Court File

IN THE HIGH COURT OF SOUTH AFRICA

(CAPE OF GOOD HOPE PROVINCIAL DIVISION)

CASE NUMBER: A486/2008

DATE: 20 FEBRUARY 2009

In the matter between:

ALFREDO VISSER APPLICANT

and

THE STATE RESPONDENT

JUDGMENT

BUIKMAN, A J:

The appellant in this case was found guilty in the regional court of Bredasdorp on 20 May 2008 on charges of housebreaking with the intent to steal and theft, in that during the period 19 December 2007 and 26 December 2007 and at or near number 3 Aster Avenue, Bredasdorp, he and his co-accused, Mr Jaco Dawids, accused number 1, broke into the home of Mr Peter John Appolis and stole one pair of shoes. The appellant was sentenced to 12 months imprisonment. He now appeals against the sentence.

The appellant pleaded guilty to the charge of housebreaking and theft and prepared a written plea in terms of section 112(2) of the Criminal Procedure Act 51/1977. In this statement the appellant contended that:

1. On 25 December 2007 he was walking with accused number 1, who told him to enter the premises of Mr Appolis, as it was not locked:

2. Accused number 1 pushed the door open.

3. He took a pair of shoes and accused number 1 took a hot water bottle.

4. He gave the shoes to his uncle, but when the police came to look for the shoes, he went to fetch them and handed them over to the police.

On 12 June 2008 the appellant was granted leave to appeal against his sentence and was granted bail pending his appeal. The appellant did not testify in respect of the issue of sentence. He chose rather to address the Court regarding his personal circumstances, through his legal representative, as follows:

1. The appellant was 18 years of age at the time of the crime.

2. He has no children or dependants.

3. He resides with his mother and stepfather.

4. He completed Standard 8 at school

5. He works at the vineyards at Strandveld Agri, for which he receives R70,00 per day.

6. He uses his wages to contribute towards the cost of food at home.

7. His mother was supportive of him and was present during the hearing.

8. He accepted responsibility for what he had done, pleaded guilty to the offence and did not waste the Court's time.

9. He played a lesser role in the housebreaking than accused number 1.

10. He has no previous convictions.

He did not own a firearm and was not planning to apply for the license to own a firearm.

There was no damage caused to the property of Mr Appolis and the shoes stolen by the appellant were returned to the complainant's possession.

nough it is contended for in the appellant's heads of ument, prepared by his legal representative, that there e recommendations by a probation officer to the effect that appellant should be sentenced to correctional supervision accordance with section 276(1)(a) of Act 51/1977, no erence is made at all to a probation officer's report in the ord of the proceedings. It was not referred to by the Court does not form part of the exhibits. According to the gistrate, in the reasons he furnished for his sentence, he however, consider correctional supervision as an rnative sentence.

trite that when youths or juveniles stray from the path of itude to criminal conduct, it is the responsibility of judicial cers, invested with the task for sentencing such youths, to ure that he or she receives all relevant information aining to such juvenile to enable him or her to structure

sentence that will best suit the needs and interests of the particular youth. The judicial officer has to ensure that whatever sentence he or she decides to impose, will promote rehabilitation of that particular youth and to have, as its priority, the reintegration of the youthful offender back into his or her own family and community. In this regard see S v Phulwane & Others 2003(1) SACR 631 (T).

I am satisfied that the magistrate did not consider the possibility of other sentencing options. Having regard to the paucity of information available to him at the time regarding the personal circumstances of the appellant, I am of the view that the magistrate ought, at the very least, to have requested the assistance of correctional officers, social workers or probation officers to help him decide on an appropriate sentence. The effect of the sentence handed down by the Trial Court is that the imprisonment of the appellant will seriously impact on his future reintegration into society.

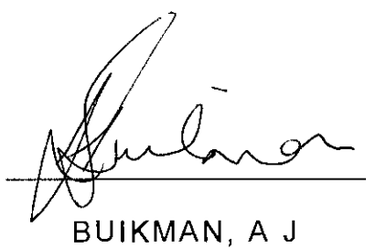
The interests of society cannot be served by disregarding the interests of the youth. A mistaken form of punishment might easily result in a person with a distorted or more distorted personality being eventually returned to society. In S v Holder 1979(2) SA 70 (A), Rumpff, C J emphasised that a decision to imprison should not be lightly imposed and should only be

taken after careful consideration as to whether the objects of punishment could not be met by another form of punishment such as a fine or without a suspended sentence of imprisonment.

The Trial Court found that the offence for which the appellant had been convicted was extremely prevalent in our time and that the Court had to take into account that the victims of housebreaking are becoming frustrated to the extent that they are prepared to take the law into their own hands. Notwithstanding the appellant's personal circumstances, the Court found that the only suitable sentence was direct imprisonment. Although the Trial Court held that the interests of justice dictate that the Court should not just hand out imprisonment sentences "left and right" this is precisely what the magistrate did. Undue weight was given to the seriousness of the offence and the interests of the community and accordingly the sentence is, in my view, flawed. The State correctly conceded that the sentence is inappropriate and should be substituted with a lesser form of punishment.

I am of view that the sentence imposed is wholly inappropriate and induces a sense of shock and in the circumstances I would propose that the sentence for 12 months imprisonment be set aside and that it be substituted with a sentence of 6 (SIX)

MONTHS IMPRISONMENT, which is totally SUSPENDED for a period of 5 (FIVE) YEARS, on condition that the appellant is not convicted of theft or any attempt thereof during the period of suspension.



BUIKMAN, A J

I agree

ERASMUS, J