225/92

Case Number 575/91

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IN THE SUPREME COURT OF SOUTH AFRICA

(APPELLATE DIVISION)

In the matter between:

JAN DANIëL CRONJÉ OOSTHUIZEN Appellant

and

THE STATE Respondent

CORAM: KUMLEBEN JA, NICHOLAS ET KRIEGLER AJJA

DATE OF HEARING: 26 NOVEMBER 1992

DATE OF JUDGMENT: 27 NOVEMBER 1992

J U D G M E N T

KRIEGLER AJA/.....

KRIEGLER AJA:

This is an appeal against sentence. The appellant was convicted in the magistrate's court Newcastle on three counts of stock theft. He was sentenced to two years imprisonment on each count but on counts 1 and 2 one year was conditionally suspended for three years. The result was an effective sentence of four years imprisonment plus two years conditionally suspended. In addition the appellant's motorcar and his interest in a trailer were declared forfeit to the State in terms of s. 35 of the Criminal Procedure Act No. 51 of 1977. An appeal to the Natal Provincial Division against conviction and sentence failed. Subsequently leave was granted upon petition to appeal to this court against the sentences.

The relevant facts fall within a narrow compass. The appellant and his wife (accused no.2

at the trial) lived in a mining village in the district of Newcastle. The complainant, a Mr Croft, carried on sheep farming on an adjacent farm. Croft's staff housing was located on that portion of the farm nearest the mining village. One of his farm workers, named Mngomezulu (accused no. 3 at the trial), lived in one of the staff houses. On three occasions during April and May 1989 the appellant and Mngomezulu stole a total of 16 ewes in lamb from Croft's breeding flock; first they took one, then four and on the third occasion 11. Mngomezulu brought the sheep to a remote part of Croft's farm where he and the appellant lifted them over a barbed wire fence and the appellant then transported them to the farm of a friend of his in the district. Each theft took place under cover of darkness. On the third occasion the appellant made use of a trailer connected to his motorcar to transport the stolen sheep. On his way

to the friend's farm he was stopped by the police and the ensuing investigations led to the prosecution. The five ewes that had been stolen on the first two occasions, all of which had in the interim lambed, were found on the farm. In the result Croft recovered all his stock.

At the trial the appellant and Mngomezulu tried, ineffectually, to put the blame on one another. Both of them and the appellant's wife, who did not testify, were convicted on all three counts. On appeal the court a quo set aside the wife's convictions and sentence but refused to interfere in the case of the appellant.

The record does not contain the grounds of appeal in the court a quo but a copy was subsequently filed under cover of an explanatory letter by the appellant's Bloemfontein attorney. The only point regarding sentence that is raised in the notice is its alleged undue severity. The

record does not reflect whether the trial magistrate responded to that contention. Be that as it may, the argument submitted on behalf of the appellant was rejected in the court a quo (Hugo J, Alexander J concurring). With leave granted on petition to the Chief Justice the appeal against sentence was pursued in this court. Substantially the same two points were advanced in this court as had been rejected by the court a quo. The first was that the sentences were so severe as to induce a sense of shock and the second that the trial court had misdirected itself in not dealing with the appellant more leniently than with Mngomezulu. The crux of the latter argument was that Mngomezulu's conduct had been more blameworthy in that he had abused a position of trust.

Counsel for the appellant's argument to the contrary notwithstanding, there is no reason to differ from the court a quo regarding either

ground. The sentences are no doubt robust, particularly in their cumulative effect, but they do not manifest any impropriety in the exercise of the trial court's sentencing discretion. It is, of course, trite that in the absence of such impropriety a court of appeal is not entitled to interfere. (See e.g. S v Rabie 1975 4 SA 855 (A) at 857D; S v Pillay 1977 4 SA 531 (A) at 535E-F; S v Holder 1979 2 SA 70 (A).) Moreover, the case called for robust sentences. The crimes are inherently serious, they were carefully planned and were committed for greed, not need. The magistrate took into account the prevalence of stock-theft in her district and that the three thefts were committed over a period of one-and-a-half months. The fact that the complainant ultimately suffered no loss can in the circumstances have but little ameliorating effect on sentence.

The second point, viz that the magistrate

ought to have dealt more lightly with the appellant than with Mngomezulu, is not really covered by the notice of appeal. As there was no objection by counsel for the State and as there is very little to the point, I shall deal with it. There was no good reason to deal more severely with a dishonest farm labourer than with the prime beneficiary of the thefts. The trial magistrate's decision to deal with the appellant and Mngomezulu on an equal footing was in accordance with principle (see eg. S v Giannoulis 1975 4 SA 867 (A) at 870H and S v Moloi and Another 1987 1 SA 196 (A) at 223G - H). Her finding as to the thieves' degrees of participation in the commission of the crimes cannot be faulted either. Nor is there any indication of a disparity in personal circumstances warranting discrimination as between the two.

The appeal is dismissed.

J.C. KRIEGLER

ACTING JUDGE OF APPEAL

KUMLEBEN JA]

] CONCUR

NICHOLAS AJA]