

IN THE HIGH COURT OF LESOTHO

In the matter of :

R E X

v

KHOAELE THOBELI

J U D G M E N T

Delivered by the Hon. Mr. Justice M.L. Lehohla
on the 21st day of September, 1990

The learned Magistrate before whom you appeared at Qacha's Nek, after convicting you of the crime charged, namely, of housebreaking with intent to steal and theft committed your matter here for sentence.

Needless to say the verdict of guilty was entered after you had pleaded guilty yourself, and the outline of the case for the Crown disclosed the commission of the offence. The sole reason that it appears to me the learned Magistrate committed this matter for sentence to this Court is that you have a number of previous convictions and you did admit them before him. The first one which is reflected on the previous convictions sheet is that of housebreaking with intent to steal and theft in respect of which you were sentenced to two (2) years' imprisonment on the 10th July, 1985. The second offence was of housebreaking with intent to steal and theft and was committed on 9th September, 1985 and in respect of that you were sentenced to one (1) year's imprisonment. The third offence also was of housebreaking with intent to steal and theft and it consisted of twelve (12)

/counts,

counts, and in respect of that you were committed for sentence to the High Court on 10th December, 1986 and the High Court imposed the sentence of five (5) years' imprisonment on you.

It is this sentence which appears to me to have had no effect whatsoever on you, for as soon after you were released; apparently after you had had your remission, you did commit the instant offence on 1st September, 1989. Looking at the list of the previous convictions, one might tend to think that, after you had served the sentence of two (2) years which was imposed on you on 10th July, 1985, and presumably after you had been given some remission, you committed the second one which was committed on 9th September 1985. Obviously you couldn't have had a remission of more than one and half ($1\frac{1}{2}$) years because what this means is that you had been two months in prison when the second offence was committed. So, the view that I take of the entire matter of the previous convictions, is that you committed these crimes one after the other, but your offences were not detected until you were brought to court in respect of the first one for which you were tried and convicted. In like manner, you were tried and convicted in respect of the subsequent offences while presumably serving sentence or sentences relating to matters regarding which you were already serving sentence or sentences.

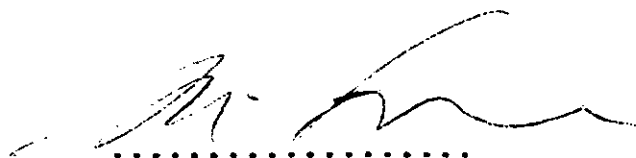
As your counsel has rightly pointed out, these convictions can savely be lumped together into a single conviction, thus for purposes of the instant proceedings, your previous convictions are going to be treated as one. But as I pointed out earlier, my main concern is that the last sentence of five (5) years that was imposed by this Court seems not to have had any effect on you. It stands to reason therefore that a higher sentence than that of five (5) years is warranted. Your counsel had suggested that because this Court should not be seen to be a

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sentencing machine, this matter should be remitted to the learned Magistrate who has jurisdiction in any case to deal with your matter. It is true the Magistrate has the jurisdiction to deal with your matter, but it appears that he was horrified by the number of previous convictions which you had had. I've already indicated that those previous convictions are to be treated as one, but to some extent I share the learned Magistrate's horror because as I pointed out the last sentence of five (5) years by this Court seems to have had no effect on you.

Much as the learned Magistrate could impose a maximum sentence according to his jurisdiction of six (6) years' imprisonment, I feel that he was entitled to commit your matter here if he felt that your previous convictions are too many and that therefore a stiffer sentence than he has power to impose is warranted. But as I stated the 5 years' imprisonment you underwent does seem to have had no remedial effect on you. Regard being had to the fact that if this matter were to be remitted to the court below the learned Magistrate would be restricted to imposing only one extra year beyond what has proved ineffective; we are not going to waste the time by sending this matter back to the learned Magistrate but we are going to deal with it here.

The minimum sentence that I feel you deserve this time is that of seven (7) years' imprisonment.



J U D G E

21st September, 1990

For Crown : Miss Moruthane

For Defence: Mr. Putsoane