

IN THE HIGH COURT OF SOUTH AFRICA  
(WESTERN CAPE HIGH COURT, CAPE TOWN)

Case No: A66/2010

In the matter between:

**ALBERT SLABB**

Appellant

Versus

**THE STATE**

Respondent

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JUDGMENT DELIVERED ON 13 AUGUST 2010

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**Allie, J**

[1] The appellant was convicted in the Wynberg District Court of housebreaking with intent to steal and theft. He was declared to be a habitual criminal in terms of Section 286 of Act 51 of 1977. He now appeals against both the conviction and sentence.

[2] The State alleged that on 27 October 2008, the accused entered through the open door of his neighbour's house, rummaged through drawers and stole a cell phone, wristwatch, earrings and R100 cash.

[3] **Ms Eileen Jones** testified that when her mother went outside their house to complain about people in the neighbourhood who had once again kicked their ball into her yard, the accused entered her home and stole certain goods while she was in the bathroom. When she came out of the bathroom, she saw the accused in her house and ran outside. The accused also ran outside and

jumped over the fence of her house. At that point her mother who was returning from the neighbour's house saw the accused jump over her fence.

[4] The accused's version that he had asked Eileen's mother Janetta Gladys Jones, to return the ball and offered to pay her R20 for it is denied by Mrs Jones.

[5] The circumstantial evidence adduced by both state witnesses seeing the accused jump over their fence, together with the direct observation by Eileen Jones who saw and heard the accused in her house has not been challenged in a way which provides a reasonable explanation for the accused's presence in the house.

[6] I can find no basis for interfering with the conviction.

[7] The accused was warned in 1995 and he knew in 2006 that he faced the possibility of being declared a habitual criminal. The accused has 12 relevant previous convictions which include 3 counts taken together for the purpose of sentence. The last previous conviction that was not overturned on appeal was in 1995.

[8] Section 286 of the Criminal Procedure Act provides that a court which convicts a person may if it is satisfied that the person habitually commits offences and the community should be protected against him, declare him to be a habitual criminal.

[9] The last previous conviction was at least 13 years before the commission of the offence in this case. Section 286 does not remove the court's discretion (see: **S v Makoula 1978 (4) SA 763 (SWA)** at 766 G and **R v Swarts 1953 (4) SA 461 (A)** at 463 B – C).

[10] It is not desirable to exercise the discretion in favour of declaring an accused to be a habitual criminal where there has been a long lapse of time between the last conviction and the present one (see: **S v Makoula (supra)** at 767 and **S v Magakoe and others 1975 (2) PHH 100 (A)**).

[11] It is always appropriate to investigate the nature and circumstances of the previous convictions when deciding to impose a sentence in terms of Section 286 (see: **S v Stenge 2008 (2) SACR 27 (C)** and **S v Masisi 1996 (1) SACR 147 (O)**).

[12] The *court a quo* failed to establish the nature and circumstances surrounding the previous convictions.

[13] In the circumstances I would set aside the sentence of declaring the accused to be a habitual criminal. The appeal against conviction fails and against sentence it succeeds.

I would accordingly impose the following sentence:

1. The accused is sentenced to 3 years imprisonment, 1 year of which is suspended for 5 years on condition that he is not convicted of housebreaking with intent to steal, theft or an attempt thereto during the period of suspension.

I agree



ALLIE, J



OLIVIER AJ