

A341/08

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

NOT REPORTABLE

DATE: 29/4/2008

HIGH COURT REF NO:683

CASE NO:03/08

MR/CR NO:300/301/03/2007 MAGISTRATE :BENONI

POLICE STATION:ETWATWA

IN THE MATTER BETWEEN:

STATE

VERSUS

SICELO NHLANHLA MNYAKENI LUCKY PHALATSI

ACCUSED NO 1 ACCUSED NO 2

REVIEW JUDGMENT

PHATUDI (AJ)

[1]

This is an automatic review in terms of Section 302, read with section 304, of the Criminal Procedure Act, Act 51 of 1977.

[2]

The accused and another were charged in the Regional Magistrate Court with HOUSEBRAKING WITH INTENT TO STEAL AND THEFT.

[3]

[4]

[5]

The accused was legally represented and pleaded guilty. He was then convicted and REFERRED TO A REFORM SCHOOL in terms of Section 290(1)(d) of the Criminal Procedure Act 51 of 1977 as his sentence.

The case is referred to this court as a special review with the message from the Acting Head of Office: Benoni that:

"No designation for a Reform School has been made as there is no such facility in Gauteng and the facility of Mpumalanga has also been closed down.

The sentence imposed by the court can therefore not be

executed.

The convict has been detained at
Modderbee Correctional Centre pending his removal to
a reformatory school."

It is noted that the said office request that the sentence
imposed be set aside in view of the above mentioned
circumstances.

[8]

[9]

[6]

It is further noted that the said office further request that the
matter be referred back to the Court a quo for imposition of
another sentence.

[7]

On perusal of the record, I noted that the convict has since
22 March 2007 been incarcerated. He was convicted on the
9 July 2007 and sentenced on 3 September 2007.

The
convict has been in custody for 13 months to date.

I find referring this matter back to the court a quo being an
extension of incarceration of the convict in custody as an
"awaiting trial".

In view of the apparent fact the Reform School no longer
exist, I find it prudent to set the sentence imposed in the
court a quo aside.

[10] As a result, the sentence in terms of the Section 290(1)(d)
of Criminal Procedure Act 51 of 1977 is hereby replaced with
the sentence as set out in the order.

[11] Accordingly, I make the following order.

[11.1] The

accused

is

sentenced

to

12

months

imprisonment which sentence is wholly suspended
for 3 years on condition that the accused is not
convicted of the crime of theft or attempt thereto.

A M L PHATUDI
ACTING JUDGE OF THE HIGH COURT

I agree.

T DAVEL (Ms)
ACTING JUDGE OF THE HIGH COURT