

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

Review No.: 424/08

In the review between:

THE STATE

and

THEMBA MZIZI

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

JUDGEMENT: EBRAHIM, J

DELIVERED ON: 7 AUGUST 2008

[1] This is a special review in terms of section 304(4) of the Criminal Procedure Act 51 of 1977.

[2] The presiding officer, an acting magistrate, convicted the accused of assault on his plea of guilty in terms of section 112(1)(a) of the Criminal Procedure Act and sentenced him to undergo 60 (sixty) days imprisonment which he then wholly suspended for three years on conditions. The sentence is wholly incompetent in view of the fact that the conviction followed upon a mere plea of guilty.

[3] As the proceedings were not conducted in accordance with justice I order that the sentence be set aside and substituted with the following sentence:

A fine of R500,00 or 30 (thirty) days imprisonment which is suspended for 2 (two) years on condition the accused is not convicted of the crime of assault committed during the period of suspension.

S. EBRAHIM, J

I concur.

C.H.G. VAN DER MERWE, J