

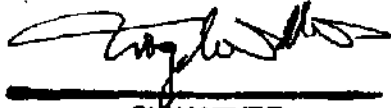
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IN THE SOUTHERN GAUTENG HIGH COURT OF SOUTH AFRICA

JOHANNESBURG

CASE NO: A544/08

DATE: 26/02/2009

<b>DELETE WHICHEVER IS NOT APPLICABLE</b>	
(1) REPORTABLE	<u>YES/NO</u>
(2) OF INTEREST TO OTHER JUDGES	<u>YES/NO</u>
(3) REVISED	<u>✓</u>
<u>5/4/2009</u>	
<b>DATE</b>	<b>SIGNATURE</b>

10 In the matter between

STATE

and

LOUIS PRETORIUS

APPELLANT

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J U D G M E N T

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20 WILLIS J: The appellant was convicted of the theft of five motorcycles with the value of R80 000.00 from his employer. He was sentenced to four years' imprisonment. He now appeals against sentence only. The appellant has been out on bail pending the appeal.

The sentence was imposed on 28 January 2008. The theft was committed during the period 1 February to 1 July 2006 at Midrand.

Counsel for the appellant has argued vigorously that the sentence which was imposed, was imposed in the absence of complete information. There is merit in this submission.

It certainly seems to me that this is an appropriate case where a probation officer's report should have been obtained in order for the learned magistrate to be able to consider all relevant aspects and decide upon an appropriate sentence. In saying this it should not be thought that I am expressing any view as to what the appropriate sentence should be. I am merely expressing a view that in order to  
10 impose an appropriate sentence in a matter such as this a court needs to be fully appraised of all relevant circumstances.

Counsel for the appellant relied very strongly on the case of *S v Nel*, 1995 (2) SACR 362 (W) where an appellant had been convicted in a regional court of the theft of 51 diamonds valued at R75 000.00 from his employer and was sentenced to five years' imprisonment of which two years were suspended on certain conditions.

Streicher J, as he then was, and Labe J decided that in those particular circumstances the sentence should be set aside and the  
20 matter referred back to the trial court in order to consider a probation officer's report.

Counsel for the State accepts that in a case such as this it would have indeed been appropriate for the learned magistrate to have considered a probation officer's report. This, I wish to emphasise, does not mean that the State concedes that there is any particularly

appropriate form of sentence in this matter, merely that the State has a view similar to my own: that justice will only be served if the court can fully consider all relevant aspects.

Accordingly I propose that the following order be made:

1. The sentence imposed by the learned magistrate is set aside.
2. The matter is referred back to the learned magistrate in order to enable her to consider an appropriate sentence in the light of a report to be obtained in terms of 276 (A) (1) (a) of the Criminal Procedure Act 51 of 1977 as amended, and such further evidence as either the State or the accused may wish to lead.
3. The appellant's bail is extended on the same terms and conditions pending the determination of sentence.

MLONZI AJ: I agree.

WILLIS J: It is so ordered.

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