(49/79) L.T.

IN THE SUPREME COURT OF SOUTH AFRICA

(APPELLATE DIVISION)

In the matter between:

RAMCHUND RAMROOP Appellant

and

THE STATE Respondent

CORAM: RUMPFF, C.J., JANSEN et MULLER, JJ.A.

HEARD: 5 September 1979 DELIVERED: 25.9.1979.

J U D G M E N T

RUMPFF, C.J. :

In this matter the appellant, 39 years old, was charged before a Magistrate of Howick, Natal, with contravening section 37 (1) of Act 62 of 1955 in that he acquired stolen goods from April Majola without having reasonable cause for believing that the goods belonged to Majola or that Majola had authority to dispose of them. The goods consisted of a variety of articles

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like polishing machines, car batteries, spanners, an airgun, pliers, electrical drills and so on. The total value of these articles was alleged to be R1083. The appellant pleaded guilty. In answer to questions put to him by the Magistrate he made the following statement:

> "April Majola brought these items listed in the charge sheet which the Public Prosecutor read out to me on four occasions. I paid him on all four occasions. On the first occasion he brought the polishing machine and some tools, a set of sockets and a screw driver. For these three items I gave him R14. He did not tell me where he got it from he lived opposite my house. He said if I did not want them he will bring back the R14 and take the items. He worked as a welder he was a neighbour, if there was a query I know I could point him out. I thought it was his property.
>
> Subsequently when he brought the other items I realised it was stolen items because he would not be in a position to own so much. Items such as batteries and a radiator is not normally kept by a welder. On the other three occasions I gave him R40, R35, R20."

He then explained that he bought the goods because he was afraid that Majola might become aggressive. He also said

that he was forced to buy the goods and he was afraid because on a number of occasions when his children were assaulted he was defenceless. At the trial of appellant, Majola gave evidence and stated that he had stolen the goods mentioned in the charge sheet and had been convicted of housebreaking with intent to steal and theft in connection with these goods. He had sold the goods in various batches over a period of three weeks to one month. He also stated that he had never threatened the appellant to buy the goods, that appellant did not object to buying the goods, that he knew appellant quite well and that he lived close to him. The appellant did not cross-examin Majola and stated: "I do not wish to dispute any part of his evidence". Thereafter the appellant refused to give evidence. He was convicted and again failed to give evidence under oath. He did, however, address the Court, saying that he was married with two minor children and that he was employed as a school teacher earning R350 per month. He then again referred to fear and said: "There was a condition of fear within me. The seller could have become

harmful/.....

harmful to my family, though he never uttered any threats".

The Magistrate sentenced him to twelve months imprisonment. His appeal against the sentence to the Natal Provincial Division failed and he now appeals to us and it is submitted that he should get a fine and a suspended sentence of imprisonment. It is not submitted that the sentence is so severe that it creates a sense of shock. It is argued that the Magistrate did not specifically indicate that he considered a suspended sentence or a fine and a suspended sentence. In the alternative the submission is that the Magistrate underemphasized the factors personal to the appellant. The Magistrate did in fact consider every possible personal factor that could be considered in favour of the appellant. He made a summary containing all of them. Against that, however, the Magistrate stated that the Court had in the current year dealt with an increasing number of cases of theft and housebreaking with intent to steal and theft and that it had consistently warned that perpetrators would be severely dealt with. The Magistrate rightly pointed out that the appellant

was not the thief but a receiver, and as the Court a quo put it, it is notorious that if there were fewer receivers there would be fewer thefts. I am quite satisfied that the Magistrate in the present case did weigh up the advantages and disadvantages of imprisonment and that he did consider whether a fine and suspended imprisonment or an effective term of imprisonment should be imposed. There are, in any event, two reasons why I do not think that this Court is entitled to reduce the sentence. In the first place the appellant refused to disclose to the Court the real reason why he bought the stolen goods. He refused to give any evidence under oath and his story of fear and threats is an obvious attempt to avoid the truth. In the second place, this is not a case of one occasion on which stolen goods were bought by appellant. According to his own statement he knew on three successive occasions that he was buying stolen goods. He is therefore the very type of person that would encourage people like Majola to steal. Had this been an isolated occasion

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on which appellant had bought some stolen goods, knowing them to have been stolen, and had he shown a genuine remorse, the position would have been different and a suspended sentence might then have been a proper sentence.

The appeal is dismissed.

CHIEF JUSTICE

JANSEN, J.A.
MULLER, J.A. } Concur.