

FRANCIS CHANDA v THE PEOPLE (1981) Z.R. 27 (S.C.)

SUPREME COURT  
GARDNER, AG. D.C.J., CULLINAN, J.S. AND MUWO, AG. J.S.  
5TH MAY, 1981  
(S.C.Z. JUDGMENT NO. 9 OF 1981)

Flynote

Sentence - Previous convictions - Effect of on leniency afforded to offender.

Headnote

The appellant was convicted of theft, the particulars of the charge being that he stole forty-eight batteries valued at K13.44. He pleaded guilty to the offence and was sentenced to two years imprisonment with hard labour. At the time of the sentence the magistrate was informed that the appellant had two previous convictions, for theft and possession of property believed to have been stolen respectively. On appeal:

**Held:**

(i) Although previous convictions may affect the amount of leniency which may be afforded to an offender, no sentence should be greater than that which is merited by the offence itself.

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(ii) The sentence of two years imprisonment with hard labour for the theft of forty-eight batteries valued at K13.44, comes to the court with a sense of shock.

For the appellant: In person.  
For the respondent: L. S. Mwaba; State Advocate.

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Judgment

**GARDNER, AG. D.C.J.:** delivered the judgment of the court: The appellant was convicted of theft, the particulars of the charge being that he stole forty-eight batteries valued at K13.44. He pleaded guilty to the offence and was sentenced to two years imprisonment with hard labour.

At the time of the sentence the magistrate was informed that the appellant had two previous convictions; for theft and possession of property believed to have been stolen respectively. No details of the value of the property involved in these two convictions were given to the trial court. However, it was indicated that the appellant had been sentenced to eighteen months imprisonment with hard labour and nine months imprisonment with hard labour in respect of both these convictions.

In sentencing the appellant the magistrate said:

"Theft is a serious offence. It carries a sentence of five years. You have two previous convictions of similar matter."

The magistrate did not take into account the value of the items stolen in the present case.

Although previous convictions may affect the amount of leniency which may be afforded to an offender, no sentence should be greater than that which is merited by the offence itself. In this case the sentence of two years imprisonment with hard labour, for the theft of forty-eight batteries valued at K13.44, comes to us with a sense of shock. This offence in itself could not possibly merit such a high sentence. Taking into account the Act that, because of his previous convictions, the appellant has lost his entitlement to leniency, we allow the appeal against sentence, which is set aside, and we substitute therefore a sentence of twelve months imprisonment with hard labour which will take effect from the 2nd of April, 1978, the date of his original conviction.

Sentence substituted

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