

FREE STATE HIGH COURT, BLOEMFONTEIN
REPUBLIC OF SOUTH AFRICA

Review Case No. : 602/2009

In the case between:-

JIN CHEN

and

THE STATE

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

JUDGMENT BY: JORDAAN, J

DELIVERED ON: 12 NOVEMBER 2009

[1] The accused was charged with, pleaded guilty to and found guilty of contravention of section 3(b)(iv) of the Prevention and combating of Corrupt Activities Act, No. 12 of 2004. The magistrate sentenced him to a fine of R13 000,00 or in default imprisonment of 3 years plus a further 3 years imprisonment, wholly suspended for 5 years on certain conditions.

- [2] After sentencing the accused the magistrate realised that she exceeded her jurisdiction and submitted the matter for special review in terms of section 304 of the Criminal Procedure Act, No. 51 of 1977. The magistrate notes that she was of intention to sentencing the accused to imprisonment of 3 years with a further 2 years suspended on certain conditions and only realised that the sentence that was passed exceeded her jurisdiction. Since, in terms of section 26(1)(a)(iii) of the aforesaid act, the magistrate was only entitled to impose a fine or imprisonment to a maximum of 5 years.
- [3] The magistrate requests this court to rectify the sentence and proposes that the following sentence be imposed:

“To pay as sum of R13 000,00 (thirteen thousand rand) only or in default to undergo 3 (three) years imprisonment plus a further 2 (two) years imprisonment which is wholly suspended for 5 years on condition that the accused is not again convicted of contravention of section 3(b)(iv) of the Prevention and combating of Corrupt

Activities Act, No. 12 of 2004 committed during the period of suspension.”

[4] The sentence as proposed by the learned magistrate creates the impression that the further two years suspended sentence would be imposed in addition to the payment of the fine. In view of the fact that section 26, refer to above, only provides for a fine or imprisonment and not both, such a sentence is not legally permissible.

[5] In view of the aforesaid the sentence has to be set aside and substituted with a sentence that gives effect to the initial intention of the learned magistrate.

[6] In the result the conviction is confirmed but the sentence is set aside and substituted with the following:

The accused is sentence to a fine of R13 000,00 (thirteen thousand rand) or, in default of payment thereof, to undergo 5

(five) years imprisonments of which 2 (two) years is wholly suspended for a period of five years on condition that the accused is not again convicted of contravention of section 3(b) (iv) of the Prevention and combating of Corrupt Activities Act, No. 12 of 2004 committed during the period of suspension.

A. F. JORDAAN, J

I agree.

C. H. G. VAN DER MERWE, J