

IN THE HIGH COURT OF SOUTH AFRICA
(EASTERN CAPE DIVISION)

Case No. CA & R 241/06

In the matter between:

BLENA ERIC WAYI Appellant

and

THE STATE Respondent

APPEAL JUDGMENT

EBRAHIM J:

Introduction

- [1] The Appellant pleaded guilty to two counts of theft in the Magistrate’s Court for the District of East London and was duly convicted thereof. On count 1 the appellant was sentenced to imprisonment for a period of two (2) years and on count 2 for a period of three (3) years.
- [2] The appeal to this Court, with the leave of the trial Magistrate, is against the sentence imposed on each count.

Grounds of Appeal

- [3] The appeal against sentence is based on the grounds that the magistrate did not give due weight to the personal circumstances of the appellant, over-emphasised the interests of society and the seriousness of the offences, and did not explore other sentencing options.

Analysis

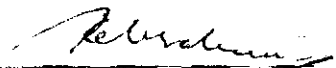
- [4] Ms Gcingca, who appeared for the appellant, submitted that the magistrate had not exercised her discretion properly and judicially in determining an appropriate sentence. She requested this Court to interfere with the sentence and decrease the term of imprisonment.
- [5] Mr Els, who appeared for the State submitted that the appellant had failed to show that the magistrate had misdirected herself or committed an irregularity. The sentences were also not startlingly inappropriate. The appeal should therefore be dismissed and the sentences confirmed.
- [6] The submissions that the magistrate erred in her approach to sentence are without merit. The reasons furnished by the magistrate reveal that she took cognisance of the personal circumstances of the appellant and weighed these against the interests of society and the seriousness of the offences.

- [7] The magistrate, quite correctly, took account of the fact that the appellant was not a first offender and had numerous previous convictions for offences of a similar nature. The appellant's first conviction was on 8 July 1982 for the offence of housebreaking with intent to steal and theft for which a term of imprisonment for eighteen months, conditionally suspended for a period of four years, was imposed. Over the next twenty-four years the appellant was convicted of housebreaking with intent to steal and theft on no less than thirteen occasions and for theft on eight occasions. The present convictions bring his tally in respect of theft to ten. In these circumstances, the magistrate can certainly not be criticised for determining that a custodial sentence was the only appropriate sentence.
- [8] The only issue in respect of which it may be said that the magistrate erred is that she differentiated between the sentences imposed on count one and count two. It is not apparent from the record of the trial proceedings why this differentiation was justified. The magistrate has also not stated why the theft committed in count two warranted a harsher sentence than that in count one. Regrettably, neither Ms Gcingca nor Mr Els addressed this issue in their heads of argument. Nevertheless, I am of the view that the magistrate erred in not treating both offences similarly in respect of sentence and should have imposed a period of imprisonment for two years on each count. This Court is accordingly obliged to intervene to alter the sentence to this extent.

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[9] In the circumstances, the appeal against sentence on count one is dismissed and the sentence of imprisonment for a period of two (2) years is confirmed. The appeal against sentence on count two succeeds to the extent that the sentence is altered a period of imprisonment for two (2) years *in lieu* of the period of three (3) years imposed by the court, and is antedated to 4 October 2005 pursuant to the provisions of s 282 of the Criminal Procedure Act 51 of 1977.


Y EBRAHIM
JUDGE OF THE HIGH COURT

30 January 2007

I agree and it is so ordered


S M MILLER
JUDGE OF THE HIGH COURT

30 January 2007

Appeal heard on	:	24 January 2007
Judgment handed down on	:	2 February 2007
Counsel for the appellant	:	Ms N E Gcinga
Counsel for the respondent	:	Mr D Els