

SOUTH AFRICA / JUDGMENT

S v Phakathi (A155/15) [2015] ZAGPPHC 109 (5 March 2015) [2015] ZAGPPHC 109

COURT

North Gauteng High Court, Pretoria

BEFORE

M J Teffo, C Pretorius

CASE / FILE NUMBER

A155/15

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IN

THE HIGH COURT OF SOUTH AFRICA

(NORTH

GAUTENG DIVISION, PRETORIA)

HIGH COURT REF NO:

814/2014

REVIEW CASE NO: MR

37/2014

DATE: 5 MARCH 2015

THE STATE

VS

BONGANI

PHAKATHI.....ACCUSED

SPECIAL REVIEW

JUDGMENT

TEFFO, J

1] On 14 March 2014, the accused, a 33 year old male, pleaded guilty in terms of section 112(1)(a) of Act 51 of 1977(the Criminal Procedure Act) in the Magistrate's court, Volksrust, to a charge of theft. He was convicted and sentenced to pay a fine of R500,00 or serve a period of 30 days imprisonment. A further sentence of 18 months imprisonment was wholly suspended for a period of five years.

2] The matter was brought to me on special review after the Magistrate had realized during the checking process of finalised cases that the Magistrate who presided over the matter's interpretation of sentencing in terms of section 112(1)(a) of the Criminal Procedure Act was not in accordance with the law.

3] I referred the matter to the office of the National Director of Public Prosecutions (NDPP) for their comment. The comments were received and noted.

4] Section 112(1)(a) of the Criminal Procedure Act reads as follows:

“ 1. Where an accused at summary trial in any court pleads guilty to the offence charged, or to an offence of which he may be convicted on the charge and the prosecution accepts the plea:

- a) The presiding Judge, regional Magistrate or Magistrate may, if he is of the opinion that the offences do not merit punishment of imprisonment or any other form of detention without an option of a fine or a fine exceeding the amount determined by the Minister from time to time in the government gazette, convict the accused in respect of the offence to which he or she has pleaded guilty on his or her plea of guilty only and;
- (i) impose any competent sentence other than imprisonment or any other form of detention without the option of a fine or to a fine exceeding the amount determined by the Minister from time to time by notice in the Gazette, or;
- (ii) deal with the accused in accordance with the law. ”

5] From the wording of the provisions of section 112(1)(a) of the Criminal Procedure Act it is clear that the imposition by the magistrate of a further sentence of 18 months imprisonment which sentence was wholly suspended for a period of five years is in direct conflict with the section. I am of the view that part of the sentence is not in accordance with the law, it is irregular and stands to be set aside.

6] After carefully considering the matter and the record of the proceedings, I do not find it necessary to remit the matter to the

court a quo for sentence. I am satisfied that the appropriate sentence under the circumstances is a fine of R500.00 or imprisonment for a period of 30 days.

7] I therefore propose the following order:

- a) The sentence of 18 months imprisonment imposed by the court a quo and suspended for five years is set aside;
- b) The accused is sentenced to pay a fine of R500,00 or serve a period of 30 days imprisonment.

M J TEFFO

JUDGE OF THE HIGH COURT

(NORTH GAUTENG DIVISION, PRETORIA)

I agree

C PRETORIUS

And it is so ordered.

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