

SOUTH AFRICA / JUDGMENT

S v Thabethe and Another (641/15 , 1342/15, A368/2016) [2016] ZAGPPHC 513 (24 May 2016) [2016] ZAGPPHC 513

COURT

North Gauteng High Court, Pretoria

BEFORE

S P Mothle, N Kollapen

CASE / FILE NUMBER

641/15

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IN

THE HIGH COURT OF SOUTH AFRICA

GAUTENG

DIVISION, PRETORIA

CASE

NO: 641/15

NELSPRUIT

CASE NUMBER: 1342/15

DATE:

24 MAY 2016

In

the special review:

STATE

And

G

THABETHE.....

Accused

TSINDANE.....

....Accused

JUDGMENT

MOTHLE J,

1. This is a special review from the Magistrate's Court, Nelspruit Mpumalanga.
2. On 23 June 2015, G Thabethe and T Sindane, ("the accused"), who were legally represented during the proceedings, pleaded guilty to a charge of theft of a number of items at Mr Price Store, Promenade, Nelspruit. The provisions of Section 112(1) (a) of the Criminal Procedure Act, 51 of 1977 ("Act 51 of 1977") were applied and the accused persons were both convicted as pleaded.
3. In sentencing the accused, the Magistrate recorded as follows:

"Both: in terms of Section 297(1)(a)(c) of Act 51 of 1977 the passing of sentence is postponed for a period of three years."

4. The matter was then referred to this Court for review and allocated to me for attention. I raised with the Magistrate a query in the following terms:

"[1] I noticed that the learned Magistrate relied on Section 297(1) of the Criminal Procedure Act 51 of 1977 in dealing with the question of sentence. In particular the court has, in terms of Section 297(1), postponed the sentence for a period of three years."

- [2] It seems to me that in postponing the sentence the Learned Magistrate applied subsection (1) (a) (ii), which provides that the sentence may be postponed unconditionally. However, the second leg of the unconditional postponement of the passing of the sentence mainly," to order such person to appear before the Court, if called upon before the expiry of the date of the relevant period," was not stated.
- [3] Is there any reason why the learned Magistrate did not include this part of the sub-section. ?"
5. I received a response from the Senior Magistrate, A Van Der Merwe, of the same Court, who agrees with the view that in handing down the postponement of a passing of a sentence, the Court may do so subject to conditions s297(1)(a)(i) or unconditionally as in s297(1)(a)(ii). The provisions relating to postponement of sentence subject to conditions are stated in detail under sub-section (1) (a) (i), from

(AA) to (hh). The sub-section then adds the following at the end:

"and order such person to appear before court at the expiration of the relevant period; or" (My emphasis).

6. Where the postponement of the passing of the sentence is effected unconditionally, this is provided for in s297(1)(a)(ii). The relevant provision, fully stated, reads as thus:

“(1) Where a court convicts a person of any offence, other than an offence in respect of which any law prescribed a minimum punishment, the court may in its discretion -

- (a) postpone for a period not exceeding five years the passing of sentence and release the person concerned -

0)..

- (ii) unconditionally, and order such person to appear before the court, if called upon before the expiry of the relevant period; or”(My emphasis).

7. The last portion of the sub-section quoted in bold letters above, was not pronounced by the Additional Magistrate P Muruba.

8. The Senior Magistrate Van Der Merwe agrees, correctly so in my view, and identifies the essential elements of the provision as being:

“a. The period of postponement may not exceed 5 years.

b. The postponement must be either conditionally (sec297(1)(a)(i) or unconditionally(sec 297 (1)(a)(ii)).

c. Whether the postponement is conditionally or unconditionally, the sentence must include an order for the accused person to appear before the court either on a specified date “at the expiration of the relevant period” (conditional postponement) or when called upon to do so “before the expiration of the relevant period” (unconditional postponement).

d. When a sentence is postponed conditionally, the conditions of postponement must be specified. ”

9. I am accordingly of the view that the matter should be remitted to the Magistrate’s Court for proper sentencing of the accused. It is imperative that in pronouncing sentence prescribed by statute, a court of law should stay as close as possible to the wording of the relevant section of the Act.

10. In the premises, the sentence is incomplete and improper. It should thus be set aside and be handed down properly.

11. I therefore make the following order:

(1) The sentence imposed by the Additional Magistrate P Muruba, on the accused dated 23 June 2015 is hereby set aside;

(2) The matter is remitted to the Magistrate’s Court Nelspruit for a proper sentencing of the accused in terms of Section 297(1)

(a) (ii).

S P MOTHLE

JUDGE OF THE HIGH COURT GAUTENG DIVISION PRETORIA

I agree:

N KOLLAP^N

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