

FREE STATE HIGH COURT, BLOEMFONTEIN
REPUBLIC OF SOUTH AFRICA

Review No. : 285/2009

In the review between:-

THE STATE

and

YOLANNAYSE DARIBO

CORAM: VAN DER MERWE, J *et* JORDAAN, J

JUDGMENT BY: JORDAAN J

DELIVERED ON: 21 MAY 2009

[1] In this matter the accused was charged of contravention of section 37(b) read with sections 1, 21, 22 and 38 of the Refugees Act no 130 of 1998 and further read with section 250 of the Criminal Procedure Act no 51 of 1977.

[2] The accused pleaded guilty and the trial court, in terms of section 112(1)(a) of the Criminal Procedure Act 51 of 1977 convicted the accused accordingly.

[3] The accused was sentenced to a fine of R500 (five hundred rand) or 30 (thirty) days imprisonment plus a further 5 (five) months imprisonment suspended for 2 (two) years on certain conditions.

[4] The matter was brought to the attention of this court by an Acting Senior Magistrate in terms of the provisions of 304(4) of the Criminal Procedure Act. The honourable Magistrate comments as follows:

“It is my humble submission that the sentence is not appropriate and runs counter the provisions of Section 112(1)(a) Act 51 of 1977. Under the given circumstance, I request the Honourable Reviewing Judge to set aside the sentence and remit the record back to the Magistrate to impose an appropriate sentence.”

[5] The remarks of the said Magistrate is clearly correct in that the additional suspended sentence of imprisonment remains a sentence of imprisonment and therefore falls outside the ambit of Section 112(1)(a) and in particular contrary to subsection (i) thereof. The sentence is therefore not permissible in the circumstances and has to be set aside.

In the premises the conviction is confirmed but the sentence is set aside and the matter referred back to the trial court for the imposition of an appropriate sentence.

A.F. JORDAAN, J

I agree.

C.H.G. VAN DER MERWE, J

/AM