

CASE NO.: CR 25/07

IN THE HIGH COURT OF NAMIBIA

In the matter between:

THE STATE

versus

KAMATI WADEINGE

[HIGH COURT REVIEW CASE NO.: 1384/06]

CORAM: PARKER, J. et MANYARARA, AJ.

Delivered on: 2007 FEBRUARY 20

REVIEW JUDGMENT:

PARKER, J:

[1] The accused was convicted on her guilty plea to housebreaking with intent to steal and theft. She was sentenced to three years' imprisonment.

[2] In response to a query as to why an effective imprisonment of three years' was imposed, the learned magistrate states that she took into account the following factors: the accused pleaded guilty, she is a first offender and the value of the things stolen is N\$425,50. In addition, she says, she took into account the following considerations,

namely, the prevalence of the offence in Namibia and the interest of society. She also states that two years' imprisonment "*is appropriate in the circumstances*", yet she imposed a sentence of three years' imprisonment.

[3] It is trite that sentencing is within the domain of the trial court; however, a reviewing or an appeal court may interfere with the sentence imposed if it induces a sense of shock in the latter court. It induces in me a great sense of shock that the learned magistrate imposed a direct imprisonment of three years, if regard is had to the following: (1) the accused person pleaded guilty, which in itself shows her sense of remorse; (2) the accused person is a first offender; and (3) the smallness of the value of the items stolen. More important, in her judgment, the learned magistrate did not say a word as to why she imposed a sentence of direct three years' imprisonment. For these reasons, I am of the view that a sentence of three years' imprisonment is not appropriate in the circumstances.

[4] In the result, I make the following orders:

- (1) The conviction is confirmed.
- (2) The sentence is set aside and the following is put in its place:

Nine months' imprisonment, six months of which are suspended for three years on condition that the accused is not convicted of theft committed during the period of suspension.

I agree

MANYARARA, AJ