

IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN

Case Nr. : 241/2015

In the matter between:-

THE STATE

Plaintiff

And

GIDEON WILLIAMS

Defendant

CORAM:

MOLOI, J et DAFFUE, J

DELIVERED ON:

04 FEBRUARY 2016

REVIEW JUDGMENT

MOLOI, J

- [1] This is a special review in terms of section 304(4) of the Criminal Procedure Act No 51 of 1977, as amended.
(the CPA)
- [2] The accused pleaded guilty to a charge of assault with intent to do grievous bodily harm before the magistrate's court. The plea of guilty was a result of a Plea and Sentence agreement in terms of section 105A of the CPA duly agreed to. In terms of the Plea and Sentence Agreement the accused was fined

R2000-00 (Two Thousand Rand) or 5 (Five) years imprisonment. The accused was also ordered to pay the complainant an amount of Thirty Thousand Rand (R30 000-00) in lieu of compensation in terms of section 300 of the CPA which amount was to be paid in monthly instalments of Two Thousand Rand (R2000-00) per month with effect from September 2015.

- [3] The matter was referred to me as the Five (5) years imprisonment, though suspended in part for five (5) years exceeded the jurisdiction of the magistrate court. A further concern was whether compensation under the provisions of section 300 of the CPA can be ordered to be paid in instalments. An enquiry was referred to the magistrate as to which provision prevented payment in instalments of the compensation under section 300 of the CPA. The magistrate correctly pointed out that in terms of section 300(3)(a) of the CPA an award thus made under the provisions of section 300 of the CPA had the effect of a civil judgment.
- [4] Section 92(1)(b) of the Magistrates Court Act, No 32 of 1944, as amended provides that jurisdiction of the magistrates court is limited to a fine of R120 000-00 (One Hundred and Twenty thousand Rand or imprisonment for a period not exceeding Three (3) years. It is clear that the sentence of five (5) years imprisonment imposed although suspended in part is not according to the law. The compensation ordered to be paid in monthly instalments is permissible since in civil

judgments payment by instalments is normal and happens frequently.

[5] I was requested to confirm the conviction and impose an appropriate sentence. The accused was a 64 year old male, married with two young children aged 8 and 4 years respectively. He had passed grade 8 at school and was a first offender. The accused showed remorse for his action hence the plea and sentence agreement. The complainant was however seriously injured.

[6] I accordingly order as follows:

6.1 The conviction on a charge of Assault with intent to do grievous bodily harm is confirmed.

6.2 The sentence of the magistrate court is set aside and replaced with the following:

The accused is ordered to pay a fine of Two Thousand Rand (R2000-00) or undergo imprisonment for a period of Two (2) years. Half of the above sentence is suspended for a period of Five (5) years on condition that the accused is not convicted of assault with intent to cause grievous bodily harm or assault committed during the period of suspension.

6.3 In terms of section 103 of the Firearms Control Act No 60 of 2000 the accused is declared unfit to possess a firearm.

6.4 The order relating to payment of compensation in terms of section 300 of the Criminal Procedure Act No 51 of 1977 is confirmed

6.5 This order is deemed to have been made on 8 September 2015.

K.J MOLOI, J

I concur.

J. DAFFUE, J