

SOUTH AFRICA / JUDGMENT

S v Bhiya (A820/15) [2015]

ZAGPPHC 889 (5 November 2015)

[2015] ZAGPPHC 889

COURT

North Gauteng High Court, Pretoria

BEFORE

Kollapen, Sam Boqwa

CASE / FILE NUMBER

A820/15

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IN

THE HIGH COURT OF SOUTH AFRICA

(GAUTENG

DIVISION. PRETORIA)

REVIEW

CASE NO: 474/15

CASE

NUMBER : A820/15

DATE:

05 NOVEMBER 2015

IN

THE MATTER BETWEEN:

THE STATE

AND

SIZWE PRINCE

BHIYA

REVIEW

JUDGMENT

KOLLAPEN J:

1. The accused, a twenty-four year old male, pleaded guilty in terms of section 112(2) of Act 51 in the Magistrate's Court, Nelspruit, to a charge of theft of a golf t-shirt valued at R399-95. He was thereafter convicted and sentenced. He was legally represented during the proceedings.
2. The charge sheet was endorsed to the effect that the accused is sentenced as follows: 'R1000 or 3 month wholly suspended for 3 yrs.'

3. The senior Magistrate, Nelspruit, whilst conducting overhead checking of the matter, noted that the record of the proceedings was incomplete because the presiding magistrate had not added a condition to the suspended sentence.
4. The senior Magistrate, Nelspruit, has referred this matter on special review, requesting that conviction and sentence be confirmed but that the sentence imposed be amended to read as follows:

‘The accused is fined R1000-00 or sentenced to 3 months’ imprisonment, wholly suspended for a period of 5 years on condition

that the accused not be convicted of theft committed during the period of suspension.’

5. The matter was not referred to the presiding magistrate for his comment.
6. The reviewing Judge requested the comments of the Director of Public Prosecutions.
7. In their memorandum the Director of Public Prosecutions made various submissions:
8. Section 297(1) of the Act says:

‘Where a court convicts a person of any offence other than an offence in respect of which any law prescribes a minimum punishment the court may in its discretion pass sentence but order the operation of the whole or any part thereof to be suspended for a period not exceeding five years on any condition referred to in paragraph (a)(i) which the court may specify in the order.’

9. Although the words ‘which the court may specify in the order’ creates the impression that imposing such a condition is discretionary, it is important that such condition be included in the order, particularly if the provisions of section 297(a)(ii) of Act 51 of 1977 have to be invoked in order to put into operation the sentence which was suspended.
10. It is to be noted that the request of the senior Magistrate in the special review, in addition to adding a condition to the suspended sentence, also changed the period of suspension from the three years specified by the presiding magistrate, to a period of five years.
11. Section 297(l)(b) provides that the period of suspension may be up to five years, which is in the discretion of the presiding magistrate. Section 297(1)(b) says ‘to be suspended for a period not exceeding 5 years’.
12. The change to the period of suspension at this stage, as requested by the senior Magistrate, could cause prejudice to the accused.

ORDER

13. In the circumstances an order is made in the following terms:
 - a. The conviction and sentence imposed by the learned Magistrate are confirmed.

- b. The sentence imposed is amended by the inclusion of a condition relating to the period of suspension. The sentence is to read as follow s:

‘The accused is fined R1000-00 (one thousand Rand) or sentenced to 3 (three) years imprisonment, wholly suspended for a period of 3 (three) years on condition that the accused is not convicted of the offence of theft committed during the period of suspension.’

N KOLLAPEN JUDGE OF THE HIGH COUR

I AGREE,

SAM BOQWA JUDGE OF THE HIGH COURT

IT IS SO ORDERED.

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