

A 250/09



31/3/2009

NOT REPORTABLE

**IN THE HIGH COURT OF SOUTH AFRICA
(NORTH AND SOUTH GAUTENG DIVISION)**

MAGISTRATE SERIAL NO: 25/2008
CASE NO: HL 506/08
HIGH COURT REFERENCE NO: 154

DELETE WHICHEVER IS NOT APPLICABLE	
(1) REPORTABLE: YES /NO.	
(2) OF INTEREST TO OTHER JUDGES: YES /NO.	
(3) REVISED.	
18.03.09 DATE	 SIGNATURE

THE STATE

VS

MKHACANI JOHN MANGANYI

REVIEW JUDGMENT

SAPIRE, AJ:

The accused was convicted in the Magistrate's Court Hlanganani of assault with intent to do grievous bodily harm and sentenced to 3 (three) years imprisonment of which 1 (one) year was suspended conditionally for 3 (three) years.

The matter came before me on review and in view of my perception I wrote to the Deputy Public Prosecution as follows:

"The sentence in this case troubles me. He is a man of 51 years who has no previous convictions.

The assault has to be seen in the light of the domestic violence and the abuse of woman. This is true but is a jail sentence appropriate? Is it not possible to avoid putting mature first offenders into jail?"

I have received a reply to my query from C. Pruis, state advocate, and G D Baloyi, Deputy Director of Public Prosecutions. Both agree that the sentence should be altered.

C Pruis is of the view that the sentence should be set aside and altered to one of 12(twelve) months imprisonment in terms of Section 276(1)(i) of the Criminal Procedure Act, Act 51 of 1977.

The Deputy Director of Public Prosecutions, Mr Baloyi, is of the opinion that the sentence ought to be set aside and the matter referred back to the magistrate with the order that a probation officer's report be obtained and that the accused be sentenced afresh after consideration of the probation officer's report. This is a course which may have merit but bearing in mind that the accused has already being in jail for some time it seems to me that the time involved is not justified.

Justice will be satisfied in this case if the sentence is reduced. If 2 (two) years of the sentence are suspended on the same conditions as those imposed by the magistrate.

Accordingly the sentence of the magistrate is set aside and the following substituted

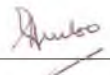
*“3 (three) years imprisonment of which 24 (twenty four) months is
suspended for a period of 3 (three) years on condition that the accused is not
again convicted of the crime of assault to do grievous bodily harm
committed within the period of suspension.”*

SIGNED AT PRETORIA ON THIS 17TH DAY OF MARCH 2009



ACTING JUDGE SAPIRE
HIGH COURT, PRETORIA

I AGREE:



JUDGE W R C PRINSLOO
HIGH COURT, PRETORIA