

IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)



A80/15

Date: ~~10~~ February 2015

17

DELETE WHICHEVER IS NOT APPLICABLE

- (1) REPORTABLE: YES/NO
- (2) OF INTEREST TO OTHERS JUDGES: YES/NO
- (3) REVISED

DATE

SIGNATURE

HIGH COURT REFERENCE NUMBER

: 833/2014

MAGISTRATE'S SERIAL NUMBER

: G151/2014

MAGISTRATE'S CASE NUMBER

: 8/2014

THE STATE vs ANDRIES MALELEKI

REVIEW JUDGMENT

PRETORIUS J.

[1] This matter was placed before the court as a special review in terms of section 304(4) of Act 51 of 1977 on the basis that the trial magistrate erroneously imposed a wrong period of suspension of the sentence as

imposed on the accused.

[2] The accused was convicted in the Magistrate's Court, Groblersdal of assault with the intent to cause grievous bodily harm. He was sentenced to 12 months imprisonment, half of which was suspended for 6 months on the normal conditions of suspension.

[3] The accused had pleaded guilty to the charge. He is a first offender, 29 years of age and has passed grade 8. His child, aged 12 years, is living with her mother. The accused is unemployed and therefore unable to pay a fine.

[4] The complainant was injured by stones thrown at him by the accused. No evidence was lead as to the complainant's injuries.

[5] In **S v Ndaba 1993(2) SACR 633 (A)** Kriegler AJA held at p639 a – b that:

“Nietemin wil dit tog voorkom dat daar dikwels onoorwoë 'n termyn van vyf jaar vasgestel word. Daarom dien beklemtoon te word dat bepaling van die opskortingstermyn deel van die straftoemeter se vonnisevaluering uitmaak en net soseer regterlikheid verg as die ander komponente van die vonnis.”

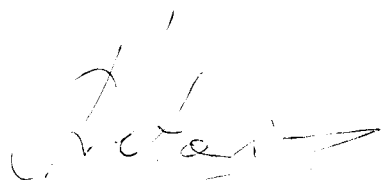
In this instance the accused is 29 years old. He reacted out of anger, but is remorseful and pleaded guilty.

[6] The Director of Public Prosecutions suggested that the sentence be set aside and a suspended period of three years be considered.

[7] I have read the record and proceedings, the magistrate's comments as well as the comments of the Director of Public Prosecutions. In the present circumstances a period of suspension of three years will be fair.

The order:

1. The sentence imposed on 21 May 2014 by Additional Magistrate Ledwaba is set aside;
2. The accused is sentenced to twelve (12) months imprisonment of which 6 months are suspended for (3) three years on condition that the accused is not convicted of assault with intent to do grievous bodily harm, or assault committed during the period of suspension.
3. The date of sentence is ante-dated to 21 May 2014



C PRETORIUS
JUDGE OF THE HIGH COURT

I AGREE:

R G TOLMAY
JUDGE OF THE HIGH COURT