

IN THE HIGH COURT OF SWAZILAND

GRIM. CASE NO.19/88

In the matter of:

THE KING

vs

MAKHEHLA JOSEPH SHABANGU

CORAM:

DUNN J.

FOR THE CROWN:

MR. NSIBANDZE

FOR THE DEFENCE:

IN PERSON

JUDGMENT ON COMMITTAL FOR SENTENCE

(11.2.88)

DUNN, J.

The accused was charged with and convicted of house breaking with intent to steal and theft of goods valued at E68.00. The accused admitted a list of 10 previous convictions all but one of which were for offences involving an element of theft. 7 of the previous convictions were before the Swazi National Court and would appear to have been in respect of relatively minor cases involving theft. In each of these cases the accused was given the option of a fine. The remaining 3 convictions were before the Magistrate's court for Nhlanguano and Hlatikulu In the first case the accused was sentenced to a fine of E150.00 or 150 days imprisonment.

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In the second case, the accused was sentenced to 6 months imprisonment. In the third case the accused was sentenced to 9 months imprisonment with a further 6 months imprisonment which was conditionally suspended for 3 years. The 3rd conviction was on the 7th January 1987.

After the production of the list of previous convictions the record reflects that the public prosecutor made a statement from the bar to the effect that the accused had been warned of the danger of being declared an habitual criminal, on the 7th January 1987. No reason was advanced for the non-appearance of the warning on the list of previous convictions and it does not appear that the Senior Magistrate made any enquiry regarding this. The Senior Magistrate proceeded to commit the accused to this court for sentence the grounds for such committal being set out as follows:-

Due to the fact that accused has been formally warned of being declared a habitual criminal, the accused shall be committed to to the High Court for sentence.

The fact that an accused person has been warned of the danger of being declared an habitual criminal is no doubt a factor which can be taken into account in deciding whether or not to commit an accused person to the High Court for sentence. The difficulty with the present case is that the Senior Magistrate has not bothered himself to enquire into the circumstances of the alleged warning given to the accused. There is no indication as to whether any conditions were attached to such warning e.g. as to the nature of the offences for which a future conviction could attract the declaration as an habitual criminal.

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Further, this court would be left to speculate as to the offence for which the accused was convicted resulting in the warning being given.

The case is remitted to the Senior Magistrate. The accused is to be brought before the Senior Magistrate and a properly substantiated submission is to be made by the Public Prosecutor regarding the warning which is said to have been given to the accused. The Senior Magistrate must then in keeping with the practice of all the subordinate courts give his reasons for conviction and for the committal of the accused to this court for sentence setting in the latter the question of the suspended sentence which was imposed on the accused on the 7th January 1987.

B. DUNN

JUDGE