

**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

Review 360/17

(Pretoria North Magistrate reference 32/17)

In the matter of

THE STATE

VS

TEVAIN

SWART

Accused

REVIEW JUDGMENT

BAM J

1. The accused was convicted of theft and sentenced to 3 years imprisonment in the Magistrate's Court, Pretoria North. The matter was then duly sent on review.
2. The charge of theft, to which the accused pleaded guilty, involved chocolates to the value of R1 67,90, stolen from Game Store on 23 September 2017. After the accused's first appearance on 26 September he was on two occasions remanded in custody, and the matter was then disposed of on 16 October. His rights to legal representation were explained, but he elected not to be represented.
3. After conviction, during the sentencing process, it transpired that the accused had 14 previous convictions for theft, and one for possession of drugs.
4. On each occasion, starting in 2011 until May 2017, he was either cautioned and discharged, or sentenced to a short period of suspended gaol sentence, or a fine with the alternative of spending time in gaol. It appears that about 8 months in suspended sentences are hanging over his head.
5. What, however, seems to be clear is that the crimes committed by the accused are commonly referred to as "*petty thefts*". However, theft is theft, and the accused did not learn from his previous encounters with the law.
6. The trial magistrate was faced with the onerous task to impose the most appropriate sentence.
7. In considering the relevant circumstances, it appears on the one hand that the accused experienced a problem with recidivism, which may even include kleptomania, possibly calling for psychological treatment. However, the lack of evidence in that regard makes it impossible to consider. On the other hand it must be taken into account that the present

crime is also not of a serious nature, complicating the issue of sentence even more.

8. After having considered the issues, I requested the magistrate to comment on the issue whether the 3 year's gaol sentence was commensurate with the nature and extent of the crime. In his response the magistrate agreed that it was not, and added that he had attached undue weight to the 14 previous convictions of the accused, and that he failed to consider the value of the stolen item and the fact that the accused pleaded guilty. The magistrate's final remark that she will abide by the reviewing judge' s decision is unfortunately not very helpful

9. In my view the sentence of 3 years imprisonment is in the circumstances too severe and not appropriate. There are alternative sentence opt ions available. However, this is a case where a pre -sentence report will be necessary and of great assistance.

10. Accordingly, the sentence should be set aside and the matter referred to the trial magistrate to consider sentence afresh, after having obtained a pre -sentence report. The accused should again be informed, and advised to get assistance from Legal Aid.

ORDER

1. The sentence of 3 years imprisonment is set aside.
2. The matter is refered to Magistrate M S RAPULANA, Pretoria North, after having obtained a pre-sentence report, to consider and impose afresh.

AJ BAM

JUDGE OF THE HIGH COURT

I agree,

S POTTERILL

JUDGE OF THE HIGH COURT

5 DECEMBER 2017