

KALOBWE v THE PEOPLE (1968) ZR 97 (HC)

HIGH COURT

WHELAN J

4th OCTOBER 1968

Flynote and Headnote

[1] Criminal procedure - Sentencing - Criminal record as factor in mitigation but not in aggravation.

A record of past convictions is a reason for the magistrate to deny leniency to the accused, but the length of the record should not result in a correspondingly harsh sentence, for that in effect would be to punish the accused again for his prior convictions.

Appellant in person

Heron, Senior State Advocate, for the respondent

Judgment

Whelan J: On the 22nd August, 1968, in the subordinate court of the third class for the Mufulira District, the appellant was convicted of the theft of a pair of trousers and a shirt valued at K13.50 and was sentenced to eighteen months' imprisonment with hard labour. He appeals to this court against his sentence.

[1] The appellant had pleaded guilty to the offence of which he stood charged together with another man. Prior to sentence the appellant admitted to sixteen previous convictions nearly all involving theft and his co - accused admitted to two previous convictions for burglary and theft and one for rape. The co - accused was sentenced to six months' imprisonment with hard labour, and it is for this reason the appellant appeals to this court asking in effect why should his co - accused be sentenced to six months when he has been sentenced to eighteen. I quite see the appellant's point of view. The magistrate had before him two men both of whom had previous convictions. There was no suggestion that the accused took any greater part in the commission of this offence of which they were convicted than his co - accused, and having observed that the criminal records in each case denied to each of the accused leniency on the part of the magistrate, it would seem that he sentenced the appellant to three times the period of his co - accused because he had a longer record. This in effect is punishing him again for his previous convictions. It would be possible for me to call upon the co - accused to come before me to show cause why his sentence should not be increased, but in the circumstances I will not do so. The sentence of eighteen months' imprisonment is set aside and in substitution therefor I sentence the appellant to six months' imprisonment with hard labour. That sentence will date from the 22nd August, 1968.

Appeal allowed.