

NOT REPORTABLE  
HIGH COURT REF NO:1388  
CASE NO: B2682/2002  
MR/CR NO: 243/12/02  
MAGISTRATE: MEYERTON  
POLICE STATION: MEYERTON  
IN THE MATTER BETWEEN:

## VERSUS

## ACCUSED 1

## ACCUSED 2

### ACCUSED 3

PATEL. J

- [1] The three accused were charged in the Magistrate's Court of Meyerton with the crime of theft of five herds of cattle to the value of R15 000-00. They were convicted of theft of one herd of cattle to the approximate value of R3 500-00 and each of them were sentenced to three years imprisonment.
- [2] The record of the court below was transmitted to the office of the Director of Public Prosecutions on 20 March 2003 to comment on

the sentence of imprisonment imposed on each of the accused. It appears that the record was received by the Senior State Advocate on 28 January 2005 and the comments were received by the office of the Registrar of this court only on 14 February 2005. Except for indicating that there was an undue delay, there is no explanation for the cause of delay of twenty two months. Suffice to say that automatic reviews need to be dealt with expedition particularly when comments are invited from the office of the Director of Public Prosecutions. If there is any delay then there must be an explanation for it.

- [3] In this case the magistrate in determining the sentence considered the following aspects:

[3.1] the personal circumstances of each of the accused, the three accused are first offenders and a youngster was influenced by them to take part in the crime;

[3.2] the theft was prearranged;

[3.3] the prevalence of this crime in the area of jurisdiction of the court below and the deterrent effect of the sentence on the accused as well as the community at large, and;

[3.4] other sentence options were regarded as inappropriate.

[4] It is trite that a sentence can only be decreased on review where the review court determines what the appropriate sentence ought to be by comparing it with the sentence which the trial court imposed and regards the difference in the two sentences as striking. (See: *S v Anderson* 1964 (3) SA 494 (A) at 495G-H; *S v Z* 1998 (1) SACR 463 (SCA) at 468f-h; . *S v Gerber* 1998 (2) SACR 441 (NC) or where the court has imposed an unacceptable sentence because of a misdirection. The misdirection must be of such a nature or degree that it may be inferred from it that the court below either failed to exercise its discretion in regard to sentence at all or exercised its discretion unreasonable or improperly. (See: *S v Pillay* 1977 (4) SA 531 (A) at 535D-G; *S v Kibido* 1998 (2) SACR 213 (SCA) at 216g-j) or where the court has imposed an incompetent sentence.

- [4] The question I have asked is whether the sentence of three years imprisonment is shockingly severe upon comparing sentences imposed in similar cases? The answer seems to be in the affirmative.
- [5] In *S v Sidla* 2000 (1) SACR 342 (E) a sentence of three years imprisonment for a first offender convicted of theft of eight herds of cattle valued at R16 000,00 was confirmed on review. In *S v Huma* 1983 (1) SA 40 AD sixteen cattle were stolen by a first offender and a sentence of seven years imprisonment was imposed. Nevertheless three years of the sentence was suspended.
- [6] *In casu*, having regard to the personal circumstances of each of the accused and, the fact that one herd of cattle to the value of about R3 500-00 was stolen, in my view, an appropriate sentence of one year imprisonment would be just and fair.
- [7] Accordingly, the following order is made:
- (a) Each of the accuseds' convictions are confirmed.

- (b) Each of the accuseds' sentences is set aside and the following is substituted therefor:

"Each of the three accused is sentenced to one year imprisonment. "

- ( c) A copy of this judgment is transmitted to the Heads of Correctional Services:

1. of Witbank Prison for the immediate release of accused numbers 1 and 2; and

2. of Vereeniging Prison for the immediate release of accused number 3.

**E M PATEL**  
**JUDGE OF THE HIGH COURT**

I agree,

**L O BOSIELO**  
**JUDGE OF THE HIGH COURT**