

SOUTH AFRICA / JUDGMENT

S v Seleke and Another (455/2012)

[2012] ZAFSHC 235 (13 December 2012)

[2012] ZAFSHC 235**COURT**

Free State High Court, Bloemfontein

BEFORE

D.I. Matlapeng, K.J. Moloi

CASE / FILE NUMBER

455/2012

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FREE STATE HIGH COURT, BLOEMFONTEIN

REPUBLIC OF SOUTH AFRICA

Review No. : 455/2012

In the review between:-

THE STATE

and

KABELO ABEL SELEKEAccused 1

NORMAN NCHERE MATJIANEAccused 2

CORAM: MOLOI, J et MATLAPENG, AJ

JUDGMENT BY: MATLAPENG, AJ

DELIVERED ON: 13 DECEMBER 2012

- [1] The matter came before this court by way of review. Attached to the record of proceedings is a letter from the trial magistrate with a request that the sentence that she imposed be amended.

[2] The two accused appeared before the magistrate charged with assault. At the conclusion of the trial they were both convicted as charged and sentenced. I do not have any qualms that they were properly convicted and sentenced. The proceedings appear to me to be in accordance with justice. If anything can be said is that the learned magistrate was thorough especially with the explanations that she gave to the accused on how to conduct the trial. This has to be commended.

[3] In sentencing the accused the record reads as follows:

“On 21/11/2012 each accused: Sentenced in terms of section 297(1)(i) of Act 51/1977 to eighteen (18) months imprisonment.”

The request by the magistrate for amendment is directed at the first part of the sentence where it refers to s297(1)(i) of Act 51 of 1977.

[4] In terms of s298 of the Criminal Procedure Act 51 of 1977, when by mistake a wrong sentence is passed, the court may immediately after it is recorded amend the sentence. This usually means that the correction has to take place within a reasonable time as the court becomes functus officio after imposing a sentence and it normally cannot change a sentence that it imposed after a lapse of time.

[5] In this matter it is clear that the sentence imposed by the magistrate contains a technical fault. It is clear that the learned

magistrate intended to sentence the two accused in terms of s276(1)(i) of the Criminal Procedure Act to 18 (eighteen) months imprisonment. However, the section was rendered as s297(1)(i) and clearly this is wrong as there is no s297(1)(i) in the Criminal Procedure Act. I am of the view that there will be no prejudice to the accused if the sentence is corrected.

[6] In the circumstances I make the following order:

1. The conviction and sentence are confirmed.
2. The sentence imposed by the magistrate is corrected to read:

Each accused is sentenced in terms of s276(1)(i) of the Criminal Procedure Act 51 of 1977 to 18 (eighteen) months imprisonment.

The correction is antedated to 21 November 2012.

D.I. MATLAPENG, AJ

I concur and it is so ordered.

K.J. MOLOI, J

/spieterse

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