

SOUTH AFRICA / JUDGMENT

S v Ndela and Another (1136/04)

[2004] ZAGPHC 15 (26 August 2004)

[2004] ZAGPHC 15**COURT**

High Courts - Gauteng

BEFORE

N.P. Willis, F.H.D. van Oosten

CASE / FILE NUMBER

1136/04

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Source record**IN****THE HIGH COURT OF SOUTH AFRICA****(WITWATERSRAND****LOCAL DIVISION)****Magistrates****ref. no: 5/4487/2003 (JOHANNESBURG)****High****Court Review No:1136/04****Magistrate's Serial****No:611/04****DATE:**

26/08/2004

THE

STATE

versus

WELCOME

NDELA.....First

Accused

and

BETHUEL

MUSAWENKOSI.....Second

Accused

REVIEW

JUDGMENT

WILLIS J:

This matter came before me for automatic review in terms of Section 302 of the Criminal Procedure Act No. 51 of 1977, as amended. The accused, who were policeman, were charged with the theft of moneys from a complainant. The amount stolen was R6000-00.

They were both found guilty by the learned magistrate, M.S. Poobalan and both were sentenced as follows:

Six months imprisonment, wholly suspended for five years on the following conditions:

that each of them repays the complainant the sum of R3000, payable to the clerk of the court Johannesburg; that the accused are not found guilty of theft committed during the period of suspension.

This appears both in the handwritten record on the learned magistrate as well as the typed transcript of the proceedings. The form J175, on which the sentence is recorded, however, provides, in addition, that "Payment to be made to the Clerk of the Court Johannesburg and to be effected within 3 (three months) from today. 12/8/04 "

I am satisfied that the accused were correctly convicted. I also find the sentence appropriate. It clearly is desirable that the accused be given a reasonable period of time within which to repay the money. Otherwise, the sentence is amenable to criticism that it is unfairly vague. Only yesterday I was given a matter for special review in terms of section 304 (4) of the Act. I had previously confirmed the conviction and sentence on automatic review. It came to light afterwards that there were slight discrepancies in the recorded sentence in different parts of the proceedings. I was asked to make an appropriate order to avoid any confusion or misunderstanding.

The accused may be prejudiced if the matter is not dealt with promptly. The extent of my interference is so minor and the need to do so obvious, that I shall make the order in this judgment without calling upon the learned magistrate or the Deputy Director of Public prosecutions to comment.

The following order is made:

The convictions of both the accused are confirmed.

The sentence for each of the accused as it appears in the form J175 relating to this matter is confirmed.

DATED AT JOHANNESBURG THIS 26th DAY OF AUGUST, 2004.

N.P. WILLIS

JUDGE OF THE HIGH COURT

I agree.

F.H.D. VAN OOSTEN

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