

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

DATE: 1/8/2005

CASE NO.: A2291/20Q3

UN REPORTABLE

In the matter between:

JOHN HENRY KUHN

and

THE STATE

JUDGMENT

POSWA J:

- [1] The appellant appeals against the sentence by the Regional Court Magistrate, Springs, on 23 July, 1998, in which he was ordered to serve five (5) years imprisonment after pleading guilty to and being sentenced for being found in possession of a stolen motor car. His appeal is not against the severity of the sentence *vis-à-vis* the offence of which he was convicted. He submits that the Regional Court Magistrate erred in refusing to make the five (5) years' period of imprisonment run concurrently with a cumulative period of sixteen (16) years, to which he had been sentenced by the Regional Court Magistrate of the Regional Division of Southern Transvaal, sitting in Roodepoort (and not in

Johannesburg, as averred by appellant in his application for leave to appeal).

- [2] In his "VERSOEK OM VERLOF TOT APPEL TEEN VONNIS INGEVOLGE ARTIKEL 309C VAN DIE STRAFPROSEWET 51 VAN 1977," dated 25 July, 2002, the appellant did not give adequate particulars of the case(s) before the Regional Court Magistrate, Roodepoort. He simply stated the following, in that regard;

"7.8 Dit is U Petisionaris se verdere nederige submitisie dat U Petisionaris, met respek, as te ware 'n slagoffer is van die sisteem dat 'n misdaad bereg moet word in die gebied waar die gepleeg is en in die Streekshof in Johannesburg gedien het, die kumulatiewe effek daarvan sou gewees het dat hierdie vonnis deel sou geword het van die reeds opelegte vonnis van 16 jaar."

..1m/J

- [3] After hearing argument, on 23 May, 2005, this court ordered that;

- (a) The sentence of the appellant is set aside;
- (b) The matter is remitted to the Regional Magistrate to impose sentence afresh after the record of the proceedings in the other matter has been duly proved in which the accused was sentenced for theft of vehicles to an effective 19 or 16 years' imprisonment, and argument in regard to sentence has taken place afresh. (The reference of the other matter is SH 135/97 decided at Roodepoort in the Regional Court of the Regional Division Southern Transvaal):"

This Court stated that reasons for the Order would follow and these are the reasons .

•17J:~11

- [4] The offence of which the appellant was convicted was committed on 17 March, 1995, within the district the Regional Magistrate's Court of Southern Transvaal, Springs.

- [5] As averred in the application papers, the appellant was, at the time of his being convicted and sentenced by the Regional Magistrate Court, Springs already serving on effective sentence of sixteen (16) years' imprisonment in respect of offences "closely connected and similar in point of time, nature, seriousness or otherwise," to the offence of which he was convicted and sentenced by the Regional Magistrate's Court, Springs, as contemplated in *S v Young* 1977(1) SA 602(AD). at 611E.
- [6] The reason for the long delay in applying for leave to appeal was adequately explained and the appellant's application for condonation for such delay has been granted by this Court when leave to appeal was granted. The only issue outstanding before this Court. when the appeal was heard on 23 May. 2005, was about the merits of the appellant's appeal.
- [7] It is common cause that the only reason why the appellant was not charged for all the offences before the Roodepoort Regional Court was that the offence that is the subject matter of this appeal was committed outside the jurisdiction of that Court.
- [8] That the attention of the Regional Magistrate Court sitting at Springs was drawn to the existence of the sentence of sixteen (16) years is common cause. An extract from the judgment of the latter Court, in this regard, reads as follows:

"Die hot hou verder in gedagte dat die beskuldigde besig is om 'n 19 jaar {should read '16 jaar'} vonnis uit te dien vir soortgelyke misdade wat hy in die Johannesburgse distrik gepleeg het. Mev. Cassim het geargumenteer dat hierdie besondere diefstal gepleeg is in hierdie hot se distrik, dit is so, dit is die een wat in Springs gepleeg is, maar die hot moet in gedagte hou dat hierdie is 'n misdaad wat nie net bloot neerkom op diefstal nie. Die beskuldigde kon net so

[9] That Regional Magistrate Court then concluded;


[10] This Court is of the view that the Regional Court Magistrate, Springs, failed to pay heed to the warning against the imposition of farcically long sentences (*S v Mashidi 'n Andre* 1999(1) SASV 282). See also *S v Mate* 2000(1) SASV 552(T), at 5576, where Stafford DJP referred to a sentence "wat nie die kumulatiewe effek, van die vonnisse behoorlik aanmerking geneem het nie" as "'n buitensporige swaar vonnis."

[11] In my view, the Regional Magistrate should in the circumstances have called for the record of the other matter, decided at Roodepoort, to be placed before him in order to decide whether the two matters were so closely connected in time or circumstance, that the sentence which it intended imposing should be served concurrently with the sentence in the Roodepoort matter. By failing to do so, the Regional Magistrate, in my view, misdirected himself and this court accordingly has the right to interfere to set aside the sentence and remit the matter to the Regional Magistrate to impose sentence afresh after the record of the proceedings in the other matter has been duly proved.



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

I agree and let it be so ordered.



I. W. B. DE VILLIERS
JUDGE OF THE HIGH COURT