



/ EVDM

NORTH GAUTENG HIGH COURT (PRETORIA)

DATE: 2 SEPTEMBER 2009

NOT REPORTABLE

**SUPREME COURT REF: 328
MAGISTRATE'S SERIAL NO: 03/09
MAGISTRATE S CASE NO: A391/08**

THE STATE

RISENGA ELIAS MTHOMBENI

REVIEW JUDGMENT

POTTERILL (AJ):

- § 1 The accused was correctly found guilty of assault with intent to do grievous bodily harm He was sentenced to three years imprisonment.
- § 2 The complainant and accused were engaged in an argument and the accused attacked the complainant with a spade Both parties were drinking prior to the assault.
- § 3 The injuries sustained are on the left forearm and elbow and nearly led to permanent paralysis

- § 4 The accused is however a [.....] man with a clean record.
- § 5 I queried the sentence with the Magistrate as being too harsh and also requested the view from the Deputy Director of Public Prosecutions. The Magistrate stands by his sentence, but the Deputy Director of Public Prosecutions submits that the sentence is too severe and suggests a wholly suspended sentence
- § 6 The offence of assaulting a person with a spade causing serious injuries may attract imprisonment sentence in appropriate cases Society requires Courts to impose deterrent sentences for drunken brawls leading to altercations and assault to which they are exposed much too often A first offender at age 53 however need not be 'removed from society' for a period of three years on the facts of this case
- §7 I find that the Magistrate overemphasized the assault and negated the personal circumstances of the accused The sentence is disproportionate to the accused and the needs of society
- §8 I accordingly make the following order
- §8.1 The conviction is confirmed.
- § 8.2 The sentence is set aside and replaced with the following
- The accused is sentenced to three (3) years imprisonment suspended for five(5) years on condition that in the time of suspension he not be found guilty of assault with the intent to do grievous bodily harm and a direct imprisonment sentence is imposed
- §8.3 The registrar of the High Court inform the necessary authorities by way of telegraph to ensure the immediate release of the accused.

S. POTTERILL
ACTING JUDGE OF THE HIGH COURT

I Agree;

A.P LEDWABA

JUDGE OF THE HIGH COURT