

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

CASE NUMBER: A391/2007

DATE: 11 MARCH 2010

5 In the matter between:

MARIO ABRAHAMS APPELLANT

and

THE STATE RESPONDENT

10 JUDGMENT

LOUW, J:

15 The appellant in this appeal pleaded guilty in the magistrate's court and was found guilty of the theft of a cell phone. He was sentenced to 12 months imprisonment under section 276(1)(i) of the Criminal Procedure Act. He now appeals with the leave of the court *a quo* against the sentence.

20 The magistrate provided reasons for the sentence and referred to the fact that the appellant, who was born on 1 January 1988, was at the time of sentence 19 years old and that he had two previous convictions. Now the two previous convictions date back when the appellant was a young boy, to 2003 when
25 he was found guilty of theft and was cautioned and discharged
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and to 2004 when he was found guilty of using the property of another person without permission, and he was then given a sentence of three years imprisonment, which was wholly suspended on certain conditions. He was also ordered to
5 submit himself to the control of a probation officer until 8 October 2005.

The magistrate further took into account, what the magistrate referred to as the nonchalant way in which the appellant
10 committed the offence, a fact that in the magistrate's view, demonstrated that the previous suspended sentence did not have the desired effect on the appellant. The magistrate referred to the fact that appellant was at the time addicted to the drug TIK and that he received treatment at the Toevlug
15 Treatment Centre for one month. The magistrate also took into account that the cell phone had not been returned to the complainant and that the accused did not offer to compensate the complainant for his loss.

20 The magistrate also considered it relevant that on a previous court date the appellant had not appeared in court and that when he next appeared he stated that he intended pleading guilty. It would appear, however, that on the occasion that he was not present in court, he was ill. There is a medical
25 certificate in the record which says that he was ill on that

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occasion.

When the matter came before us on a previous occasion in February 2008, the appeal hearing was postponed for a report of a correctional officer to ascertain whether the appellant was
5 a suitable candidate for correctional supervision. The report has now come to hand and the officer reports that the appellant voluntarily submitted to rehabilitation and he is now free of drugs and is employed as a trainee chef. He now expresses remorse and according to the report the appellant is
10 a suitable candidate for correctional supervision. It must also be borne in mind that the appellant did spend approximately 14 days in prison, first after his arrest before he was granted bail and subsequently after his conviction and before he was granted bail pending the appeal.

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We do not consider that in this case it would be appropriate to sentence the appellant to correctional supervision with, as suggested by the correctional officer, 24 hours house arrest, subject to such free time as is determined by the Department
20 of Correctional Services or the Commissioner or his delegate. The appellant is currently working as a trainee chef and Mr Hack, who appears on behalf of the appellant, submitted that by the very nature of that work, it would be very difficult to sensibly fit in periods of house arrest and to accommodate the
25 hours of work that he will inevitably have to perform.

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We consider that in practice it will cause more problems if a period of house arrest is ordered. In our view it is more appropriate to impose a suspended sentence of imprisonment
5 subject to appropriate conditions. We do not consider direct imprisonment as was ordered by the magistrate to be an appropriate sentence in this case. This is a young man who must be rehabilitated outside prison.

10 The order which I propose is as follows:

1. The conviction is confirmed but the appeal against sentence succeeds and the sentence imposed by the magistrate is set aside with the following sentence
15 substituted for the sentence imposed by the magistrate:
ONE (1) YEAR IMPRISONMENT which is SUSPENDED for a period of FIVE (5) YEARS on the following conditions:

20 (a) That the appellant is not convicted of theft or attempted theft committed during the period of suspension and in respect of which a period of imprisonment is imposed.

25 (b) That the appellant perform 160 hours of

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community service at an institution determined by the Department of Correctional Services, with a minimum of 16 hours per month.

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(c) That the appellant not use alcohol or drugs other than prescribed by a medical doctor.

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(d) That the appellant subject himself to alcohol and drug testing, should the Commissioner or his delegate order such test.

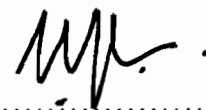
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(e) That the appellant comply with the order to report in person to the correctional officer at Wynberg Magistrate's Court, 2nd Floor, by no later than 19 March 2010.

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(f) That the appellant pay R1 000,00 to the complainant, Douglas Smith, as compensation for the loss of his cell phone by no later than 30 April 2010.

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LOUW, J

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BRUSSER, AJ: I agree.

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for BRUSSER, AJ

LOUW, J: It is so ordered.

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LOUW, J

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