

**FREE STATE HIGH COURT, BLOEMFONTEIN
REPUBLIC OF SOUTH AFRICA**

Review No: 303/2009

In matter between:

THE STATE

VS

S.P. TLHEME

Accused

CORAM: EBRAHIM, J et C.J. MUSI, J

JUDGMENT BY: C.J. MUSI, J

DELIVERED ON: 4 June 2009

[1] This is a special review sent by the additional magistrate, Welkom. The magistrate requests that an order in terms of which a suspended sentence was put into operation be set aside.

[2] The accused was convicted at Welkom, on 07 October 2003, of attempted theft and sentenced, on 28 November 2003, to 3 (three) months imprisonment which was wholly suspended

for 3(three) years on condition that the accused is not convicted of theft or attempted theft committed during the period of suspension (the Welkom sentence).

[3] On 2 July 2004 the accused was convicted of theft, at Bethlehem magistrate's court, and sentenced to R800, 00 or 4(four) months imprisonment which was wholly suspended for 4(four) years on condition that he is not convicted of theft committed during the period of suspension (the Bethlehem sentence). This offence was committed on 1 July 2004.

[4] On 16 April 2009 the prosecutor applied for an order that the Bethlehem sentence be put into operation.

[5] The magistrate however ordered that the Welkom sentence be put into operation.

[6] The magistrate's order is clearly wrong because there was no evidence that the accused breached the Bethlehem sentence's conditions of suspension. When he was convicted at Bethlehem, he breached the Welkom sentence's conditions of suspension. It is the Welkom

sentence that was therefore supposed to be put into operation and not the Bethlehem sentence.

[7] The magistrate's order putting the Bethlehem sentence into operation is incompetent and irregular. It ought to be set aside.

[7] I accordingly make the following order:

a) The order, of the additional magistrate Welkom, in terms of which the suspended sentence mentioned in paragraph 3 of this judgment, was put into operation from 16 April 2009 is set aside.

C. J. MUSI, J

I concur

EBRAHIM, J

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