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IN THE COURT OF APPEAL OF BOTSWANA

Criminal Appeal No. 17 of 1990

In the matter between:

PATRICK NTHAU

vs

THE STATE

Appellant in person
M.E.C. Mhango for the State

J U D G M E N T

Coram: B.A. Doyle, J.A.:
G. Bizos, J.A.:
W.H.R. Schreiner, J.A.:

B.A. DOYLE, JA:

The applicant was convicted on 20th October, 1987 in the Magistrate's Court at Jwaneng on one count of burglary and theft and one count of burglary. He had pleaded guilty to the first count. He was sentenced to eight years imprisonment and 4 strokes on each count concurrent. On appeal to the High Court the appeal to the High Court the appeal against the second count of burglary was allowed and the conviction was quashed.

On the count of burglary and theft the sentence was reduced to five years imprisonment and the strokes were confirmed.

The applicant now seeks leave from this Court to appeal against sentence. The gist of his appeal is not that the sentence of five years in itself is excessive but that on a subsequent occasion on the 10th December, 1987 he was found guilty at the Magistrate's Court at Gaborone, and sentenced to six years

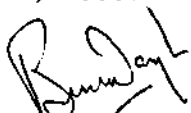
imprisonment. He maintains that the magistrate on that occasion made the sentence concurrent with all sentences he was already serving but that the prison authorities state that they have no record of this. He asks that this be rectified as otherwise he will serve too long a sentence. There is nothing this Court can do in relation to a sentence imposed on an occasion subsequent to the sentence in the case we are dealing with, but no doubt the proper authority can examine the relevant record to ascertain the true position.

As regards the sentence before this Court we do not find that the sentence of five years is excessive. In so far as that part of the sentence is concerned we would not be disposed to grant leave to appeal. However the appellant has been sentenced to corporal punishment on two occasions previously.

Over and over again this Court has stated that it would serve no useful purpose to impose a sentence of strokes along with long terms of imprisonment or to impose strokes on an accused who has been sentenced to the infliction of corporal punishment on a number of occasions previously.

We consider that the sentence of corporal punishment in this case falls within the principle expressed. We therefore grant leave to appeal against sentence and we vary the sentence by deleting the imposition of strokes.

DATED THIS 27TH DAY OF NOVEMBER, 1990.



B.A. Doyle
Judge of Appeal

G. Bizo

G. Bizo
Judge of Appeal

W.H.R. Schreiner

W.H.R. Schreiner
Judge of Appeal