

IN THE HIGH COURT OF SOUTH AFRICA
(TRANSCAL PROVINICIAL DIVISION)

6 March 2009

Case No: A290/08

High Court Ref No: 217

S v ELMON VONGANI MACEBELE

REVIEW JUDGEMENT

SERITI J

1. This matter came before me on automatic review pursuant to the provisions of section 302 of the Criminal Procedure Act 51 of 1977.
2. The accused was arraigned in the magistrate's court. Malamulele, on a charge of assault with intent to do grievous bodily harm. He pleaded not guilty to the charge. He was convicted as charged and sentenced to pay a fine of R2400-00 (two thousand four hundred rand), alternatively a term of imprisonment of 12 (twelve) months.
3. No query was si rtt to the magistrate regarding sentence. The matter was also not forwarded I • the O< •"• •• of the Director of Public Prosecution for their commentt on sentence. There ■•(•. an for this was that it was in the interests of justice that accused be released with immediate effect as it was clear that i. would be unjust to keep him in costody >' ■ 31 much longer.
4. The sonipn^c im y■ 'do'^" ls ie n.y view harsh tnkmg irro account **his**)<ersonal circumsUA-.- :->. v 't'lon oi'swtencvl.. 'acl\ls r •',s

court that he is still a scholar doing grade 10. He is looking after his sibling as his mother is working at the Reef. When asked by the court if he could afford a fine, he replied that he could not.

5. At the time of the commission of the offence accused was a relatively young man of 20 (twenty) years.
6. The question of sentence falls within the discretion of the trial court. This court will only interfere with the sentence of the trial court if the trial court did not exercise its discretion properly, misdirected itself or if the sentence induces a sense of shock.
7. Accused is a first offender, relatively young and it also became clear that he could not afford to pay a fine. The injury that the complainant sustained was an open

laceration, which he said was just cleaned and dressed with a bandage at Malamulele hospital. No medical report was handed in court by the complainant.

8. The magistrate referred to complainant's injury as an 'ugly wound'. He further said.

" / have heard correctly when you said you do not have money to pay for a fine however this court wants to give you the latitude if somebody it might be a relative it might be a family member deciding to buy out your freedom, will do so as I am going to impose a time of imprisonment coupled with payment of a fine. "

9. The sentence with an option of a fine was clearly not an appropriate sentence in the circumstances. This court therefore is entitled to interfere with the sentence of the trial court.

10. I notice that the accused was arrested on 1 October 2002. The Registrar of this court received the court record on the 19 February 2009 and it was brought to my attention on the 20 February 2009. This means that the accused has already spent 4 (four) months and 2 (two) weeks in prison before this matter could come before me. The delay by the magistrates in forwarding matters of this nature is totally unacceptable as it causes prejudice to an accused person, as it has done in this case.

11. If this matter was forwarded to this court earlier, the accused could have been released a long time ago.

12. In the premises, the court makes the following orders.

1. The conviction is confirmed.

2. The sentence imposed by the magistrate is set aside and substituted with the following;

2.3 30 (thirty) days imprisonment.

2.2. In terms of section 282 of the Criminal Procedure Act 51 of 1977, the sentence is antedated to 1 October 2008.

3. The Registrar is ordered to bring it to the attention of the Clerk of the Court that matters of this nature must be forwarded to the High Court as soon as possible.

W.L. SERITI.
JUDGE OF THE HIGH COURT.

F.M. LEGODI
JUDGE OF THE HIGH
COURT.