

ASIVOROSI JITOKO v STATE (HAA0106 of 2005S)

HIGH COURT — APPELLATE JURISDICTION

5 SHAMEEM J

14, 21 October 2005

Criminal law — probation — reoffended while on probation — probation cancelled — appeal against cancellation of probation order — claimed total sentence harsh and excessive — Probation of Offenders Act ss 5, 6.

15 This case was an appeal against the cancellation of probation order and substitution of 30 months' imprisonment. The Appellant, a juvenile, was charged and pleaded guilty to four different incidents of breaking and entering and larceny. The court reviewed the Appellant's probation and he was judged to be uncooperative. His parents showed no interest in him and on the terms of his probation. The Appellant was re-arrested after escaping from custody. He was then sentenced to imprisonment. The Appellant submitted that the total sentence was harsh and excessive but the State opposed any reduction of the sentence.

20 **Held** — (1) In imposing the probation, the learned magistrate was determined to keep the Appellant out of an institution and so placed him in a facility with a school and home environment. However, he offended four times, on each occasion with different boys. This suggested that he was the main offender and that he was the disruptive influence on the other boys.

25 (2) The 12-month total sentence was not harsh given the Appellant's lack of cooperation nor was the 18-month sentence harsh and excessive for housebreaking. The sentence fell into the lowest end of the tariff and reflected his youth and guilty plea.

Appeal dismissed.

No cases referred to.

30 Appellant in person

S. K. Bavou for the State

35 **Shameem J.** This is an appeal against the cancellation of probation orders, made in criminal cases 356 of 2004, 357 of 2004 and 358 of 2004, and the substitution of a total of 30 months' imprisonment. The Appellant is now 17 years and 10 months old. At the time of the offending, he was a juvenile.

40 The Appellant was originally charged with three offences of shopbreaking and housebreaking. In case no 357 of 2004 (Crim App HAA0107 of 2005), he with two others were charged with stealing \$701 worth of items from fashion house shop after breaking into the shop on 13 January 2004. He pleaded guilty. He was then 16 years old, and said he had committed the offence because of peer pressure. He was a first offender. He was placed on probation for 2 years.

45 In case no 358 of 2004 (Crim App HAA0108 of 2005), he was charged with shopbreaking entering and larceny with one other. He was alleged to have broken into the Morris Hedstrom Supermarket between 7 and 8 January 2004, and stole items there to the total value of \$1442.15. Most of the items were bottles of liquor. He pleaded guilty on 12 February 2004 and was convicted. He was placed on probation.

50 In case no 356 of 2004 (Crim App HAA0106 of 2005), he was charged with shopbreaking entry and larceny. The Appellant with two others were alleged to have broken into the Jamm Amusement Centre and stole items to the total value

of \$834 on 13 January 2004. He pleaded guilty and was convicted. After hearing mitigation, he was sentenced to probation.

On 30 April, the cases were called before the learned magistrate for review of probation. The probation officer said that the Appellant was not cooperating and
5 that his parents had shown no interest in him or the terms of the probation. A bench warrant was issued for the Appellant and his parents. The case was called on 26 May 2004. The Appellant was then remanded in custody at the Boys' Centre.

10 In case no 914 of 2004 (Crim App HAA0109 of 2005), he was charged with two others (not the same as the two on the previous file), with breaking into the house of Maraia Ravula and stealing items to the total value of \$633, between 31 March and 3 April 2004. He pleaded guilty and admitted the previous convictions. His father Joji Tavo was present and asked the court for leniency,
15 saying that his frequent absences from home as a result of his job as a seaman, was partly to blame.

The Appellant then escaped from the Boys' Home. When he was finally arrested, he was sentenced on 19 April 2005, to 18 months' imprisonment. On the same day, his probation was cancelled under ss 5 and 6 of the Probation of
20 Offenders Act. In substitution, he was sentenced to 12 months' imprisonment in criminal case no 358 of 2004, 9 months' imprisonment in criminal case no 357 of 2004, and 9 months' imprisonment in criminal case no 356 of 2004. All sentences were to be served concurrently but consecutive to the 18-month term imposed in criminal case 914 of 2004. The learned magistrate also ordered the
25 Appellant's father to forfeit to the State \$500, which was the Appellant's good behaviour bond.

The Appellant submits that this total sentence is harsh and excessive. The State opposes any reduction of the sentence. To assist me in this appeal, I called the Probation Officer Ms Devi to court, to advise me as to the terms of the order. She
30 stated that the Appellant had not attended the interviews, had not been present at home for her home visit, that he was not enrolled at the Lami High School where he had promised the court he would attend school and had not cooperated with the probation officer in any way. Further, the Boys' Home had reported that the Appellant was a disruptive influence on the other boys and had run away, taking
35 other boys with him.

I also called his parents to court. They both said that the Appellant was well-behaved at home but that he behaved badly in the company of other boys in the village.

In imposing the probation order for files 356, 357 and 358 of 2004, the learned
40 magistrate was clearly determined to keep the Appellant out of an institution and in a school and home environment. It was an opportunity for the Appellant to reform himself and to focus on important goals for his life. He missed this opportunity. His record of offending shows that he offended four times, on each occasion with different boys. This suggests that he was indeed the main offender,
45 and that he is the disruptive influence on the other boys. His record at the Boys' Home confirms this.

In those circumstances, the learned magistrate had no option but to cancel the probation order. His parents are evidently unable to control him. He has not attended school and was not enrolled at the Lami High School despite promises
50 to the court that he would attend. He reoffended while on probation and committed yet another breaking and entry offence.

The 12-month total sentence is not harsh, given the Appellant's total lack of cooperation from the very commencement of his 2-year probation. Nor is the 18-month sentence harsh and excessive, for housebreaking. Indeed the sentence falls into the lowest end of the tariff, presumably to reflect his youth, and guilty plea. Nor is the total term of 30 months' imprisonment excessive for four different incidents of breaking and entry.

As I explained to the Appellant in court, he now needs to take stock of his life and his future. Perhaps this period of incarceration will allow him to reflect on the direction his present conduct is leading him. This appeal is dismissed.

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Appeal dismissed.

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