CASE NO. 33/99

IN THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

In the matter between

SUSAN NAY WRIGHT APPELLANT

AND

THE STATE RESPONDENT

BEFORE: SCHUTZ, STREICHER JJA AND MTHIYANE AJA

HEARD: 22 MARCH 2000

DELIVERED: 24 MARCH 2000

Criminal law - theft of police docket - sentence increased.

W P SCHUTZ

J U D G M E N T

SCHUTZ JA:

[1] The appellant pleaded guilty to the theft of a police docket and was convicted accordingly in the Magistrate's Court, Port Elizabeth. The sentence was 12 months imprisonment, of which 8 months was conditionally suspended for five years. An appeal against sentence to the Eastern Cape High Court failed, but that court granted leave to appeal to this court. Some days before the appeal was argued the parties were notified that their representatives should be prepared to argue whether the sentence should be increased.

[2] The facts were these. The appellant and her co-accused conspired to steal

the police docket in a case in which a charge of fraud against one Aroonslam was being investigated. The appellant's complicity was secured by the promise of a sum of R10,000. She never received this money, as the police had been alerted to the intended theft and had prepared a duplicate docket, which the informer stole and gave to the appellant, who passed it on to her co-accused, who was a friend of Aroonslam. Before the docket could reach him the police arrested the appellant and her co-accused.

[3] The appellant's personal circumstances are these. She has no previous convictions and is a 40 year old married woman with three children. She was earning R2 200 per month gross, but lost her job because of her arrest. Her father suffered from heart disease and she paid his medical bills. In consequence she was unable to meet her household expenses. She was heavily in debt. Her intention was to use the R10 000 to pay her father's medical bills. After arrest she co-operated with the police, and, as I have said, pleaded guilty.

[4] The prosecutor requested a fine coupled with a suspended sentence of imprisonment, but the magistrate rightly took a more serious view of the matter and imposed the sentence mentioned earlier. He motivated his sentence as follows:

> "a) Die hof beskou hierdie voorval in 'n baie ernstiger lig as die gewone voorvalle van diefstal wat voor die hof gebring word. Hierdie kom neer op korrupsie in 'n staatsdepartement wat in effek beide die Departement van Polisie en die Departement van Justisie raak.
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> b) Korrupsie veral, in die staatsdepartemente is deesdae aan die orde van die dag. Ongelukkig word die wandaders selde aan die kaak gestel. Hierdie korrupsie het as 'n reël ernstige finansiële implikasies en gevolge.
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> c) As gevolg van hierdie tipe voorvalle verloor die publiek respek en vertroue in die relevante departemente.
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> d) Die Departemente van Justisie en Polisie is die hoekstene van al die staatsdepartemente. Hulle primêre funksie is immers die handhawing van wet en orde. Huidiglik is hierdie land misdaadgeteisterd. Die blote feit dat misdaad nou op 'n drafstap in die verskillende staatsdepartemente is, is vir die gewone man op straat onaanvaarbaar.
>
> e) Die howe sal 'n drastiese standpunt moet inneem om persone met soortgelyke planne af te skrik en om die publiek se vertroue in die verskeie staatsdepartemente te herstel.
>
> f) In hierdie geval is melding gemaak van 'n groot bedrag geld, naamlik R10 000 wat hande sou wissel vir die diefstal van die dossier.
>
> g) Die dossier wat gesteel moes word, bevat 'n baie ernstige klag,

> naamlik bedrog, nodeloos om te sê bedrog is ook een van die misdrywe wat deesdae vry algemeen voorkom."

[5] On the appellant's behalf it has been contended that the magistrate erred in holding "Hierdie kom neer op korrupsie in 'n staatsdepartement." This argument is based on there being no clear evidence that the informer who stole the docket was a policeman or state official, so that it has not been established that anyone was perverted from doing his duty. It could have been a theft in the normal course, if I may put it that way. The High Court accepted that technically this argument was correct, but nonetheless declined to interfere with the sentence, because it considered the theft to be a serious one which merited the sentence imposed regardless. I would agree that corruption in the strict technical sense has not been proved.

[6] Insofar as a reduction in sentence is sought, no other misdirections have been demonstrated, nor has it been shown that the magistrate closed his mind to forms

of sentence other than direct imprisonment; and he has had regard to the personal circumstances of the appellant. The circumstances that I have set out were accepted as correct by the prosecutor. Nonetheless they are very meagre. The appellant made no real attempt to take the court into her confidence. Consequently there is no evidence, for instance, as to how she came to be involved in the conspiracy to steal. In any event, I agree with the statement of Nienaber JA in *S v Lister* 1993 (2) SACR 228 (A) at 232 H - I "To focus on the well-being of the prisoner at the expense of the other aims of sentencing, such as the interests of the community, is to distort the process and to produce, in all likelihood, a warped sentence."

[7] When one has regard to the nature of the crime and the interests of the community in having it punished, it must be stressed that the crime of stealing a police docket goes to the root of the maintenance of law and order and demands condign punishment. Further, I would associate myself with the magistrate's

remarks (suitably corrected as to corruption in this particular case). In *S v Newyear* 1995 (1) SACR 626 (A) this court sustained a sentence of four years imprisonment with two suspended in the case of a first offender policeman with 25 years of flawless service, who had corruptly taken four motor car tyres. Admittedly he was a policeman, and he did not plead guilty but falsely denied his guilt. In these respects his offence merited a heavier sentence than the appellant deserves. On the other hand, the value of the benefit she was to receive was considerably higher than that of four tyres. A sentence of corrective supervision, which was pressed on us, would send the wrong message to the public.

[8] Sentence is a matter for the discretion of the court burdened with the task of imposing sentence. A court of appeal may only interfere, whether a reduction or an increase of sentence is sought, if the court imposing the sentence failed to properly and reasonably exercise the discretion bestowed on it. Various tests have been formulated to determine whether that was the case. Ons such test is whether

the sentence can be said to be startlingly inappropriate. Another one is whether the sentence induces a sense of shock. (Cf *S v Pieters* 1987 (3) SA 717 (A) at 727 G - 728 A.) Taking all the relevant factors into account the sentence imposed in this case does not shock me as being excessive. On the contrary, the sentence is startlingly inappropriate and justifies the conclusion that the magistrate failed to properly and reasonable exercise his discretion in that it does not nearly allow for the seriousness of the crime. To my mind the appropriate sentence would be 12 months imprisonment without any part suspended. This was the maximum sentence that the magistrate could impose at the time. Such a sentence could lead to a disparity between the appellant and her co-accused, who received the same sentence as she did, but did not appeal, a disparity that would arise if it is to be assumed that the circumstances of the two accused were similar. Ordinarily one seeks to avoid such disparities, but I do not consider that the creation of a possible disparity should deter us from imposing a fitting sentence on the appellant. After

all, she chose to appeal, and if she had been successful, there would also have been a disparity the other way, unless the co-accused's sentence was altered on review.

[9] This judgment deserves the attention of prosecutors. As I have stressed, the theft of a police docket is a serious matter, which should be charged in a court with adequate jurisdiction and pursued with more firmness than was the case here.

[10] The appeal by the appellant fails and the sentence of the magistrate in the case of the appellant is set aside and replaced with the following:

"12 months imprisonment."

W P SCHUTZ
JUDGE OF APPEAL

CONCUR
STREICHER JA
MTHIYANE AJA