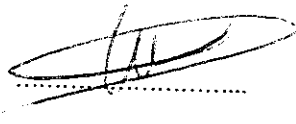


REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG, PRETORIA)

(1)	REPORTABLE: YES / NO
(2)	OF INTEREST TO OTHER JUDGES: YES /NO
(3)	REVISED. <u>05.02.2014</u> 
	DATE SIGNATURE

5/2/2014

CASE NO: A697/2012

In the matter between:

MDUDUZI DLAMINI

Appellant

and

THE STATE

Respondent

J U D G M E N T

CAMBANIS AJ

[1] This is a criminal appeal against sentence only, the appellant having pleaded guilty to the charge of housebreaking with the intent to steal and theft committed on the 4th August 2011. The court convicted him of this charge.

[2] Appellant was initially charged with another person but their trials were separated on 24th January 2011 when Appellant elected to plead guilty to the charge and submitted his statement in terms of section 112 (2) of the Criminal Procedure Act no 51 of 1977.

[3] Appellant admitted that he together with his friends broke a door, gained entry into the home of Ms. Yvette Ali and stole spare keys of a motor vehicle, one SAMUNG DVD player, T-shirts, one HP laptop and a Sony DIGITAL Camera. They shared the stolen property amongst themselves. He does not name those persons nor does he disclose how the stolen items were divided up amongst themselves. He does not say how many friends were involved nor does he provide the names of the other people involved. In short, the Appellant, did nothing to assist the police in investigating this crime any further which in my view indicates that he does not have any remorse for having committed this crime. This is an aggravating factor.

[4] At the sentencing stage of the trial, the State proved six previous convictions for house breaking, one conviction for possession of reasonably suspected stolen property and one conviction of theft. He was twice previously declared unfit to possess a firearm. His history of previous convictions constitutes another aggravating factor.

[5] A perusal of his previous convictions reveals that the appellant was still on suspension until 9 November 2012 on the theft charge and still under correctional supervision until 9 October 2012 at the time that he committed the crime under

discussion. This clearly did not in any way whatsoever deter the appellant from engaging once again in this criminal conduct.

[6] The trial court failed to consider this aspect when deciding an appropriate sentence and thus failed to consider the additional terms of imprisonment that ought to have come into effect once the appellant was again convicted during the periods of suspension on his previous convictions.

[7] The appellant did not call any witnesses in mitigation of sentence nor did he testify on his own behalf. His personal circumstances were placed on record by his legal representative, namely that he is single, he has two (2) children and a pregnant girlfriend at the time of sentence. He gained employment as a carpenter two months before his trial, he left school in standard 8 and was the bread winner.

[8] In considering whether to interfere with sentence on appeal, the Court of Appeal is mindful of established legal precedent that an Appeal Court will not lightly interfere with the lower court's decision. It will only do so where the sentence imposes a sense of shock and is startlingly inappropriate or where there is a clear case of misdirection.

[9] The only possible misdirection by the lower court was to ignore further aggravating factors as already mentioned in paragraphs 5 and 6 above.

[10] This court was referred to a number of cases in which accused persons received lesser sentences for the offence of housebreaking. A reading of these

cases reveals that the circumstances and personal history set out in those cases are remarkably different to the present case. They do not provide any useful guidance nor do they show that this sentence is inconsistent with sentences handed down by the court for the same offence.

[11] The Appellant has failed to persuade this court that any misdirection has taken place. He has also failed to establish that the sentence induces a sense of shock or that it is inappropriate.

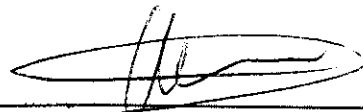
[12] The court makes the following order:

1. The appeal is dismissed.



C CAMBANIS
ACTING JUDGE OF THE HIGH COURT

I agree



K E MATOJANE
JUDGE OF THE HIGH COURT

DATE OF HEARING : 9 SEPTEMBER 2013

DATE OF DELIVERY :

FOR THE APPLICANT : MR J VAN ROOYEN (Attorney)

INSTRUCTED BY : PRETORIA JUSTICE CENTRE

FOR THE RESPONDENT : ADV S R SIBARA

INSTRUCTED BY : DIRECTOR OF PUBLIC PROSECUTIONS,
PRETORIA