

REPUBLIC OF NAMIBIA



HIGH COURT OF NAMIBIA NORTHERN LOCAL DIVISION, OSHAKATI

SENTENCE JUDGMENT

Case No.: CC 05/2013

In the matter between:

THE STATE

and

SAKARIA NANDIPITE NAMASHONGO

ACCUSED

Neutral citation: *S v Namashongo* (CC 05/2013) [2017] NAHCNLD 5 (06 February 2017)

Coram: JANUARY, J

Heard: 24 January 2017

Delivered: 06 February 2017

Flynote: Sentence — Housebreaking with the intention to rob and robbery with aggravating circumstances — Plea of guilty — Mitigating factors — Individualization

Summary: Accused was indicted for housebreaking with intent to rob and robbery with aggravating circumstances. He pleaded guilty and submitted a statement in terms

of section 112(2) of the Criminal Procedure Act, Act 51 of 1977. The court found strong mitigating factors and considered the time that the accused was incarcerated awaiting trial. The sentence is individualized and partly suspended.

ORDER

The accused is sentenced as follows;

6 (six) years' imprisonment of which 3 years' imprisonment are suspended on condition that the accused is not convicted for housebreaking with the intent to rob and robbery committed during the period of suspension.

JUDGMENT ON SENTENCE

JANUARY, J

[1] The accused in this matter was arraigned with a co-accused on an indictment of housebreaking with the intention to rob and robbery with aggravating circumstances as defined in terms of section 1 of the Criminal Procedure Act, Act 51 of 1977 (the CPA). The accused pleaded guilty and tendered a statement mistakenly labelled it to be given in terms of section 112(1)(b) of the CPA. The statement is actually in terms of section 112(2) of the CPA.

[2] The 112(2) statement reads as follow;

"1. I am an adult male person and the accused person in this matter standing preferred of the charge of Housebreaking with intent to rob and robbery with aggravating circumstances as defined in Section 1 of the Criminal Procedure Act, Act 51 of 1977.

2. I plead guilty to the aforesaid charge and in elucidation of my plea, I wish to make the following admissions:
 - 2.1 That on 12 January 2012 and at Okanyothi cucashops in Indangungu, within the district of Ondangwa, I entered into a sleeping room where there were two girls who I asked to give me the money.
 - 2.2 That at that stage, I believed that the two women were in possession of money as they were working in the cucashop and I waited for the other cucashops to close before I approached them.
 - 2.3 That I was wielding an axe and a pocket knife when I approached the two girls in the room. I was not in possession of any other weapon.
 - 2.4 That I forced the two girls to direct me to where they kept the key for the cucashop, which they did, and I took the key and opened the shop whereafter I started searching for the money in the shop and that after a diligent search I left the shop with the following items:
 - 2.4.1 N\$2,600.00;
 - 2.4.2 2 x packets of unopened N\$5.00 Recharge Vouchers;
 - 2.4.3 2 x packets of unopened N\$10.00 Recharge Vouchers;
 - 2.4.4 1 x packet of YES cigarettes;
 - 2.4.5 2 x 200ml of Coffee Mokador;
 - 2.4.6 6 x packets of Revlon Relaxer;
 - 2.4.7 Packets of whiskey, I cannot recall the specific number of packets;
 - 2.4.8 2 x Samsung cell phones; and
 - 2.4.9 1 x Nokia cell phone.
- 2.5 That at the time I was taking these items from the cucashop, I did not have the intention to return the items to them and was going to permanently deprive the girls of these items listed hereinabove.

- 2.6 I was in no manner forced, coerced or promised anything in return for my plea of guilty and I tender same willingly, voluntarily and out of my own free will.
- 2.7 I know that what I did was wrong and unlawful and that I can be punished for it and thus beg this Honourable Court to show mercy on me in sentencing.”

[3] Mr. Pienaar is representing the State in this matter and Ms Mugaviri represents the accused. The State accepted the plea of guilty on the facts and admissions tendered by the accused. In accordance with section 112(2) of the CPA, this court was satisfied that he is guilty and convicted the accused on the strength of his statement. The trails of the accused and his former co-accused are now separated after an application in terms of section 157(2) of the CPA by Mr Pienaar. The accused must now be sentenced.

[4] The State did not prove any previous convictions. The accused did not testify in mitigation but called a witness who is his uncle, the brother of his late father. Ms Mugaviri addressed this court in mitigation. Mr. Pienaar only addressed the court in aggravation and did not call any witnesses.

[5] The uncle is employed as a teacher for 16 years. He knows the accused from birth since the accused stayed with his late father and the uncle in the same house. The uncle took care of the accused because the father was not employed. He assisted the accused by paying his school fees. The accused passed grade 11. The uncle is still taking care of the accused. The accused is the eldest of 7 children. Accused is now 26 years old. The uncle testified that the accused did not disappoint him and was never a troublemaker before. This is the first time that he brushed shoulders with the law. The accused was hardworking and always caring for his younger siblings. The accused has a 6 year old child. The child is staying with the maternal grandmother.

