



A451/17¹
11/09/2017

IN THE GAUTENG DIVISION OF THE HIGH COURT, PRETORIA

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: ~~YES~~ / NO.

(2) OF INTEREST TO OTHER JUDGES:
~~YES~~ / NO.

(3) REVISED.

DATE 6/9/2017

SIGNATURE

Magistrate: Orkney

Case no: 01/532/16
High court ref no:159/17

THE STATE

v

ANDRIES RANTSIE

REVIEW JUDGMENT

LOUW, J

[1] The accused was convicted in the magistrates' court, Orkney on a count of housebreaking with intent to commit a crime unknown to the state. He was sentenced to a fine of R1 200,00 or six months imprisonment, wholly

suspended for five years on condition that the accused is not convicted of any offense committed during the period of suspension.

[2] The previous reviewing Judge directed an inquiry to the trial magistrate regarding the fact that the condition imposed does not refer to any specific offense, but to any offense. The learned magistrate responded by stating that he used the review judgment in *S v Maiaene*, case no. 92/2008 as a guide. In that matter, the sentence was, however, suspended on condition that the accused is not convicted of housebreaking with the intent to commit any offense during the period of suspension. The condition of the sentence imposed in *Maiaene* was therefore not the same as the condition imposed by the learned magistrate in the present matter. In the present matter, the condition refers to any offense, which is too wide. If the accused were to be convicted, e.g., for a simple traffic offense, the sentence which was imposed could then be put into operation.

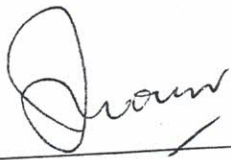
[3] Where a perpetrator is caught after unlawfully breaking and entering into premises and the evidence is overwhelming that his intention was to commit a crime or crimes, but it is impossible for the prosecution to prove what crime or crimes he intended to commit, the allegation that he intended to commit an unknown offense, and to pronounce a verdict accordingly, is proper. *S v Slabb* 2007 (1) SACR 77 (NC) [13]. The charge sheet against the accused in the present matter alleged that he was guilty of the crime of housebreaking with the intent to commit a crime unknown to the state,

was therefore in order. The condition of the sentence imposed by the court should accordingly, as in *Maiaene*, have been that the accused should not be convicted of housebreaking with the intent of committing any offense during the period of suspension.

[4] In the result, the sentence by the trial court is set aside and replaced by the following:

"The accused is sentenced to a fine of R1 200,00 or six months imprisonment, which is wholly suspended for a period of five years on condition that the accused is not convicted of housebreaking with intent to commit any offense committed during the period of suspension."

Signed at Pretoria on 6 September 2017.



J W LOUW

JUDGE OF THE HIGH COURT



D S FOURIE

JUDGE OF THE HIGH COURT