

IN THE COURT OF APPEAL OF THE REPUBLIC OF BOTSWANA

Criminal Appeal No. 9 of 1981

In the matter of:

ADOLF DITLHOBLO

vs

THE STATE

Appellant in Person

G. R. Gareebine for the Respondent

---

JUDGMENT

---

Coram: Maisels, P  
Dendy-Young, J.A.  
Aguda, J.A.

MAISELS, P

The appellant, one Kaunda and a third person were jointly convicted by a Magistrate of store breaking and theft. They were sentenced to four years' imprisonment. The appellant and Ben Kaunda appealed to the High Court against conviction and sentence. Not only was their appeal dismissed but the sentence of four years imprisonment was increased to seven years imprisonment.

Ben Kaunda appealed to this Court in December last year against the decision by the High Court increasing the sentence.

2.

There was also an appeal against conviction. There was no merit in the appeal against conviction but this court came to the conclusion that despite the dreadful nature of Ben Kaunda's previous convictions it could not say that the sentence imposed on Ben Kaunda by the Magistrate was manifestly inadequate and reduced his sentence to that imposed by the Magistrate i.e. 4 years imprisonment. Your record of previous convictions is just as bad as that of Ben Kaunda but Counsel who is appearing for the State has very fairly and appropriately taken up the attitude that it would be wrong to differentiate between the treatment given to Ben Kaunda and the treatment to be given to you. Consequently your appeal will succeed to the extent that the Magistrate sentence of four years will be restored. In the case of Kaunda I recorded a serious warning and the same warning is going to be issued to you. Unless you mend your ways, however unlikely that may be having regard to your previous record, but I say unless you mend your ways and you commit another crime on any sort of seriousness you can expect no mercy from any court and you can take it as beyond doubt that you will be sentenced much more severely. You and your fellow friends are a menace to society and the court will take strong steps to protect society from you.

3/..

3.

As we do not consider that in the circumstances the sentence imposed by the Magistrate was manifestly inadequate and in addition because of the sentence imposed on your fellow thief Kaunda and the fair attitude adopted by Counsel for the State, the appeal against sentence is allowed, and the sentence of four years imprisonment imposed by the Magistrate is restored. Otherwise your appeal is dismissed.

*I. A. Maisels*  
.....  
I. A. Maisels  
President of Court of Appeal

I agree: *J. R. Dendy-Young*  
.....  
J. R. Dendy-Young  
Judge of Appeal

I agree: *T. A. Aguda*  
.....  
T. A. Aguda  
Judge of Appeal

LOBATSE

15th June, 1981