

SUMMARY

SEBASTIAAN SKRYWER *versus* THE STATE

SILUNGWE, J. *et* HEATHCOTE, A. J.

2005.06.30

SENTENCE

Consistency - Principle of - Has gained wide acceptance -
Strives to avert wide divergence in sentences imposed in
similar cases - Promotes legal certainty and improves
respect for the judicial system.

IN THE HIGH COURT OF NAMIBIA

In the matter between:

SEBASTIAAN SKRYWER**Appellant**

and

THE STATE**Respondent****CORAM:** Silungwe, J. et Heathcote, A. J.

Heard on: 2005.06.29

Delivered on: 2005.06.29

APPEAL JUDGMENT

SILUNGWE, J.: The unrepresented appellant was tried in the Grootfontein Magistrate's Court for, and convicted of, theft of N\$9,993.00 in cash from his employer for which he was sentenced to a direct prison term of four years. This appeal is against sentence only.

Ms E. M. Kalomo of the Legal Assistance Centre appears for the appellant *amicus curiae* and the Court expresses its indebtedness to her for her industry. The respondent is represented by Ms R. Herunga of the Prosecutor-General's Office.

At the time of the commission of the crime, the appellant was employed by Lewis Stores as a cashier. He was a first offender, thirty years old, married with children and maintaining his mother.

The thrust of Ms Kalomo's argument is severity of the sentence imposed and inconsistency in relation to sentences passed in similar cases. This approach is fully endorsed by Ms Herunga and properly so, in my view. To this end, the Court's attention has been drawn to several domestic decisions, such as: *Josef Hendricks v The State* 2004 (3) NCLP (HC), where this Court confirmed a sentence of three years imprisonment for theft of N\$48,000.00 in cash; *Valery Christina Pack v The State* CA 118/2005 (unreported) which involved theft of property worth N\$ 45,853.85; a sentence of five years imprisonment, two years of which were conditionally suspended on the usual conditions, was confirmed by the Court; *The State v Kenneth Victor Coetzee* Case No. CC 01/2003 (unreported), where the accused had stolen N\$446,814.87, a custodial sentence of six years was passed three years of which were conditionally suspended; and *The State v Carl Brune*, 2004 (6) NCLP 48 (unreported) where a similar sentence as in *Kenneth Victor Coetzee's* case (*supra*) was imposed for defrauding the accused's employer to the tune of N\$446,814.47.

It is evident that the above cases share one feature in common, to wit: consistency in sentencing. In addition, although the value of the property stolen in the cases in question was considerably higher than in the present one, the difference between the sentence here and the sentences imposed in those cases is not much. In the circumstances, Ms Kalomo urges the Court to interfere with the sentence. Ms

Herunga agrees with Ms Kalomo but only to the extent of suspending two years of the existing sentence.

The principle of consistency in sentencing has gained wide acceptance. Its significance lies in the fact that it strives to avert any wide divergence in the sentences imposed in similar cases and should thus appeal to any reasonable person's sense of fairness and justice. One advantage of consistency in sentencing is that it promotes legal certainty and consequently improves respect for the judicial system.

In casu, Ms Kalomo's plea that the sentence warrants interference by this Court finds favour with me as the sentence imposed was, in my view, startlingly inappropriate. Consequently, the sentence of four years imprisonment is varied to one of two years imprisonment one year of which is suspended for five years on condition that the appellant is not convicted of theft committed during the period of suspension.

SILUNGWE, J.

I agree

HEATHCOTE, A. J.

ON BEHALF OF THE APPELLANT:
Kalomo

Ms Erenstine M

Instructed By:
curiae

amicus

ON BEHALF OF THE RESPONDENT:
Herunga

Ms Ruth

Instructed By:
General

Office of the Prosecutor-