[6] The witness knows that the accused did not appear in court on the 16th September 2014 until April 2016 after he was released from custody on warning. Apparently the accused was having employment in the South and he was scared to go

to jail. The accused was arrested in April 2016 after the accused's return to the house of the uncle. The witness informed the police when the accused returned.

[7] In cross-examination the witness conceded that the accused was convicted for a serious crime; that it is a prevalent crime; that the appropriate sentence is a custodial sentence; that the sentence should be an example to other would be offenders. The witness however requested for leniency as the family would like to see the accused back home.

[8] The personal circumstances of the accused are; that he is a first offender who was 20 years old at the time of the commission of the crime; that he is now 26 years old; that he pleaded guilty in the court *a quo* and in this court; that he passed grade 11 at school; that he has one child aged 6 years old staying with the maternal grandmother; that he was arrested on 12 January 2012 and remained in custody until 21 January 2013. The Magistrate's court record is not clear what happened in the meantime from 21 January 2013 to 04 April 2013. The accused was summonsed to appear on 04 April 2013. He was then released on warning. The accused failed to appear in court on 16 September 2014 until 18 April 2016. He was rearrested on a warrant of arrest and remained in custody until today. He thus spent about 2 years and 9 months in custody trail awaiting.

[9] The accused did not inform this court what motivated him to commit the crime. In his plea explanation in the Magistrate's court he answered on a question why he had committed the crime that: "I was suffering and had problems. I wanted to get money and pay for my tertiary education. I wanted to rob the complainant and get money, as I also have a child to look after."

[10] Considering the evidence of the accused's uncle that he took care of the education of the accused and is still generally taking care of the accused, the need to go get money for education cannot be true. Furthermore the evidence reflects that the maternal grandmother takes care of the accused's child. There is no evidence before this court that the accused was required to support the child. It was submitted by Ms Mugaviri that the accused committed the crime to support himself and his child. There is

no evidence to that effect. The evidence of the uncle is to the contrary in that he took care of the accused. I therefore reject the explanation. It is in my view more likely that the motivation was greed.

[11] It is evident from the section 112(2) plea explanation that the crime was premeditated. The accused waited for other surrounding cucashops to close before he went to rob, armed with an axe and a pocket knife. The two victims are vulnerable girls who were surprised in the sanctity of a room they were sleeping in adjacent to the cucashop that was robbed. The accused armed with dangerous weapons i.e. an axe and a pocket knife forced the two girls to give him the key to the cucashop, opened the door to the cucashop and took cash and property to the value of plus minus N\$5000.00.

[12] The crime of housebreaking with the intention to rob and robbery is indeed a serious crime. It is evident from the many cases coming before this court on review and appeal that it is very prevalent. Furthermore it is also evident that this serious crime is more frequently committed by criminals in the age groups between 18 years and 30 years of age. There is therefore justification to send a clear message to society and other would be offenders that the courts cannot and will not tolerate these types of offenses and will impose custodial sentences.

[13] I am mindful that cases need to be individualized and sentences will therefore differ from case to case. It is however by this time trite that Housebreaking with intent to rob and robbery and Housebreaking with the intention to steal and theft attract custodial sentences unless there are mitigating circumstances justifying a suspended sentence or a fine.

[14] Both Ms Mugaviri and Mr Pienaar referred this court to several cases on sentencing of convicts for this crime. In those cases excessive force was used and many of them dealt with cases where victims were killed or suffered serious injuries. In most of those cases the convicts were indicted with multiple counts where courts had to consider the cumulative effect of sentences. The sentences ranged between 15 years and 8 years imprisonment.

[15] In this case there is no evidence of any serious force, violence, injuries or damage to property. The accused was convicted of one crime only. There is no evidence whether or not anything was recovered but Mr Pienaar in his submissions informed the court that property to the value of N\$1400.00 was recovered.

[16] I find strong mitigating factors and considered the time that the accused had already spent incarcerated whilst trial awaiting. Most of the time of his incarceration was caused by himself not appearing in court when he was on warning. It is however in my view inescapable that the accused will have to serve a custodial sentence.

[17] In the result the accused is sentenced to:

6 (six) years' imprisonment of which 3 years' imprisonment are suspended on condition that the accused is not convicted for housebreaking with the intent to rob and robbery committed during the period of suspension.

H C JANUARY

JUDGE

APPEARANCES:

FOR THE STATE:

MR. PIENAAR

OFFICE OF THE PROSECUTOR-
GENERAL

FOR ACCUSED:

MS MUGAVIRI

MUGAVIRI ATTORNEYS