

IN THE COURT OF APPEAL APPEAL OF THE REPUBLIC OF BOTSWANA  
HELD AT LOBATSE

COURT OF APPEAL CRIMINAL APPEAL NO. 30/95  
[HIGH COURT CRIMINAL APPEAL NO 173/93]

In the matter between:

BRIAN SAMPSON

Applicant/Appellant

and

THE STATE

Respondent

Appellant in person

Ms. P. Solomon for the Respondent

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## J U D G M E N T

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CORAM      T.A. AGUDA, J.A.  
                 LORD N. WYLIE, J.A.  
                 G.G. HOEXTER, J.A.

HOEXTER J.A.

Pursuant to leave granted by this Court the Appellant appeals against the sentences imposed upon him by the Principal Magistrate sitting at Gaborone on 17th August, 1993.

Having been duly convicted of the three offences indicated hereunder the Appellant, then aged 21 years, was sentenced by the trial Court as follows:-

Count 1 [Store-breaking and theft] - Five years imprisonment and three strokes;

Count 2 [unlawful possession of arms] - Seven

years imprisonment;

Count 4 (unlawful possession of arms) - A fine of P250-00 and, in default of payment, five months imprisonment.

The trial Court further ordered the sentences of imprisonment to run concurrently.

The sentences thus imposed were supported by Ms. Solomon who argued the case on behalf of the State. While sentence is a matter which falls within the discretion of the trial Court, this Court has in a long line of decisions expressed its disapproval of the imposition of strokes when coupled to a long sentence of imprisonment. See, for example, the remarks of **AGUDA J.A.** the case MMOLOTSI MOGADI & OTHERS V THE STATE in CA 19/90 and of **SCHREINER J.A.** in MOSOTHO MASINA & ANOTHER V THE STATE CA 7/92.

In the instant case the Appellant has to undergo imprisonment for seven years. That is a long sentence of imprisonment. The Appellant is a comparatively young man and he is a first offender. Having due regard to all the circumstances of his case I consider that no justification can be found for the addition of corporal punishment to his prison sentences. Save as above there is no good reason for disturbing the punishment imposed by the trial Court.

In the result the appeal against sentence is dismissed save that the order for the infliction of corporal punishment [three

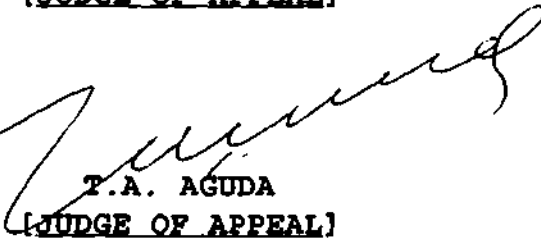
strokes in respect of Count 1] is set aside.

DELIVERED IN OPEN COURT AT LOBATSE THIS *2nd* DAY OF FEBRUARY, 1996.



G.G. HOEXTER  
[JUDGE OF APPEAL]

I agree



T.A. AGUDA  
[JUDGE OF APPEAL]

I agree



LORD N. WYLIE  
[JUDGE OF APPEAL]