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**IN THE HIGH COURT OF SOUTH AFRICA
(NORTH GAUTENG HIGH COURT. PRETORIA)**

**NOT REPORTABLE
CASE NO: A112/09
DATE: 08 DECEMBER 2009**

MAGISTRATE PRETORIA

Case No; D26/912/2009

Magistrate's serial no: H79/C&

High Court Ref No: 1439

THE STATE VS JOHNNY PRETORIUS

REVIEW JUDGMENT

BOTHA J:

In this matter the accused was convicted of robbery and sentenced to two years' imprisonment. In addition the magistrate ordered that a suspended sentence of 4 years imprisonment imposed on the accused on 20 February 2007 be further suspended for a period of 5 years.

The conviction is in order. The sentence as such is also in order. What was irregular was the further suspension of the sentence imposed on 20 February 2007. It was irregular because the correct procedure was not followed, but more basically because the magistrate had no jurisdiction to further suspend a sentence that had obviously been imposed by a court of higher jurisdiction. The magistrate agrees that the further suspension was irregular. The state advocates also agree that it was irregular.

The question is what is to be done. The magistrate suggests that the matter of the suspended sentence be referred to the Regional Court. The state advocates suggest two possibilities:

- (a) that the sentence of two years imprisonment be confirmed together with an order that it run concurrently with any portion of the suspended sentence of 4 years imprisonment that may be put

into operation; or

(b) that the conviction be confirmed but the sentence be set aside and that the matter be remitted to the magistrate so that he can deal with it in terms of section 116(1)(b) of Act 51 of 1977, that is to refer the matter to a regional court for sentence.

In my view the course set out in paragraph (a) above should be followed. It is the least prejudicial to the accused and will as far as possible give effect to the original intention of the magistrate that he should not incur further incarceration on account of the suspended sentence. Obviously the suspended sentence can be put into operation, but that is for the regional court to decide if the State decides to take the necessary steps. I may add here that it is not the magistrate's task to refer the matter to the regional court for a consideration of whether the suspended sentence should be put into operation.

The following order is made:

- 1. The conviction of the accused is confirmed.**
- 2. The sentence imposed by the magistrate is confirmed and it is ordered that it should run concurrently with any portion of the suspended sentence imposed on 20 February 2007 that may be put into operation.**
- 3. The order of the magistrate that the suspended sentence imposed on 20 February 2007 be suspended for another 5 years is set aside.**
- 4. The declaration that the accused is unfit to possess firearm is confirmed.**

C BOTHA
JUDGE OF THE HIGH COURT

I agree

CJ EKSTEEN
ACTING JUDGE OF THE HIGH COURT