

REPUBLIC OF SOUTH AFRICA

SOUTH GAUTENG HIGH COURT, JOHANNESBURG

High Court Ref No: 27/11

Magistrates' Serial No: 03/11

In the review matter of:

STATE

versus

VUSI VINCENT KGOSI

REVIEW JUDGMENT

MEYER , J

[1] This is a review in the ordinary course. On 20 November 2010, the accused was found guilty of theft in the Magistrate's Court, Orlando. The charge and evidence against him was that he intentionally and unlawfully stole two transformers that were the property or in the lawful possession of Metrorail. This he did on 1 October 2010, at New Canada in the district of Johannesburg.

[2] I am not satisfied that the trial court exercised the discretion bestowed upon it in imposing sentence properly and reasonably. The accused was unrepresented. Regrettably, the trial court did not investigate the matter of an appropriate sentence for the accused fully and properly. The accused was 32 years old at the time when he was sentenced on 31 January 2011. He is a first offender. He is unmarried and he has no children. He did piece work before he was arrested and was maintained by his brother. The accused had been in custody since his arrest during October 2010. It appears from the record before us (the J15 form) that the accused was arrested on 1 October 2010.

[3] The offence of which the accused was convicted concerned the theft by him of two transformers that he placed in a 'school bag'. No evidence was obtained relating to the value of the two transformers and regarding the consequences of the theft of such items. The accused was nevertheless sentenced to three years imprisonment.

[4] Had the accused not already been in custody for so long I would have set the sentence aside and remitted the matter to the presiding magistrate for a proper investigation into the matter of sentence. Adv. Zeiss van Zyl S.C. of the Office of the Director of Public Prosecutions: South Gauteng High Court, furnished me with an oral review opinion for which I am grateful. I agree with him that it would be more appropriate in the particular circumstances of this case to set aside the sentence imposed upon the accused and to replace it with one of a shorter period of imprisonment of which the period of imprisonment not yet served by him is suspended for a period of three years on condition that he is not convicted of the offence of theft committed during the period of suspension for which a sentence of direct imprisonment of at least six months is imposed.

[5] In the result the conviction is confirmed and the sentence imposed by the learned magistrate is set aside and replaced by the following:

1. The accused is sentenced to a period of imprisonment for one year.
2. The presently unexpired period of this sentence of one year imprisonment is suspended for a period of three years on condition that the accused is not convicted of theft committed by him during the period of suspension for which a sentence of direct imprisonment of at least six months is imposed.
3. This sentence is pre-dated to 31 January 2011.
4. The accused is accordingly to be released immediately unless he is also in custody in connection with an unrelated matter.

WEPENER, J

[5] I agree with my brother Meyer, J.

PA MEYER
JUDGE OF THE HIGH COURT

WL WEPENER
JUDGE OF THE HIGH COURT

27 May 2011