

CHIWAMA v THE PEOPLE (1967) ZR 184 (HC)

HIGH COURT

WHELAN J

15th DECEMBER 1967

Flynote and Headnote

[1] Criminal procedure - Sentencing - Relationship between sentences - Reformatory order and corporal punishment.

A person serving a period of detention in a reformatory, the object being reformation of his character, should not be given corporal punishment for an offence committed prior to his entry into the reformatory.

Appellant in person.

Reilly, Senior State Advocate, for the respondent

Judgment

Whelan J: On the 6th November, 1967, before the subordinate court of the first class for the Chingola District, the appellant was found guilty on his own confession of the theft by servant of property valued at £81 5s. 0d., which offence was committed on the 23rd May, 1967. No statement of offence was contained in the charge (the words under the heading of "Statement of Offence" being, in fact, the particulars of offence), but the particulars of offence themselves disclose theft by servant, and the appellant was in no way embarrassed by this omission.

On the 18th November, 1967, the appellant's criminal record was put before the learned resident magistrate, and this disclosed that on the 5th August, 1967, the appellant was ordered to receive three strokes of the cane for theft by servant, that on the 25th August, it was ordered that he be sent to a reformatory, and that on the 13th September, 1967, he had been awarded four strokes with a cane for theft by servant.

The reformatory order of the 25th August was made in respect of an offence committed on the 3rd April, 1967, that is to say prior to the commission of the offence - the subject of this appeal. Had the appellant, on his appearance before the magistrate for entry and theft, had the common sense to ask for the case of theft by servant to be taken into consideration, the magistrate would in all probability have done so and still have made a reformatory order. [1] As the appellant is serving a period of detention in a reformatory - the object being whilst he is there to reform his character and point out to him the error of his ways - I consider that an order for corporal punishment at this stage, for an offence committed prior to being ordered to a reformatory, to be wrong in principle. It can serve no useful purpose from the point of view of additional reformation of the accused's character. I set aside the order that the appellant receive nine strokes with a cane, and, in substitution therefor, I order that the appellant, who is 18 years of age, suffer one day's simple imprisonment.

Appeal allowed.