

R. v. SIKOPO JOHN.

A CRIMINAL REVIEW CASE OF 1936.

Housebreaking—maximum sentence seven years imprisonment—sentence of ten years imprisonment, in excess of maximum—three outstanding principles governing imposition of judicial punishment.

In the case in question the accused person could have been but was not charged with burglary; the charge as laid was housebreaking and upon conviction sentence of ten years imprisonment was passed, the maximum sentence for this offence being imprisonment for seven years. The High Court in reviewing the sentence reiterated the outstanding principles to be applied in imposing judicial punishment and reduced the sentence to two years.

For further cases in which are considered the principles governing punishment see *R. v. Shunga White* p. 113 *post*; *R. v. Edward Nsokolo* 2 N.R.L.R. p. 85 and *Simasiku v. The King* 4 N.R.L.R. p. 114.

Francis, J.: It would seem that the charge here could quite appropriately have been laid for the offence of burglary. It was not so laid, and the accused pleaded to, and was tried on a charge of housebreaking, the maximum sentence in respect of which is seven years. The punishment here imposed and submitted for confirmation is three years in excess of that provided by law.

In the event I consider the sentence harsh and unduly severe.

There are certain well-established principles which govern the imposition of judicial punishment, three principal among which are noted here: (a) the intrinsic value of the subject matter; (b) the antecedents of the accused; and (c) the prevalence of the particular crime in question in the neighbourhood.

As regards (a), without detracting from the seriousness of any kind of housebreaking, I would not assign extreme gravity to the breaking of the hut of a person of the standing of a compound policeman, particularly in this case where it is stated that the door through which entry was effected was of a kind that "might have been knocked down by a dog".

With respect to (b), the Magistrate described the accused as of "the type of criminal who should be kept in custody for as long as possible". Reviewing his prison history during the last fifteen years the accused has been sentenced on six occasions to periods of imprisonment amounting to just over four years, and in arriving at this computation I have assumed that the sentences passed in January, 1925, were consecutive. The last sentence of eighteen months was imposed for the offence of arson in Livingstone, and incidentally is the severest. It is to be observed that

among the previous convictions there is not one for housebreaking nor for the cognate offence of burglary. It is quite possible that he was released from prison on the completion of his last sentence nine months ago, since when no bad record against him is shown.

In these circumstances, I cannot concur in the Magistrate's description.

As to (c), there is no information on the record that this crime is prevalent in the district of Livingstone.

In this case, therefore, I consider the Magistrate has not applied himself judicially to the question of punishment.

In my opinion, a sentence of two years imprisonment with hard labour is sufficient, and propose so to alter the sentence.

But you should let the Attorney-General see this beforehand.