

SOUTH AFRICA / JUDGMENT

S v Willemse (B14/2015) [2015] ZAWCHC 28 (18 March 2015) [2015] ZAWCHC 28

COURT

Western Cape High Court, Cape Town

BEFORE

Binns-Ward

CASE / FILE NUMBER

B14/2015

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REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA

(WESTERN CAPE HIGH COURT, CAPE TOWN)

High Court Ref No: 15284

Magistrate's serial No: 2/2015

CASE NO: B14/2015

DATE: 18 MARCH 2015

In the matter between:

THE STATE

And

WHAYLIN WILLEMSE

From the Court of the Magistrate for the District of MALMESBURY held at ATLANTIS.

REVIEW JUDGMENT

BINNS-WARD J:

This matter was sent to this court on special review in terms of s 304(4) of the Criminal Procedure Act 51 of 1977 by the magistrate at Atlantis.

The accused, who was legally represented, pleaded guilty before a probationer magistrate to a charge of malicious injury to property. The trial magistrate elected to accept the plea in terms of s 112(1)(a) of the Criminal Procedure Act. Malicious injury to property (in the current case the charge sheet had disclosed that the value of the property concerned was R1

500) is a serious offence, and thus one in respect a sentence of direct or suspended imprisonment, or correctional supervision coupled

with a suspended sentence of imprisonment should have been regarded as eminently foreseeable possibilities. The magistrate's

election in the circumstances to convict the accused in terms of s 112(1)(a) was therefore injudicious, to say the least.

The trial magistrate imposed a sentence of six months' imprisonment wholly suspended for a period of three years on condition that the accused is not convicted of malicious injury to property committed during the period of suspension. Section 112(1)(a) of the Criminal Procedure Act provides:

Where an accused at a 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 prosecutor accepts that plea-

- (a) the presiding judge, regional magistrate or magistrate may, if he or she is of the opinion that the offence does not merit punishment of imprisonment or any other form of detention without the option of a fine or of a fine exceeding the amount determined by the Minister from time to time by notice in the 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 a fine exceeding the amount determined by the Minister from time to time by notice in the Gazette; or
- (ii) deal with the accused otherwise in accordance with law.

A wholly suspended period of imprisonment is, despite the order of suspension – which is conditional – a punishment of imprisonment. The sentence imposed was thus plainly not a competent one in terms of s 112(1)(a)(i) of the Criminal Procedure Act.

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