

Reportable:	YES / NO
Circulate to Judges:	YES / NO
Circulate to Magistrates:	YES / NO
Circulate to Regional Magistrates:	YES / NO

IN THE HIGH COURT OF SOUTH AFRICA (Northern Cape Division)

Case Nr: 20/2008

Case Heard: 23/06/2008

Date delivered: 27/06/2008

In the matter between:

Terrence Oss

PLAINTIFF

and

THE STATE

RESPONDENT

Coram: Williams J et Olivier J

JUDGMENT ON APPEAL

Olivier J:

1. The appellant was convicted in the magistrate's court on a charge of housebreaking with intent to steal and theft. The matter was referred to the regional court for purposes of sentence and there he was sentenced to 10 years imprisonment, of which a period of 3 years was conditionally suspended for five years. The appeal is directed at the sentence only.
2. It is trite law that a Court of appeal will only interfere with a sentence where a material irregularity or misdirection has occurred in the consideration of sentence or where the sentence

is shockingly inappropriate (see **S v Shaik and Others** 2008 (1) SACR 1 (CC) para [72]).

3. The only ground of appeal advanced by the appellant in his application for leave to appeal is that the trial court was “*harsh*” in imposing the sentence.
4. In the heads of argument on behalf of the appellant it was submitted:
 - 4.1. that a period of 8 years and 7 months had expired since the appellant’s last previous conviction; and
 - 4.2. that the appellant had himself reported the crime to the police and that it was unlikely that the crime would have been solved had he not done so.
5. The appellant had pleaded guilty to the charge and in his statement in terms of section 112(2) of the Criminal Procedure Act expressed his remorse for what he had done. I agree, however, with the regional magistrate’s observation that this should be seen against the background of the events that had led to the charge against the appellant.
6. He had partaken in the crime at the request of a person who had promised to pay him for his services and when he was not paid he not only reported the matter to the police in a clear act of vengeance, but also damaged the co-perpetrator’s vehicle and took money from it.
7. The fact that the appellant reported the matter to the police would therefore seem to have been motivated by revenge,

rather than by a feeling of remorse, and once he had confessed to the police, he would have had little option but to plead guilty to the charge.

8. The appellant was 29 years old at the time of the trial. He had left school in 1995 when he was in standard 7. Both his parents had passed away while he was serving a term of imprisonment.
9. Whatever mitigating weight these personal circumstances might carry, it is by far outweighed by the appellant's list of previous convictions and the circumstances of the crime he was convicted of.
10. His record reflected no less than nine previous convictions involving dishonesty, five of theft and four of housebreaking with intent to steal and theft, for which a variety of sentences had been imposed, including corporal punishment, the postponement of sentence, a fine, a partially suspended sentence and sentences of imprisonment.
11. On the last occasion when the appellant was convicted of housebreaking with intent to steal and theft, he was sentenced to 5 years imprisonment, and warned of being declared a habitual criminal in terms of section 286 of the Criminal Procedure Act.
12. A mere seven months after having been released on parole he committed this crime. The period between the last previous conviction on his record should therefore be seen against this background.

13. At the time of his trial the appellant was again serving a sentence of 3 years imprisonment for damaging his co-perpetrator's vehicle and taking money from it.
14. In his section 112(2) statement the appellant contended that he had been unemployed at the time of the offence and had needed the money. He failed, however, to disclose the amount he had expected to be paid. It is also of some interest to note that he had been at a tavern when he was approached by his co-perpetrator in connection with this crime.
15. The regional magistrate pointed out that there had been "*an alarming increase in crimes of this kind*".
16. It is clear that the regional magistrate made a mistake about the number of previous convictions. I am not, however, persuaded that this would justify an interference with the present sentence.
17. Furthermore it might possibly be argued that the regional magistrate over-emphasized the importance or relevance of the fact that the building the accused and his co-perpetrator had broken into, was a church building. Again, however, I am of the view that this would not in itself justify an interference with the sentence.
18. Even when regard is had to the fact that the appellant was already serving a sentence of 3 years imprisonment, the sentence imposed by the regional magistrate and the cumulative effect of the two sentences do not strike me as shockingly inappropriate.
19. In the circumstances I would make the following order:

The appeal against the sentence is dismissed and the sentence is confirmed.

**C J OLIVIER
JUDGE
NORTHERN CAPE DIVISION**

I agree and it is so ordered:

**C C WILLIAMS
JUDGE
NORTHERN CAPE DIVISION**

For the Plaintiff:	Adv T Fourie
On behalf of:	Legal Aid Board, KIMBERLEY
For the Respondent:	Adv C Kersten
On behalf of:	Director of Public Prosecutions, KIMBERLEY