



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

Reportable:	YES/NO
Of Interest to other Judges:	YES/NO
Circulate to Magistrates:	YES/NO

Review No.: A49/2016

In the matter between:

THE STATE

and

JOSEPH BOTMAN MOKONE

CORAM: JORDAAN, J *et* ZIETSMAN, AJ

JUDGMENT BY: ZIETSMAN, AJ

DELIVERED ON: 4 AUGUST 2016

- [1] This is an automatic review emanating from the magistrate of Bothaville, where the accused was found guilty on a charge of malicious injury to property and sentenced to three years imprisonment which is suspended for 5 years on condition that the accused is not convicted of malicious injury to property committed during the period of suspension.

- [2] The accused is a 43 year old male person who was convicted on the charge as referred to above on the basis that he damaged the property of the complainant, being a window pane on 20 December 2015 at Khotsong in Bothaville.
- [3] Reasons were requested by C D Pienaar AJ as well as Mhlambi AJ, which mainly questioned the sentence which was imposed, and it was required from the magistrate to indicate why the sentence must not be regarded as shockingly inappropriate especially in the light of the amount of the damage that was caused being R24,60.
- [4] In his reasons the magistrate indicated that the accused had a long list of previous convictions, and although most of them are more than 10 years old, at least two previous convictions are less than 10 years old, being for theft where the accused was sentenced to R900 or 3 months imprisonment and 1 previous conviction of assault committed on 12 September 2013 where the accused was sentenced to 3 years imprisonment suspended for three years on certain conditions.
- [5] The magistrate also indicated that the fact that the accused had various previous convictions, as well as one previous conviction which is similar to the present offence, and although that previous conviction was committed more than 10 years ago, had a bearing on the present imposed sentence. The aforesaid being the reason why he suspended the whole sentence.

[6] Bearing in mind the damage which was caused in this matter, as well as the fact that the only relevant previous conviction was also committed more than 10 years ago, I am of the view that the sentence imposed, although suspended wholly, is still shockingly inappropriate in the circumstances.

[7] I therefore make the following order:

1. The conviction is confirmed;
2. The sentence is set aside and the matter is re-admitted to the magistrate for sentencing the accused afresh.

P. ZIETSMAN, AJ

I concur.

A.F. JORDAAN, J

/eb