

Reportable:	YES / NO
Circulate to Judges:	YES / NO
Circulate to Magistrates:	YES / NO
Circulate to Regional Magistrates:	YES / NO

**IN THE HIGH COURT OF SOUTH AFRICA
(Northern Cape High Court, Kimberley)**

CASE NO: **35/2015**
DATE DELIVERED: **27/11/2015**

In the matter between:

ROGER BARKER

Appellant

and

THE STATE

Respondent

Coram: Olivier J et Pakati, J

JUDGMENT

Olivier J:

[1.] The accused in this matter was convicted on two counts, one of assault and one of assault with intent to cause grievous bodily harm. On the two counts taken together he was sentenced to *“6 months imprisonment or a R1,000.00 fine which is wholly suspended for a period of 3 years on condition Accused is not convicted of assault with intent to do grievous bodily harm”*.

[2.] As he was represented at the trial the matter is not automatically reviewable. It has, however, been submitted for special review in terms of Section 304(4) of the **Criminal Procedure Act**¹. The Magistrate has correctly pointed out that the condition of suspension of the sentence did not qualify and restrict it to a contravention committed during the period of suspension.

¹ 51 of 1977

[3.] In my view the sentence of imprisonment should also have been an alternative to the sentence of a fine, and not the other way around².

[4.] Otherwise the sentence is in my view in accordance with justice, and so are the convictions.

[5.] The following orders are therefore made:

1. THE CONVICTIONS ARE CONFIRMED.

2. THE SENTENCE IS AMENDED TO READ AS FOLLOWS:

“A FINE OF R1,000.00 OR 6 MONTHS IMPRISONMENT, WHOLLY SUSPENDED FOR A PERIOD OF 3 YEARS ON CONDITION THAT THE ACCUSED IS NOT CONVICTED OF ASSAULT WITH INTENT TO CAUSE GRIEVOUS BODILY HARM COMMITTED DURING THE PERIOD OF SUSPENSION.”

**C J OLIVIER
JUDGE
NORTHERN CAPE DIVISION**

I agree and it is so ordered.

**B M PAKATI
JUDGE NORTHERN CAPE DIVISION**

² Compare Section 287(1) of the **Criminal Procedure Act**