

A709/09



IN THE HIGH COURT OF SOUTH AFRICA
(NORTH GAUTENG HIGH COURT, PRETORIA)

A. 709/09.

3/8/2009

MAGISTRATE: WITBANK

HIGH COURT REF NO: 811

REVIEW CASE NO: C1869/2009

IN THE MATTER OF:

THE STATE

AND

KLAAS OSCAR MASILELA

ACCUSED

REVIEW JUDGMENT

SERITI, J

The accused appeared at the District Court,
Witbank facing one charge of unlawfully escaping

from custody. He was convicted as charged and sentenced to five (5) years imprisonment, which sentence was said not to run concurrently with the sentence he was serving.

When the matter came on review the Magistrate was requested to comment on the appropriateness of the sentence imposed on the accused.

In his comments, the Magistrate said, *inter alia*:

"In reconsidering all the facts today, I must agree that direct imprisonment of five (5) years may be too harsh under the circumstances. Five years imprisonment, of which two years are suspended, may be appropriate (provided that this term of imprisonment does not run concurrently with

the sentence that he is serving presently.)"

The Director of Public Prosecutions was requested to comment on the sentence imposed by the trial Court. Advocate F C Roberts, Senior State Counsel, in his comments stated amongst others that although the offence committed by the accused is serious, the trial Court has no jurisdiction to impose the sentence of five (5) years imprisonment, as the trial Court jurisdiction is limited to three (3) years imprisonment.

Section 92(1)(a) of the Magistrate's Court Act 32 of 1944 reads as follows:

"Limits of jurisdiction in the matter of punishments-

(1) Save as otherwise in this Act or in any other law specially provided, the court, whenever it may punish a person for an offence -

(a) by imprisonment, may impose a sentence of imprisonment for a period not exceeding three years, where the court is not the court of a regional division, or not exceeding 15 years, where the court is the court of a regional division."

Advocate Roberts, in his comments stated that he could not find any legal provision which authorises the trial court to impose sentence of more than three (3) years. Neither could I.

The conclusion that I arrive at is that the trial court imposed a sentence that is above its jurisdiction.

Director of Public Prosecutions suggested a sentence of three (3) years imprisonment.

The accused when he escaped from custody, he jumped out of a bakkie that was transporting them from police station to prison. No violence was used.

My view is that a sentence of two (2) years imprisonment will be appropriate in this case.

The following order is made:

1. Conviction is confirmed.

2. Sentence imposed by the trial court is
set aside and substituted by the
following: two (2) years imprisonment.



W L SERITI

I agree



F M LEGODI