

IN THE HIGH COURT OF SOUTH AFRICA
(ORANGE FREE STATE PROVINCIAL DIVISION)

Review No. : 293/08

In the review between:-

THE STATE

versus

TOBIAS MOTHISI

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

JUDGMENT BY: VAN DER MERWE, J

DELIVERED ON: 5 JUNE 2008

[1] The accused in this matter was properly convicted upon his plea of guilty of contravention of section 1(1) of the Trespass Act, No. 6 of 1959. The accused was then sentenced to 28 (twenty eight) months imprisonment, wholly suspended for five years, on condition that the accused is not convicted of contravention of section 1 of Act No. 6 of 1959 committed during the period of suspension.

[2] The magistrate brought the matter to the attention of this court in terms of section 304(4) of the Criminal Procedure Act, No. 51 of 1997. The magistrate correctly points out that the sentence imposed is incompetent as section 2 of Act No. 6 of 1959 provides that any person convicted of an offence under section 1 thereof shall be liable to a fine not exceeding R2 000,00 (two thousand rand) or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment. The magistrate therefore requests that the sentence be set aside and replaced with a sentence of 24 months imprisonment wholly suspended for five years on the same conditions.

[3] The sentence must therefore be set aside. I agree that it is in the interests of justice that this court impose sentence afresh. I am, however, not satisfied that the maximum sentence of 2 (two) years imprisonment, albeit suspended, is justified in the circumstances of this case. Although the accused unlawfully entered onto mine property for purposes of illegal mining, he was arrested before he could participate

in any illegal mining. He pleaded guilty and is a first offender. In my judgment, a sentence of 1 (one) year imprisonment, conditionally suspended for five years, would be appropriate.

- [4] Therefore the conviction is confirmed but the sentence set aside and replaced with a sentence of 1 (one) year imprisonment wholly suspended for five years on condition that the accused is not convicted of contravention of section 1 of Act No. 6 of 1959, committed during the period of suspension.

C.H.G. VAN DER MERWE, J

I agree.

C.B. CILLIÉ, J

/sp