

SOUTH AFRICA / JUDGMENT

S v Patula (33/2015) [2015] ZAFSHC 65 (26 March 2015)

[2015] ZAFSHC 65

COURT

Free State High Court, Bloemfontein

BEFORE

G.J.M. Wright, S.J. Reinders

CASE / FILE NUMBER

33/2015

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FREE STATE HIGH COURT, BLOEMFONTEIN

REPUBLIC OF SOUTH AFRICA

Review No. : 33/2015

DATE: 26 MARCH 2015

In the review between:-

STATE

And

LATSHISILE PATULA.....Accused

CORAM: G.J.M. WRIGHT et S.J. REINDERS, AJJ

JUDGMENT: G.J.M. WRIGHT, AJ

DELIVERED ON: 26 MARCH 2015

REVIEW JUDGMENT

[1] The Accused stood trial in the Kroonstad District Court on one count of negligent driving (in contravention of the provisions of section 63(1) of the National Road Traffic Act, Act 93 of 1996). The Accused was represented by an attorney throughout the proceedings in the trial court. He pleaded guilty. Magistrate T.T. Monaedi imposed the following sentence on the Accused:

A fine of R 1 500,00 or 12 months imprisonment “which [sic] R 1 000,00 is suspended” for a period of five years on the condition that the accused is not convicted of a contravention of section 63(1) of Act 93 of 1996 committed during the period of suspension.

- [2] The matter was sent to the High Court for Special Review by the Senior Magistrate at the Kroonstad Magistrate's Court, A. Mnguni. Mnguni expressed concern that the sentence imposed may not be in accordance with justice by stating that:

"The sentence imposed is a fine alternatively imprisonment, a portion of the fine was suspended for five (5) years on a condition, the sentence does not make provision for the suspension of the imprisonment alternative. I am of the mind that the suspended fine should have the imprisonment as the alternative."

- [3] The trial magistrate gave short reasons for the sentence he or she imposed. The sentencing judgment mostly deals with the nature of the Accused's conduct (thus the nature and seriousness of his crime). Towards the end of the judgment, the magistrate posed a question to the Accused's legal representative in the following manner: "I am not sure Mr Ndasuka you said your client is not in a position to pay a fine?" This interruption creates the impression that the sentence was not properly considered before the judgment started and that the magistrate was making it up as he or she goes.
- [4] The magistrate fortunately did realize that a sentence of a fine might be appropriate as a sentencing option. Unfortunately, this option was not properly considered during the proceedings preceding the judgment on sentence. It would however in the circumstances appear to be appropriate to impose a fine.
- [5] In deciding on an appropriate sentence, a presiding officer has to make a value judgment in an objective manner so that it explains the sentence. See: *S v Vries* 1996 (2) SACR 638 (Nm) at 640 g – h. The judicial officer imposing the sentence should therefore provide an explanation for the sentence that he or she decides upon.
- [6] The magistrate failed to adhere to this most basic principle of his or her function as judicial officer. This in itself was unfair to the Accused in that no reasons were provided as to why the specific sentence was imposed and why it was worded in that specific manner.
- [7] For some inexplicable reason, the magistrate thought it prudent to only suspend a portion of the imposed fine, and not also a portion of the alternative imprisonment. In *S v Moyi* 1994 (2) SACR 408 (T) the principle was enunciated that when a portion of imprisonment is suspended, a portion of the fine must also be suspended (at 409 b – c). Logic dictates that the reverse should follow, namely that when a portion of a fine is suspended, a portion of the alternative imprisonment must also be suspended.
- [8] The reason for imposing a term of imprisonment as an alternative to a fine can firstly be found in the purpose of imposing a term of imprisonment in the alternative to a fine. In *S v Tsatsinyana* 1986 (2) SA 504 (T) the court held that the alternative sentence of imprisonment has a dual purpose, namely to ensure payment of the fine and, in the event of failure to pay, to serve as punishment for such failure.
- [9] In *S v Bokbaard* 1991 (2) SACR 622 (C) it was decided that if a fine is imposed to keep an offender out of prison, the alternative imprisonment is primarily a method of compulsion and thus only has to be sufficient to make non-payment of the fine problematic. If, however,

the fine is imposed to give the culprit a chance to stay out of prison even though imprisonment is warranted, the alternative imprisonment becomes primarily a means of punishment, and the term of imprisonment must be determined as if it were the only punishment imposed.

- [10] As the magistrate failed to provide detailed reasons for the nature of the sentence imposed, it is unclear what objective the specific sentence has to achieve. From the question posed during the judgment, read with the comments made in the judgment regarding the Accused's conduct, the inference can be made that the magistrate preferred not to have the Accused serve a term of imprisonment. If this is the correct inference, the alternative imprisonment was merely a method to compel the Accused to pay the fine. Imprisonment was then not in itself considered to be the appropriate sentence.
- [11] The implications of the judgment in the manner it has been worded should be considered. Should the Accused not pay the R 500,00 that has not been suspended, the result of the present wording of the sentence might lead to him having to serve the full period of 12 months alternative imprisonment. In the circumstances of the present case this will be an injustice to the Accused as 12 months imprisonment in the circumstances of the present matter appears harsh. In the premises, a portion of the term of alternative imprisonment should also be suspended so as to ensure that the sentence as a whole is appropriate in the circumstances.
- [12] The possibility also exists that the Accused may offend again, inviting a situation where the portion of the sentence which had not been suspended will come into operation. Should that occur, the suspended portion of the fine (R 1 000,00) and/or the period of alternative imprisonment may become a reality. It may well be that the Accused may then be unable to pay the fine and he will then have to serve the 12 months imprisonment.
- [13] In considering the appropriateness of the sentence, regard should be had to the whole sentence, including the part that is suspended. The reason being that a situation may arise where the Accused may eventually have to serve the suspended portion of the sentence. See: *S v Rooi* 2007 (1) SACR 668 (CPD) at 671 a – b. It is the whole of the sentence that should be appropriate in the circumstances of the matter.
- [14] Whichever way one view the matter, the 12 months imprisonment is problematic and inappropriate in the circumstances.
- [15] The period of suspension ordered by the magistrate is 5 years which is the maximum period allowed for suspension. In *S v Nabote* 1978 (1) SA 648 (O) at 650 H the view was expressed that, unless special circumstances are present, a sentence should not be suspended for the maximum period. This dictum differs from that in *S v Van Rensburg* 1978 (4) SA 481 (T) at 483 G – H. The sentiments expressed in the Nabote matter seem appropriate in the circumstances of the present matter and are worth following.

[16] In the circumstances of the case, it appears unfair and inappropriate to suspend the sentence for the maximum period of time. Suspension for a period of 3 years would be more appropriate.

ORDER

The following orders are made:

1. The conviction is confirmed.
2. The sentence is set aside and substituted with the following:

“A fine of R 1 500,00 or 12 months imprisonment of which R 1 000,00 or 8 months is suspended for a period of 3 years on condition that the Accused is not convicted of negligent driving in contravention of section 63(1) of Act 93 of 1996 committed during the period of suspension.”

2. No order is made in terms of section 34 of Act 93 of 1996.

G.J.M. WRIGHT, AJ

I agree.

S.J. REINDERS, AJ

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Prepared on 9 October 2026 · Esheria