

THOMAS GOMA JACOBS -vs- THE STATE

1996/04/22

Strydom, J.P. et Frank., J.

CRIMINAL PROCEDURE:

SENTENCE:

Prevalence of crime in general and housebreaking  
in particular - First Offender. Jail sentence -  
not inappropriate under the circumstances -  
Combating of crime - Role of Courts.

IN THE HIGH COURT OF NAMIBIA

In the matter between

THOMAS GOMA JACOBS

APPELLANT

versus

THE STATE

RESPONDENT

CORAM: STRYDOM, J.P. et FRANK, J.

Heard on: 1996.04.22

Delivered on: 1996.04.22

APPEAL JUDGMENT

STRYDOM, J.P.: This is an appeal against sentence in terms of a judge's certificate issued by two judges of this Court. The accused was convicted of housebreaking and theft of goods valued at N\$1 616.00. The accused pleaded guilty but after questioning by the magistrate a plea of not guilty was recorded because the value of the articles stolen was disputed. After evidence was led the accused was convicted as charged. The sentence imposed by the magistrate was one of three years imprisonment of which one year imprisonment was suspended on the usual conditions.

At the time of sentence the accused was a first offender of 38 years, he is married with three children of whom two were at school at the time. At the time the accused was also employed as a driver for Langpad Transport and was earning

N\$800.00 per month. He informed the Court that he could pay a fine of N\$300.00. It is common cause that the accused broke into the farm store of his employer during the latter's absence from the farm. In evidence the accused said that the crime was motivated by hunger because the employer left the farm without properly providing for his employees.

I agree with Mr Miller for the State that this claim cannot be accepted. Many of the items stolen such as the keyboard, soap, ointment, etc were inedible. Although all the articles were recovered the accused, after his arrest by the complainant, escaped and took with him the keyboard valued at some N\$1 300.00. It is trite law that sentencing is pre-eminently the duty of the trial Court and that the Court of Appeal will only interfere with the exercise of such discretion in certain limited instances.

Mr Coetzee who appeared amicus curiae for the accused and whom the Court wants to thank for his assistance in this matter, submitted that the magistrate misdirected himself by over-emphasizing the interest of society and the nature of the crime at the expense of the personal circumstances of the accused.

A reading of the reasons supplied by the magistrate shows that the interest of society played an important role when the magistrate considered sentence. There is no doubt that the magistrate emphasized factors such as the deterrent effect of sentence to try and curb in some way the spate of

crimes that have become commonplace in our society. The reasons, however, also demonstrate that the magistrate was alive to the 'personal circumstances of the accused and the fact that he was a first offender.

The many reviews that this Court is dealing with every day and the outcry from the society are all proof of the prevalence of crime and more particularly crimes such as housebreaking and theft. Those who commit this crime overlook nobody. No distinction is made between the rich and the poor. All levels of society have fallen victim to thieves and housebreakers alike. Whether we want to believe it or not we are involved in a war against crime which at present shows no sign of abating. The situation calls for exceptional measurements and in this process the Courts play an important role. In this regard the imposing of a prison sentence for housebreaking and theft, even in the case of a first offender, has become more or less the general rule. Because of the prevalence of the crime the shoe is now on the other foot and it is only in exceptional circumstances where a non-custodial sentence is imposed by the Courts.

Being a first offender is in our present-day situation generally speaking not such a circumstance. What I have said must not be seen as an attempt to circumvent or to do away with the general principles of sentencing in our law and more particularly the principle of individualisation of punishment. It is only that the circumstances justify that in sentencing the emphasis is now shifted more to factors such as deterrence and even retribution in the sense of an

appropriate punishment for the crime committed. It is only when Courts of Law recognise this situation and act upon it that we will; together with others such as the police and the vigilance and co-operation of the community itself, become an effective tool in the combatting of crimes such as housebreaking and theft.


Reverting back to the present case. Although the sentence imposed can be described as robust considering the fact that the accused was a first offender with a family and the other factors relied upon by Mr Coetzee, I find myself unable to agree that the sentence is one which creates a sense of shock. Concerning the circumstances of the particular case the imposition of a custodial sentence was, in my opinion, appropriate. That in the circumstances the factor of deterrence and retribution and public influence were brought more to the fore and were particularly emphasised by the magistrate, can in my opinion, not be faulted.

In the result the appeal is dismissed.



STRYDOM, JUDGE PRESIDENT

I agree



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FRANK, JUDGE

ON BEHALF OF THE APPELLANT:

MR F P COETZEE

Instructed by:

A VAATZ

ON BEHALF OF THE RESPONDENT:

ADV P J MILLER