL, CORNELIUS FREDERICK'Appellant

and

THE STATE..... Respondent

The appellant was charged in the Regional Court with housebreaking with intent to steal and theft. The offence was committed on 30 March 1998. The items stolen were 2 electrical appliances, cold drinks, dog food, a decoder, a video machine, TV, hi-fi, a camera, watches, jewellery and lighters. The appellant pleaded guilty, at his trial, and his plea of guilty was accepted by the State and found to have been correctly made by the learned magistrate. The appellant does not, in his appeal, contest the correctness of his being convicted. The learned magistrate proceeded to declare the appellant an habitual criminal. It is true that he had a long record of previous

offences, most of which were related to that in respect of which he was found guilty. In particular he was found over and over again to have been guilty of theft. Significantly, however, the last conviction that the appellant had was in 1986. It would appear then that the appellant had been rehabilitated for some period of time before the crime in respect of which he had been convicted and which causes the subject matter of this appeal. There is clear authority, that there should not be a long lapse of time between the present crime and previous offences before a person is declared to be an habitual criminal in terms of section 286 of the Criminal Procedure Act, 51 of 1977 (cf S v Magakoe and Others 1975

(2) PH H 100 (A), and 5 v Makoula 1978 (4) SA 763 (SWA)). It would seem to me that the learned magistrate accordingly misdirected himself in declaring the appellant an habitual

criminal, given the overall circumstances of this particular case. Counsel for the State eventually conceded that this may well have been the case, and that the learned magistrate may well indeed have misdirected himself. Counsel for the appellant submitted that an appropriate sentence would be between 7 and 10 years, and counsel for the State submitted that an appropriate sentence would be 10 years. In my view a sentence of 8 years' imprisonment would be more appropriate. Accordingly I would uphold the appeal in regard to sentence, I would set aside the declaration of the appellant as an habitual criminal, and I would impose a sentence in lieu of that, imposed by the learned magistrate, of - 8 years' direct-imprisonment. SCHABQRT, J:- . I agree. It is ordered accordingly. ON BEHALF OF APPELLANT: ADV NGUTSHANE INSTRUCTED BY: ON BEHALF OF THE STATE ADV MALANGE DATE OF HEARING: 17 MAY 2000 DATE OF JUDGMENT:17 MAY 2000

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