

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

Review No.: 152/2014

In the review between:

THE STATE

versus

N[...] P[...] M[...]

REVIEW JUDGMENT

CORAM: KRUGER, J *et* WRIGHT, AJ

JUDGMENT BY: WRIGHT, AJ

DELIVERED ON: 4 SEPTEMBER 2014

- [1] This is a special review under section 304(4) of the Criminal Procedure Act 51 of 1977. The Accused was charged with common assault. He pleaded guilty.
- [2] The presiding magistrate was of the opinion that the offence did not merit direct imprisonment or a fine exceeding R 5 000.00. The magistrate proceeded in terms of section

112(1)(a) of the Criminal Procedure Act and convicted the Accused of assault as charged.

- [3] The Accused was sentenced to three months' imprisonment, wholly suspended for 3 years on condition that he is not convicted of assault or assault with intent to commit grievous bodily harm committed during the period of suspension. The Accused was not legally represented during the trial proceedings.
- [4] The Accused elected not to call any witnesses in mitigation of sentence. In his address before sentencing, the Accused placed his personal circumstances on record. The complainant is his wife. The assault followed on a verbal confrontation between the complainant and the Accused. He hit her on the head four or five times with a bottle. The children were not present. The prosecutor accepted the version of the Accused, but placed on record that, according to the complainant, the youngest child of the complainant and the Accused was present during the fight, and that the complainant applied for a protection order.
- [5] The sentence imposed by the magistrate provides for direct imprisonment albeit suspended. It does not provide for a fine.
- [6] The magistrate should have proceeded under section 112(1)(b) instead of section 112(1)(a). The circumstances called for questioning of the Accused as there appears to have been doubt about the seriousness of the transgression.

No information regarding the nature and extent of the complainant's injuries was placed before the trial court. The charge sheet does however refer to blows to the complainant's head. The fair administration of justice called for an inquiry.

[7] I am of the view that it would not serve the interests of justice to refer the matter back to the court *a quo* in order to comply with the provisions of section 112(1)(b). The Accused clearly intended to plead guilty and presented his version of events during argument.

[8] The facts as placed before the trial court show a measure of provocation leading to the assault on the complainant. The Accused is a first offender. He is 31 years old and supports his wife and two children. A suspended sentence is called for and should include the option of a fine.

ORDER

[9] In the result the following order is made:

1. The conviction is confirmed;
2. The sentence imposed in the court *a quo* is set aside and replaced with the following:

“The Accused is sentenced to a fine of R 500.00 or three months imprisonment, wholly suspended for three years on condition that the Accused is not

convicted of assault or assault with intent to do grievous bodily harm committed during the period of suspension.”

G.J.M. WRIGHT, AJ

I concur.

A. KRUGER, J