

IN THE HIGH COURT OF SWAZILAND

Review Case No. 16/93

In the matter of

THE KING
vs
MLIMI DLAMINI

In the District of Shiselweni
17th February, 1993

REVIEW ORDER

Hull, C.J.

The accused, having earlier tendered a plea of guilty, was found guilty on a charge which is described both in the charge sheet and the judgment as being "Housebreaking with intent to steal and theft".

The learned senior magistrate rightly had regard, on the one hand, to the prevalence of this offence but, on the other, to the plea, the youth of the accused (who was 18 years old) and the fact that he was a first offender.

The magistrate sentenced him to two years imprisonment without the option of a fine, but also to a further twelve months imprisonment, again without the option of a fine, the latter sentence being suspended for three years on condition that he is not convicted during the period of suspension of a crime or offence of which theft is an element.

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The magistrate's intention in doing this, and his reasons, are not entirely clear. It appears to me more likely that he regarded him as having committed two offences, i.e. housebreaking with intent to steal, and theft. Another possibility, though this seems less likely, is that he meant to impose a three year sentence of which one was suspended.

From a brief review of the authorities, it appears to me that there is no intrinsic irregularity in alleging two offences in a single charge in this jurisdiction, although the better practice in my view, is to specify each offence in a separate charge.

No real injustice has been caused to the accused (who was unrepresented) by the combination of the charges as such. However the episode should, for the purposes of punishment, be treated as a single transaction.

Two years actual imprisonment, in all the circumstances, was too heavy a penalty.

The convictions and sentences are varied as follows:

- (a) Convictions will be entered against the accused for housebreaking with intent to steal and for theft respectively;
- (b) On each of these charges, he will be sentenced to two years imprisonment, without the option of a fine, of which, however, 18 months will be suspended in each case for three years on condition that during the period of suspension he does not commit a crime or offence of which theft is an element.

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- (c) Both sentences will run concurrently, and will run from the time that he was first taken into custody, to the effect that the time he has already spent in custody is to be taken into account.

D. Hull

David Hull
CHIEF JUSTICE