

A539/17

19/10/2017

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

Review Case Number: 212/17

In the matter of:

The State

Vs

G. K.

Accused

REVIEW JUDGMENT

BAM, J

1. On 18 July 2017, in the Magistrate's Court, Cullinan, the accused, aged 17 (d.o.b [...] /2000), represented by Legal Aid, upon a plea of guilty, was convicted on a charge of malicious injury to property. The case was then postponed for sentence purposes, and after having obtained that report, the accused was sentenced to 2 years imprisonment.
2. In his statement in terms of Section 112(2) of the Criminal

Procedure Act, the accused admitted the commission of the offence in circumstances where he “. . . *aggressively pushed (the) door and the glass broke.*”

3. In terms of the provisions of the Child Justice Act, the matter was duly sent on review, which resulted in the Reviewing Judge directing an enquiry to the Trial Magistrate, requesting reasons for the sentence, including what alternative sentence was considered. I will revert to the Magistrate's reasons.

4. From the pre-sentence report before the trial court, compiled by a probation officer, the accused's version of the events is reported as follows:

At the time of the commission of the offence, the accused was an in-patient at a treatment centre for drug addiction. On the day in question the accused was in the dining room. After having been verbally reprimanded by a caretaker, the apparently agitated accused, in leaving the room, pushed a glass door, breaking the glass and cutting his hand in the process.

5. After a comprehensive discussion of the accused's drug related problems, it was recommended by the probation officer that the sentence the court imposes should be suspended on condition that the accused should be treated as an inpatient at a named treatment centre in order to address his substance abuse.

6. Although the offence of malicious injury to property may, in given circumstances, be serious, it seems that in this case it was rather trivial. There is, for instance, no indication, whatsoever, about the extent of the damage, and the costs involved to replace the broken window. I could find no reference to this issue in the judgment or the Magistrate's subsequent reasons.

The obvious failure of the Magistrate to properly consider the nature and extent of the crime, being one of the most important considerations in respect of the appropriate sentence, is clearly a material misdirection.

7. What is further of concern is that the Magistrate, apparently, did not consider the version of the accused how it came about that the damage to the door window was caused. From the version of the accused it seems that he did not have *dolus directus*, and that the form of *mens rea* was *dolus eventualis*.

The Magistrate's failure to properly consider the version of the accused is a further material misdirection.

8. What the Magistrate however concentrated upon, and emphasized, was the attitude and conduct of the accused whilst being treated in the rehabilitation centre, by not co-operating with the care givers at the rehabilitation centre. In his "*comments*" to the Reviewing Judge's enquiry in respect of the sentence the Magistrate said the following: "*The*

surrounding circumstances on how and why he committed the offence, clearly shows that he was not ready to co-operate with care giver and he ended up committing the offence."

9. The direct sentence of 2 years imprisonment sentence is in any event not commensurate with the nature and extent of the crime, and is shockingly inappropriate.
10. The contributions by Adv P Vorster and Adv H M Meintjes SC, Deputy Director of Public Prosecutions, Gauteng Division are appreciated. Both advocates opined, mainly for the same reasons referred to above, that the sentence should be set aside. Adv Meintjes submitted that the sentence should be substituted with a warning, and, in the event of the accused still having a problem with his drug addiction, that it should be addressed in an alternative manner.
11. I agree with Adv Meintjes' contentions. The accused's drug problem, in the event of the accused's rehabilitation not yet completed, should be attended to by the Department of Social Development. A copy of this judgment must be forwarded to that department.

Order:

1. The accused's conviction on the charge of malicious damage to property in case number A210/17, Magistrate, Cullinan, is confirmed.

2. The sentence of 2 years imprisonment is set aside and substituted by the following:

The accused is cautioned and discharged.

3. The accused must be released from custody with immediate effect.

AJ BAM

JUDGE OF THE HIGH COURT

I agree,

S. POTTERILL

JUDGE OF THE HIGH COURT

17 October 2017