

THE PEOPLE v PHIRI (1967) ZR 180 (HC)

HIGH COURT

WHELAN J

1st DECEMBER 1967

Flynote and Headnote

[1] Criminal procedure - Transfer of proceedings - Subordinate court shifts case to High Court for sentencing - When possible.

A subordinate court has power to commit a case to the High Court for sentence only if the subordinate court is of the opinion that greater punishment should be inflicted for the offence than it has power to inflict.

[2] Courts - High Court - Transfer of sentencing proceedings from subordinate court.

See [1] above.

[3] Courts - Magistrate's court - Transfer of sentencing proceedings to High Court.

See [1] above.

WHELAN J

Reilly, Senior State Advocate, for The People

The accused in person.

Judgment

Whelan J: The accused, Amos Phiri, having been convicted of rape by the subordinate court of the first class for the Ndola District, holden at Luanshya was, on the 17th October, 1967, committed to this court for sentence. There was initially some doubt as to the age of the accused had a medical examination resulted in the production of a certificate that he was somewhere between seventeen and eighteen years of age, but the learned magistrate in his judgment stated that he still felt that the accused was older than that. The accused, after conviction, admitted five previous convictions, all for housebreaking and theft. He was in 1961 placed on probation, in 1963 sent to a reformatory, and in December, 1965, released as a juvenile on licence until May, 1967. The present offence was committed on the 17th March, 1967.

After hearing the accused in mitigation the learned resident magistrate said: "The present offence is terribly serious and unfortunately all too prevalent in Luanshya. Various forms of punishment previously imposed have not reformed the accused. The court feels that this matter should be dealt with by the High Court and calls for Certificate of Antecedents." Then followed a Warrant of Commitment for Sentence, in which was recited, *inter alia*, that the court was of the opinion, for reasons set out in the record, that greater punishment should be inflicted in respect of the offence than this court had power to inflict.

[1] [2] [3] The only reasons I can find in the record are that the subordinate court felt that this matter should be dealt with by the High Court. A subordinate court has power to commit for sentence only if it is of the opinion that greater punishment should be inflicted for the offence than the subordinate court has power to inflict. The resident magistrate's court had power to sentence the accused to three years' imprisonment and, in addition, to order corporal punishment up to twelve strokes, and I therefore feel that, in fact, the learned magistrate in saying he felt that this matter should be dealt with by the High Court was losing sight of the correct principle upon which he should act in considering whether he should commit for sentence. This case is remitted to the subordinate court with a direction that it should be dealt with according to law. This will not, of course, preclude the magistrate from again committing for sentence should he consider that the appellant is deserving of a sentence of imprisonment exceeding three years.

Order accordingly.