

IN THE HIGH COURT OF SOUTH AFRICA
(TRANSVAAL PROVINCIAL DIVISION)

DATE: 14/3/2005

REPORTABLE

High Court Ref. No.: 5477

Magistrate's Serial No.: REVIEW MB2015/2004

Case No. H143/2004

Magistrate

WONDERBOOM (held at MAMELODI)

THE STATE V THABO ALFRED MALEBYE

REVIEW JUDGMENT

SOUTHWOOD J

On 22 November 2004 the accused was found guilty of theft in the magistrates' court at Mamelodi and sentenced to a fine of R2 000 or four (4) months imprisonment. The accused was not able to pay the fine and commenced serving the sentence. To date he has served three months and eight days of the sentence.

On 3 December 2004 the matter came before me on review. I was concerned that the sentence appeared to be excessive and the fact that the court had not

investigated the ability of the accused to pay the fine or informed the accused of the possibility of paying the fine in instalments. The presiding magistrate was requested to furnish his reasons for sentence as a matter of urgency.

The presiding magistrate did not furnish reasons as a matter of urgency. On 15 February 2005 I received his reasons which consist of one and a half typed pages. By then the accused had served about three months imprisonment. The presiding magistrate has not explained the delay of two and a half months in furnishing the reasons. He readily concedes that the sentence imposed is excessive, that he did not investigate the accused's ability to pay the fine and that he did not enquire whether the accused was able to pay the fine in instalments.

The accused pleaded guilty and admitted taking the hot plate without paying for it. The court did not establish the value of the hot plate. The accused has no previous conviction and was unemployed. He said that at times he earned R40 to R60 per day washing cars. He is 23 years old, unmarried and has no children.

The Director of Public Prosecutions does not support the sentence and suggests that it be considerably reduced. The Director is also of the view that the presiding magistrate's delay in furnishing reasons has prejudiced the accused since it is clear that the sentence would be interfered with on review. The Director suggests that the presiding magistrate be censured for the delay in furnishing reasons.

As long ago as 1962 the importance of the review system in our law was described in the following terms -

'One of the important contributions made by South African law to the administration of justice is the system of review as of course, or, as it is more commonly known, of automatic review ... When it is borne in mind that at least ninety percent of the accused persons are either wholly or partially illiterate and that the great majority of them are undefended, the vital importance of the system in the administration of justice in this country becomes apparent'

The system works in the following way. As soon as a magistrate has imposed a sentence which is subject to review he is obliged to inform the accused that the accused is entitled within three days of sentence to make written representations for the consideration of the reviewing judge. The record of the proceedings is then, within one week, submitted to a judge of the High

Court for review and the judge has wide powers to either confirm the sentence or make another order to ensure that justice is done. At all times the system requires the expeditious submission of the magistrate's sentence to the judge for review. This is because it is the duty of our courts to ensure that the freedom of the individual is guaranteed within the limits of the law. It is a grave violation of individual freedom to detain a person in prison and it is the highest duty of the courts and of every judicial officer to ensure that it occurs only with the full authority of the law. Where the Act makes provision for the expeditious review of a magistrate's sentence the process is not properly

complete before the reviewing judge has either certified it to be in accordance with justice or made another order. The magistrate is therefore obliged in the

exercise of this high calling of our courts to ensure that the process whereby a person is deprived of his personal freedom receives the full *imprimatur* of the law as soon as possible. The impression must never be created that our courts are indifferent to the freedom of the individual. See sections 303 and 304 of Act 51 of 1977: *S v Letsin* 1963 (1) SA 60 (O) at 60A-H.

The delay of two and a half months in furnishing reasons must therefore be strongly condemned.

This was a simple case of shoplifting - ie petty theft. However prevalent within the area of jurisdiction of the court it remains a petty crime not deserving of the sentence which the presiding magistrate imposed. The presiding magistrate failed to play his part and ensure that the accused was not the victim of an oppressive and unfair system.

I make the following order -

The conviction is confirmed;

II The sentence of R2 000 or four (4) months imprisonment is set aside and substituted with the following sentence:

'R500 or three (3) months imprisonment'

III In terms of section 282 of Act 51 of 1977 it is ordered that the substituted sentence be deemed to have been imposed on 22 November 2004.

IV It is ordered that the accused be released immediately.

B R SOUTHWOOD
JUDGE OF THE HIGH COURT

I AGREE

G WEBSTER
JUDGE OF THE HIGH COURT

IN THE ORDINARY COURSE OF EVENTS