

SOUTH AFRICA / JUDGMENT

S v Dube (A525/09) [2009] ZAGPPHC 235 (22 June 2009)

[2009] ZAGPPHC 235

COURT

North Gauteng High Court, Pretoria

BEFORE

E Jordaan, BR Du Plessis

CASE / FILE NUMBER

A525/09

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NOT

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IN

THE HIGH COURT OF SOUTH AFRICA

(NORTH

GAUTENG PRETORIA)

DATE:22/06/2009

CASE

NO:A528/09

DATE:

08 June 2009

Magistrate

Case No: PR 17/2009/TEM

High

Court Ref No: 602

THE

STATE v NQOBILE THANDI DUBE

REVIEW

JUDGMENT

JORDAAN. J:

The accused was convicted the magistrate's court, Pretoria on a charge of theft. She was sentenced to 3months direct imprisonment wholly suspended for a period of 3(three) year on the normal conditions of suspensions.

The accused pleaded guilty and the matter was disposed in terms of section 112(1) (a) of Act 51 of 1977.

The matter came to the attention of the Chief Magistrate of Pretoria during Quality Control Measures He is of the view that an incompetent

sentence has been imposed and sent the matter on review with the request of that the sentence be set aside. I agree with the magistrate of the view of the Chief Magistrate.

A sentence of imprisonment without option of a fine .even if wholly suspended, cannot be imposed where the Court had followed the

procedure as followed in section 112(1)(a).

The office of the Director of Public Prosecutions referred me to an reported case of S Raath, A5Q7/06 where Southwood J said the

following:

"A presiding officer who sentence an accused person in terms of section 112(1)(a) of the Act must be of the opinion of that the offence does not merit punishment of imprisonment without an option of fine. Section 112 (1)(b) provides the cases where the Presiding officer is of the opinion of imprisonment or any other form of detention without the option of fine".

The sentence is aside and the matter is remitted to pass sentence afresh.

E Jordaan

Judge of the High Court I agree

I agree

BR Du Plessis

Judge of the High Court

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