

FREE STATE HIGH COURT, BLOEMFONTEIN
REPUBLIC OF SOUTH AFRICA

Review No. : 99/2011

In the special review between:-

THE STATE

and

KABELO JACOB SERUOE

CORAM: MOLOI, J *et* LEKALE, AJ

JUDGMENT BY: LEKALE, AJ

DELIVERED ON: 24 MARCH 2011

[1] The accused was convicted of theft by the Edenville Magistrates' Court on 9 February 2011 and sentenced as follows:

“Fined R300 or one (1) month imprisonment which is wholly suspended for a period of 1 (one) year on condition that [he] is not convicted of theft committed during the period of suspension – plus a further two (2) months imprisonment running from 9 December 2010 to date.”

[2] The latter part of the sentence raised the eyebrows of the senior magistrate and he directed an enquiry to the trial magistrate who responded that she was empowered by section 282 of the Criminal Procedure Act (the CPA) to antedate a sentence in respect of the period which the accused spent in custody as an awaiting trial prisoner.

[3] The senior magistrate, thereupon, invoked the provisions of section 304(4) of the CPA and brought the issue to the attention of this court with the following remark:

“My interpretation of the Section as well as the dicta in S vs De Boer 1968(4) SA 866 (A) and S v Hawthorne en ‘n Ander 1980(1) SA 521 (A) is that the trial court is not allowed to antedate any sentence...”

[4] I am in respectful agreement with the learned senior magistrate that section 282 of the CPA cannot be used by the trial courts to antedate sentences which they impose. (See **S v SILENI** 2005 (2) SACR 576 (E) at 577 f and compare **S v SEEKOEI** [1997] 1 ALL SA 40 (NC) at 46 b.)

- [5] A sentencing court which feels that the interests of justice require that any period, which a convicted person spent in custody prior to being sentenced, should be taken into consideration may deduct same from the sentence which it considers to be appropriate in the circumstances of the particular case. (See **S v HAWTHORNE EN 'N ANDER** 1980 (1) SA 521 (A) at 525 E.)
- [6] The Court further notes, without deciding the issue, that it is not apparent *ex facie* the record of the proceedings that the trial magistrate conducted an enquiry, as required by section 103(2) (a) of the Firearms Control Act, No. 60 of 2000 (the Act), before the trial court announced that the accused is not declared unfit to possess a firearm.
- [7] Section 103(2)(a) of the Act requires in peremptory terms that an enquiry should precede any declaration made in terms thereof. The purpose of such an enquiry is evidently to establish whether or not the accused is unfit to possess a firearm regard being had to the nature and seriousness of the

crime of which he has been convicted, his personal circumstances and the interests of the community, among others. (See **MKHONZA v S** [2009] 3 ALL SA 358 (KZP) and **S v MAAKE** 2007 (1) SACR 403 (T) at para [18].)

[8] Where no such enquiry was undertaken, the *ipse dixit* of the court on the matter can hardly be said to be in the interests of justice.

[9] In conclusion it is worth observing and reiterating, in our opinion, that trial courts are obliged, as of law and without exception, to conduct the relevant enquiry where the provisions of section 103(2)(a) of the Act are applicable.

[10] **ORDER:**

1. In the result the conviction is confirmed and the sentence is set aside and replaced with the following sentence:

“The accused is fined R300,00 or 1 (one) month’s imprisonment wholly suspended for a period of 1 (one) year on condition that he is not convicted of

theft committed during the period of the suspension.”

[11] The said sentence is antedated to run with effect from 9 February 2011.

L.J. LEKALE, AJ

I concur.

K.J. MOLOI, J

/sp