

FREE STATE HIGH COURT, BLOEMFONTEIN
REPUBLIC OF SOUTH AFRICA

Review No. : 506/09

In the review between:

THEMBENI DESLEY LITABE

versus

THE STATE

CORAM: MOCUMIE, J *et* MOLOI, J

JUDGMENT BY: MOCUMIE, J

DELIVERED ON: 5 NOVEMBER 2009

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MOCUMIE, J

[1] This matter came before me on review in terms of section 302 read with section 304 of the Criminal Procedure Act, 51 of 1977, ("the CPA"). The accused appeared before the magistrate court Ficksburg on a charge of theft. He pleaded not guilty but despite his plea was convicted as charged on the proven facts. He was sentenced as follows:

“Fined One Thousand Rand (R1 000,00) Three (3) months imprisonment. A further Three (3) months imprisonment wholly suspended for Three (3) years on condition that the accused is not convicted of Theft committed during the period of suspension. In terms of Section 103(2) Act 60/2000 accused not declare unfit.”

[2] I was of the view that the condition for the suspension of sentence was too broad. I sent a query to that effect. The presiding officer has since responded.

[3] The presiding officer's response reads:

“Firstly I must concede that although the sentence at page 47 of the transcribed record reads on condition that you are not again convicted of an offence of which dishonesty is an element, committed during the period of suspension, this was a slipping of the tongue see J15 of the written record as well as J4.”

[4] The concession which the presiding officer makes, is neither here nor there because the fact of the matter is that the sentence that was pronounced or that the accused was

informed about is as reflected on page 47 of the transcribed record. As it stands it is too broad and requires to be corrected.

[5] The second leg of the presiding officer's response is not so clear as the correction on the wording that will be done will cater for the conditions to be set in such circumstances.

[6] In the circumstances I make the following order:

ORDER:

1. The conviction is confirmed.
2. The sentence imposed is set aside and altered to read:

“R1 000,00 (one thousand rand) or 3 (three) months imprisonment. In addition a further 3 (three) months imprisonment wholly suspended for 5 (five) years on condition that the accused is not convicted of theft or attempt thereto committed during the period of suspension.”

B.C. MOCUMIE, J

I concur.

K.J. MOLOI, J

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