REPUBLIC OF SOUTH AFRICA

THE SUPREME COURT OF APPEAL
OF SOUTH AFRICA

Case No 415/96
/mb

In the matter of:

ANDREW ANDREWS	FIRST APPELLANT
MORNé STURGEON	SECOND APPELLANT
LEON HARWOOD	THIRD APPELLANT
GREGORY HARWOOD	FOURTH APPELLANT
ALLAN HALL	FIFTH APPELLANT

and

THE STATE	RESPONDENT

CORAM: : HARMS, SCOTT JJA et STREICHER AJA

HEARD: : 4 SEPTEMBER 1997

DELIVERED: : 9 SEPTEMBER 1997

JUDGMENT

SCOTT JA/ ...

SCOTT JA:

The appellants pleaded guilty in the Regional Court to a charge of theft of motor car parts. They were duly convicted and each was sentenced to 6 years imprisonment of which 3 years were conditionally suspended for 5 years. Their appeal against sentence to the Transvaal Provincial Division was unsuccessful. Leave to appeal was refused by the court o quo but was subsequently granted pursuant to a petition to the Chief Justice.

The circumstances in which the theft was committed were common cause. The parts in question comprised some 70 items and included parts such as wheels, mudguards, bumpers, seats, direction-indicators, radio speakers and the like. Their market value was approximately Rll 000 and their replacement value was estimated to be in the region of R40 000. The parts were removed from 11 motor vehicles

which together with a large number of other vehicles had been impounded by the police and were being kept in a police storage-yard situated in Benoni. The yard was surrounded by a fence 1,8 metres high and reinforced with razor-wire. In the early hours of the morning of 16 November 1994 the appellants gained access to the yard through a hole which had previously been made in the fence but subsequently repaired. After removing the parts they were apprehended by the police as they were attempting to leave the yard.

Captain Venter, who was the officer in charge of the yard, described in evidence the difficulties he experienced protecting the vehicles in the yard from thieves. He said that subsequent to him assuming control in June 1994 the prevalence of theft from the vehicles was such that an amount of R125 000 had been spent reinforcing the original fence with razor-wire and creating partitions within the yard. The thefts had

nonetheless continued and there were complaints virtually daily from members of the public that parts had been removed from their vehicles while in police custody. The police as a consequence were obliged to pay out relatively large sums of money as compensation.

None of the appellants gave evidence; nor were any witnesses called on their behalf to give evidence in mitigation or offer any explanation for their conduct. All were represented by the same attorney who addressed the court in mitigation. It appears that the first and second appellants were 19 years of age, the fourth and fifth appellants 18 years, and the third appellant 20 years of age. None were married or had children. All were in fixed employment earning between Rl 500 and R2 000 per month. The first and third appellants each had a previous conviction for theft. The first appellant's conviction related to the theft of a 'plug' for which he was cautioned and discharged. The third appellant

had been convicted of stealing a 'multimeter' and sentenced to a juvenile whipping. The regional magistrate was of the view that these convictions were not sufficiently serious to justify a different sentence. It was not contended that he erred in adopting such an approach.

It does not appear from the record of the proceedings that the attorney representing the appellants requested a report in terms of s 276 A(l)(a) of the Criminal Procedure Act, 51 of 1977, regarding the suitability of the appellants for correctional supervision; nor is any reference made in the magistrate's judgment to this sentencing option. Both in this court and in the court below it was contended that the magistrate erred in not considering the imposition of correctional supervision and the various advantages of this form of punishment were pressed upon us in support of this submission.

The fact that no mention was made in the judgment of

correctional supervision does not mean, of course, that the magistrate overlooked it as one of the sentencing options open to him. What is clear is that he was of the view that the circumstances were such as to require the imposition of direct imprisonment. This in itself is no justification for the inference that he misdirected himself in the exercise of his discretion to impose an appropriate sentence; nor was counsel for the appellants able to suggest any other basis, apart from the severity of the sentences, for holding that there had been a misdirection.

The sentences imposed were undoubtedly severe. But that does not mean this court can interfere. It has been said time without measure that a court of appeal has no general discretion to ameliorate the sentences of trial courts. Where it is sought to have a sentence set aside on appeal solely on the ground of its severity, what must be shown is that the sentence is so severe that the inference can be drawn that the trial court

failed to properly exercise its discretion when imposing it.

The theft of spare parts involving the removal of those parts from a motor vehicle, like the theft of a motor vehicle itself, is regarded by the courts in a particularly serious light. Not only is it a crime which is prevalent throughout the country but by the very nature of things is difficult to guard against. The courts have issued countless warnings that they will take strong action against those who are convicted of crimes of this nature and generally the severity of the sentences imposed in such cases has increased in recent times. This much must be known to all. It is so that the appellants are relatively young. But this was not a crime committed on the spur of the moment. It was carefully planned and indeed one is struck by its audacity. The parts were removed from vehicles in the custody of the police and virtually from under their noses. As I have indicated, something in the region of 70 parts were removed from no fewer than 11

vehicles. All this is indicative of a sophisticated criminal operation on a relatively large scale.

It may well be that the sentence imposed in each case is more severe than one which I myself might have imposed sitting as a court of first instance. But the difference relates more to the period of imprisonment which was suspended than to the period which was made effective. In these circumstances I am unpersuaded that there is any sound basis for holding that the magistrate failed properly to exercise his discretion. This court is accordingly not at large to interfere with the sentences imposed and the appeal cannot succeed.

The appeal is therefore dismissed.

D G SCOTT

HARMS JA) - concur
STREICHER AJA)