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

CASE NO: A884/2013

DATE OF HEARING: 17 APRIL 2014

(1) REPORTABLE: YES / NO
(2) OF INTEREST TO OTHER JUDGES: YES/NO
(3) REVISED.

17/4/14
DATE

SIGNATURE

In the matter between:

VUYANI BRUCE BALETE **APPELLANT**

and

THE STATE **RESPONDENT**

J U D G M E N T

MAKHOBA AJ:

The appeal is properly on the roll.

1. THE CHARGE

The Appellant was charged with four counts of theft of which he pleaded guilty to counts one and two and not guilty on counts three and four. The Appellant was convicted on counts one and two on the 10th August 2010. In respect of counts three and four the trial commenced on the 10th August 2010. After several delays it was finalised on the 24th February 2011 whereby Appellant was discharged on counts three and four.

2. SENTENCE

On the 24th February 2011 Appellant was sentenced as follows by the court *a quo*:

1. Count 1: 3 (three) years imprisonment
2. Count 2: 3 (three) years imprisonment

The court *a quo* did not order that the sentences on the two counts run concurrently. Appellant was thus sentenced to an effective period of 6 (six) years imprisonment. The Appellant was granted leave to appeal by the court *a quo* against the sentences imposed.

The appeal is therefore solely on the sentence only.

3. GROUNDS OF APPEAL

Counsel for the Appellant relied on the following grounds of appeal against the sentence.

i. The sentence imposed by the court *a quo* is startlingly severe and disproportionate;

ii. Court *a quo* failed to consider various mitigating factors;

iii. The sentence accounts only for retribution and general deterrence as aims of sentence whilst individual deterrence and rehabilitation was ignored;

iv. The time spent in custody was not taken into account;

Counsel for the Respondent submitted that the sentence imposed by the court *a quo* should be confirmed. Furthermore Respondent submitted that the Appellant has in any event been released on parole on 24 May 2013 having served 2 (two) years and 7 (seven) months.

4. THE LAW

In S v Anderson 1964 (3) SA 494 (A) at 495 paragraph D-E Rumpff JA said the following *"Over the years our courts of appeal have attempted to set out various principles by which they seek to be guided when they are asked to alter a sentence imposed by the trial court. These include the following: the sentence will not be altered unless it is held that no reasonable man ought to have imposed such a sentence, or that the sentence is out of all proportion to the gravity or magnitude of the*

offence, or that the sentence induces a sense of shock or outrage or that the sentence is grossly inappropriate or inadequate, or that there was an improper exercise of his discretion by the trial Judge, or that the interest of justice require it".

In S v Mkize 1973 (3) SA 284 (N) 286 F-G Miller J said the following: *"While the public is entitled to protection against any one individual, one cannot sacrifice the individual entirely in offering that protection to it. I think the most the court can do consistently with justice is to protect the public for as long a period as seems commensurate with the accused's desert."*

In this matter before us the Appellant was relatively young when he committed the offence in question. In S v N 2008 (2) SACR the court held that the child offenders were to be distinguished from adults because it must be recognized that their crimes might stem from immature judgements.

5. CONCLUSION

The Appellant in this case was 18 years of age at the time of the commission of the offences. He was a first offender and he pleaded guilty on the first and second counts. The value of the items is not that substantial. It is my respectful view that due to the age of the Appellant and the nature of the offences he committed the court *a quo* should at last have requested a pre-sentence report before sentence was

imposed. Such report would have enabled the court *a quo* to impose a proper sentence.

On page 81 of the record lines 5-20 the court *a quo* over emphasised the interest of the community and the bad character of the accused and those who in the opinion of the court are like him. By so doing the court did not properly take into account the Appellant's personal circumstances and over emphasised the interest of the society. The court *a quo* failed to take into consideration that the Appellant had been in custody for far too long due to the delay of the trial by the State.

Consequently I find that the sentence imposed to the Applicant by the court *a quo* on both counts are excessive and there was an improper exercise of the court's discretion by the trial court – see S v Mkize and S v Anderson supra and other decisions referred to above.

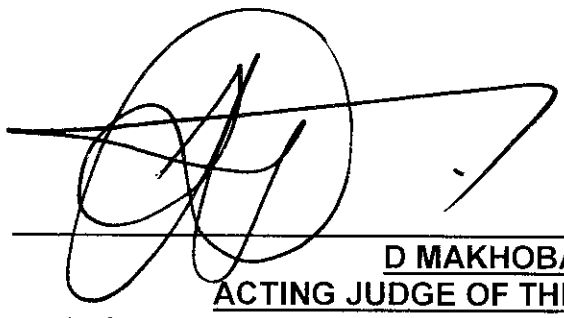
It is unfortunate that the Appellant had already served part of his sentence in prison.

6. ORDER

I propose the following order: The Appeal against sentence is upheld.

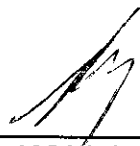
The sentencing imposed on counts one and two are set aside and the following sentence is imposed.

1. For purpose of sentence both counts are taken as one.
2. 18 (eighteen) months imprisonment suspended for a period of 3 (three) years on condition the accused is not convicted of any offence of which dishonesty is an element committed during the period of suspension
3. In terms of section 282 of Act 51 of 1977 the sentence is ante dated to the 24th February 2011.



D MAKHOBA
ACTING JUDGE OF THE
HIGH COURT OF SOUTH AFRICA,
GAUTENG DIVISION, PRETORIA

I agree and it is so ordered.



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