

SOUTH AFRICA / JUDGMENT

S v Santho (HC16/2018) [2018] ZANWHC 21 (16 August 2018)

[2018] ZANWHC 21

COURT

North West High Court, Mafikeng

BEFORE

A.M. Kgoele, T. Djaje

CASE / FILE NUMBER

HC 16/2018

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IN THE HIGH COURT OF SOUTH AFRICA

NORTH WEST HIGH COURT, MAFIKENG

Case No. HC 16/2018

In the matter between:-

THE STATE

AND

THAPELO MOFFAT SANTHO

SPECIAL REVIEW

JUDGMENT

KGOELE J.

- [1] On 11 July 2018 the Magistrate Court at Klerksdorp convicted the accused in this matter of three Counts of Theft solely on his plea of guilty. He was sentenced to sixteen (16) hours of community services after a pre-sentencing report was presented to the Court.
- [2] The Presiding Magistrate send this matter for a special review after realizing that he/she made an error in passing the said sentence and further that, it did not reflect his/her intention which was to sentence the accused person in terms of Section 276(1)(h) of the Criminal Procedure Act 51 of 1977 (the CPA) in accordance with the recommendation in the pre-sentencing report.

- [3] A proper reading of the record reveals that at all material times the intention of the Presiding Magistrate was to impose a sentence recommended in the pre-sentencing report. This much can be gleaned from page 8 of the record of proceedings, line 18-22 wherein he/she indicated that:

“Now taking into consideration the period that you had already spent in custody from 6 March until today the 11 July, the Court is satisfied that it can actually sentence you according to this report”

- [4] The recommendation in the pre-sentence report was couched as follows:-

“The accused is a suitable candidate for correctional supervision in terms of Section 276(1)(h) of the CPA 51 of 1977”

- [5] Paragraph 3.2 of the report clearly stipulates that the sixteen (16) hours of community services he must perform is part of the conditions proposed with regard to the above sentence in terms of the provisions of Section 52 of the Correctional Services Act 111 of 1998.

- [6] I fully agree with the Presiding Magistrate that the sentence he/she

imposed does not correctly reflect the tenor of his/her sentence. In my view the provisions of Section 298 of the CPA cannot be applied in this matter because of the time period that has elapsed in the interim.

- [7] The following Order is thus made.

7.1 The sentence imposed by the Presiding Magistrate in this matter on the 11 July 2018 is hereby set aside;

7.2 The matter is referred back to the Magistrate Court Klerksdorp for the Presiding Magistrate to pass a proper intended sentence;

7.3 A warrant for the execution of sentence may be issued by the Magistrate Klerksdorp for the accused to be brought before Court to enable the Presiding Magistrate to impose a proper sentence.

A.M. KGOELE

ACCTING DEPUTY JUDGE PRESIDENT OF THE HIGH COURT

I agree

T. DJAJE

JUDGE OF THE HIGH COURT

DATED: 16 AUGUST 2018

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