

DISTRIBUTABLE (61)

THE ATTORNEY-GENERAL v MICHAEL MHANDU

SUPREME COURT OF ZIMBABWE,
DUMBUTSHENA, CJ, BECK, JA & McNALLY, JA,
HARARE, OCTOBER 15, 1984.

M. Werrett, for the appellant

The respondent in person

BECK, JA: On the 23rd of February of this year the respondent was convicted on his plea of guilty of housebreaking with intent to steal and theft.

The record of what occurred in the magistrate's court is very scant. It may well be the case, and we must assume that it could be so, that the house was unoccupied at the time; a window appears to have been left open and the respondent entered the house through the open window and stole a two plate electric stove which was later recovered undamaged. He is 26 years old according to the charge sheet and he has relevant previous convictions.

On the 30th November 1978 he was convicted of theft and was sentenced to pay a fine and in addition, to one month's imprisonment suspended for 3 years on conditions.

Within that period of three years he broke the conditions and on the 1st October 1981 he was convicted on two counts; the first was a count of robbery for which he was sentenced to 2 years' imprisonment with labour and the second was a count of possessing stolen property for which he was sentenced to 2 months' imprisonment with labour and in addition the suspended sentence of 1 month that I have mentioned was brought into effect.

Not long after serving that sentence he was once again in trouble and in June 1983 he was convicted of housebreaking and theft and was sentenced to 6 months' imprisonment with labour.

In spite of that record the magistrate that convicted him of the present offence sentenced him to 4 months' imprisonment with labour only and the Attorney- General has appealed against that sentence. By now the sentence has been served and in recognition of the hardship that would be occasioned to the respondent if he were to be ordered to serve a further period of imprisonment, Miss Werrett who appears for the Attorney-General has fairly indicated to us that she is asking for no more than a declaratory order.

One other relevant fact that I might mention is that the theft of the stove does not appear to have been motivated by need because in mitigation the respondent told the magistrate that he had some modest cash savings of \$30 and also owned four head of cattle, so he was not entirely destitute at the time.

Housebreaking with intent to steal and theft is intrinsically a very serious offence. It is an extremely prevalent one and it is obviously the kind of offence in respect of which suitably deterrent sentences are necessary. Miss Werrett has said, and I think she has said correctly, that even first offenders usually get an effective sentence of 9 months' imprisonment with labour for this offence.

The respondent can consider himself extremely fortunate that he was treated with such excessive leniency. Obviously his previous convictions, which are all relevant and all very recent, are a matter to which attention must be paid, although undue weight should not be attached to them. It would seem however as if the magistrate in the present case could not have attached any weight to them at all, and in that he erred. Bearing in mind the facts that I have recounted it seems to us that the least sentence that should have been imposed upon the respondent was one of 1 year's imprisonment with labour, and a declaratory order to that effect will issue.

DUMBUTSHENA, CJ: I agree

MCNALLY, JA: I agree