

**THE SUPREME COURT OF APPEAL
OF SOUTH AFRICA**

CASE NO: 383/2002
Reportable

In the matter between

CHINA ANDREW KWENAMORE

APPELLANT

and

**THE STATE
RESPONDENT**

CORAM: SCOTT, LEWIS JJA and MLAMBO AJA

HEARD: 17 NOVEMBER 2003
DELIVERED: 27 NOVEMBER 2003

***Summary:* Cumulative effect of sentences imposed on young offender excessive;
reduced from 22 to 7 years' imprisonment.**

JUDGMENT

LEWIS JA

[1] The appellant was charged and convicted on ten counts of housebreaking and theft, and one count of housebreaking with the intent to commit a crime unknown to the State, in a Regional Court. He pleaded guilty on all 11 counts and was sentenced to two years' imprisonment on each count. He appeals now against the effective sentence of 22 years' imprisonment imposed by the trial court. An appeal to the High Court, Pretoria, was unsuccessful. This appeal lies, however, with the leave of that court.

[2] The basis of the appeal is that the cumulative effect of the sentence is excessive. The appellant argues that this is especially so since he was not yet 18 when the last of the offences charged were committed. It is also of note that he has no previous convictions.

[3] It is not necessary, for the purpose of this appeal, to deal in any detail with the individual offences committed. Suffice it to say that the appellant committed the first crime of housebreaking and theft when he was just 16 years old, and that he continued to commit such offences over a period of some 16 months. He worked in concert with two other offenders, and stole goods,

including weapons, to the value of R150 000 over that period (there was some dispute as to the value of the goods stolen, but nothing turns on this).

[4] The sentences were imposed after the report of a probation officer was received by the court. It emerged from the report that although the appellant was impoverished, he had a stable family life, living with his parents and his siblings. He had committed the thefts in order to enhance his lifestyle and compete with his peers. He knew that what he had done was wrong, but claimed that he had been influenced to commit the crimes by friends.

[5] The appellant argues that his conduct was rash, but asserts that his youth had made him vulnerable to temptation. He had admitted guilt and claimed to have shown remorse; and he was susceptible to rehabilitation, especially since he has the support of a family. He does not deny the seriousness of the crimes he committed, but contends that his youth is a powerful mitigating factor.

[6] Evidence was led in aggravation of sentence by the State (one of the complainants testified about the vandalism in his home

perpetrated by the appellant and his cohorts). Indeed there can be no question but that the crimes committed by the appellant are very grave indeed and warrant serious punishment. But there is nothing to suggest that a very lengthy period of imprisonment is justified.

[7] Indeed, 22 years' imprisonment imposed on a very young man (he was 18 when convicted and sentenced), even absent considerations of rehabilitation, is in my view so excessive that it warrants interference. (See *S v Koutandos & another* 2002 (1) SACR 219 (SCA).) I consider that an appropriate sentence would be seven years' imprisonment in total.

[8] The appeal against sentence is thus upheld. The order of the trial court that the appellant is declared unfit to possess a firearm in terms of s 12(2) of the Arms and Ammunition Act 75 of 1969 remains in place.

[9] The sentence of the trial court is set aside and replaced with the following:

'The accused is sentenced to seven years' imprisonment.'

C H Lewis

Judge of Appeal

Concur:
Scott JA
Mlambo AJA