

A763/05

**THE HIGH COURT OF SOUTH AFRICA**  
**TRANSVAAL PROVINCIAL DIVISION**

DELET WHICHEVER IS NOT APPLICABLE

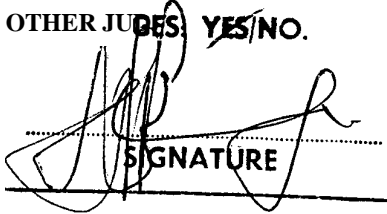
(1) REPORTABLE: /NO

(2) OF INTEREST TO OTHER JUDGES: YES/NO.

(3) REVISED.

DATE: 20/6/05

**Magistrate:**  
**BARBERT**

  
SIGNATURE

**Review Case no: M116\05**

**High Court Ref no: 1002**

**THE STATE VS WILSON KHW AMBA MASHABA**

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**REVIEW JUDGEMENT**

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**SHONGWE, J**

- [1] The accused, unrepresented legally, pleaded guilty and was duly convicted on his plea of housebreaking with intent to steal and theft. He was sentenced to 3 years imprisonment.
- [2] Upon review it was felt that 3 years is too harsh. The magistrate was requested to motivate. The office of the Director of Public Prosecution was also requested to furnish its comments on the matter.

- [3] There appears to be no fault with the conviction, however I am of the view that the magistrate misdirected herself by over-emphasising the interests of the community and the seriousness of the offence. It is undoubtedly so that housebreaking with intent to steal and theft is a serious offence.
- [4] *In casu* the accused pleaded guilty which is a sign of remorse. The magistrate says that the accused did not show remorse save to plead guilty. I was unable to glean from the record that his plea of guilty was the inevitable thing to do.
- [5] The fact that the accused is a first offender is not demonstrated in any manner by the sentence imposed. There is no law that says first offenders must not be sent to prison, however mercy is an element of justice. (**S vs Rabie 1975 (4) SA 855 (A)**). That the court did consider the personal circumstances of the accused and applied mercy must be borne by the type of sentence imposed.
- [6] It is conceded that 3 years imprisonment is the maximum sentence that a magistrate can impose. The accused is a fairly young man with a wife and two children. I consider the conduct of the accused to be different from the usual housebreakings we come across. He took his brother's key and opened the door and stole the goods.

Unlike the usual burglars who break open the windows or doors and plunder the whole place.

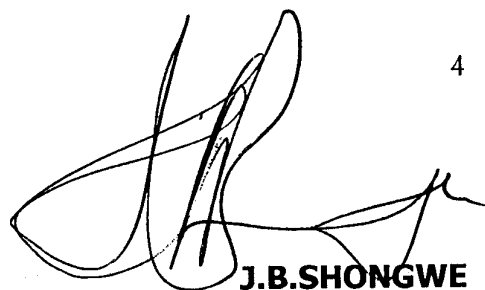
[7] The punishment must not have the effect of breaking the accused's moral fibre, it must also have the effect of rehabilitating and deterring the accused and would-be burglars.

[8] I am of the view that the circumstances of this case justify an interference with the sentence.

[9] Therefore the following sentence is considered appropriate:

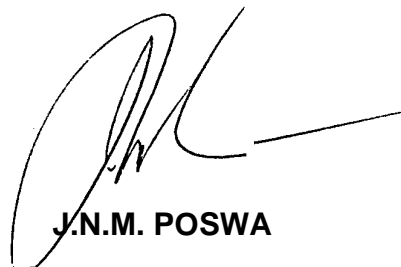
**(a) The conviction is confirmed.**

**(b) The sentence is set aside and replaced with the following: The accused is sentenced to 3 years imprisonment, half of which is suspended for 3 years on condition that the accused is not convicted of house breaking with intent to steal and theft committed during the period of suspension.**



**J.B.SHONGWE**  
**JUDGE OF THE HIGH COURT**

I agree.



**J.N.M. POSWA**  
**JUDGE OF THE HIGH COURT**