

SOUTH AFRICA / JUDGMENT

S v Phakwe (38/06) [2006] ZANWHC 29 (4 May 2006)

[2006] ZANWHC 29

COURT

North West High Court, Mafikeng

BEFORE

R D Hendricks, Samkelo Gura

CASE / FILE NUMBER

38/06

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CA NO: 38/06

IN THE HIGH COURT OF SOUTH AFRICA

(BOPHUTHATSWANA PROVINCIAL DIVISION)

In the matter between:

THE STATE

and

JOHN DOMINIC PHAKWE

REVIEW JUDGMENT

HENDRICKS J:

[1] This is an automatic review that initially came before my sister Leeuw J, who queried as to whether:-

[a] the State succeeded in proving the identity of the accused beyond reasonable doubt;

[b] why two other suspects were brought by the police to the witnesses for identification if it was known that the accused was the person who broke into the house; and

[c] whether the Magistrate have jurisdiction to impose a sentence of twelve (12) years imprisonment.

[2] The Magistrate in his response addressed the questions raised in paragraph [a] and [b] above and I am satisfied that the identity of the accused was proven beyond a reasonable doubt. The Magistrate's reasoning cannot be faulted.

[3] As far as the sentence is concerned, the Magistrate indicates that he erroneously wrote “years” instead of “months”

and the sentence should have read “twelve (12) months imprisonment”.

[4] It is understandable that a mistake creaped in when the Magistrate wrote the sentence on the charge sheet.

[5] However, this clearly indicates that the Magistrate did not read the review documents before it was send to the Registrar.

[6] It is highly regrettable that matters such as this one should delay unnecessarily. This delay could have been avoided if the proceedings were read and corrected before it was dispatched.

[7] I find myself unable to agree that even the proposed sentence of twelve (12) months is appropriate under the circumstances of this case.

[8] In his address on the mitigation of sentence, the accused stated that he is gainfully employed earning an income of

R1 000-00 per month. He is single but he has a child and he is staying with his parents.

[9] It is clear from the record that the Magistrate did not consider imposing a fine as a form of punishment on the accused, despite the fact that he is gainfully employed and also a first offender.

[10] Under the circumstances I am of the view that the accused should be given a sentence with the option of a fine.

[11] I therefore make the following order:-

[i] The conviction is confirmed.

[ii] The sentence is set aside and substituted with the following:-

“R2 000-00 or twelve (12) months imprisonment.”

R D HENDRICKS

JUDGE OF THE HIGH COURT

I agree.

SAMKELO GURA

4 MAY 2006

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