

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

Review No. : 271/2008

In the review between:-

THE STATE

versus

JOHANNES TSHIDISO MOETI

CORAM: *MOLEMELA, J et MOLOI, AJ*

JUDGMENT BY: MOLEMELA, J

DELIVERED ON: 6 NOVEMBER 2008

[1] This is an automatic review matter that came before me in accordance with the provisions of section 302 read with 304 of the Criminal Procedure Act, 51 of 1977.

[2] The accused person appeared at the Magistrate's Court in Botshabelo on a charge of assault with intent to do grievous bodily harm. He was convicted as charged and sentence to 2 (two) years imprisonment. It is clear from the judgement of the magistrate invoked the provisions of section 4 (1) of the Dangerous Weapons Act 71 of 1968 and accordingly found

no circumstances justifying a lighter sentence than the prescribed 2 (two) years imprisonment sentence.

[3] I was of the view that the sentence imposed did not reflect that the accused's personal circumstances were properly taken into account. In my view the following personal circumstances were under - emphasized when sentence was imposed on the accused person (1) that at the age of 36 years he was a first offender; (2) that he was the sole breadwinner responsible for the support of extended family and dependants; (3) that the circumstances under which the offence was committed suggested the accused had not planned the assault beforehand and committed the offence in a fit of jealousy after he had seen his girlfriend in the company of the complainant.

[4] Adv Hiemstra SC from the office of the Director of Public Prosecutions conceded that the sentence was too harsh under the circumstances and recommended a lighter sentence.

[5] It is trite that when sentence is imposed, the presiding officer must consider the well-known triad of sentence in a balanced manner. It is also trite that a court of appeal or review can only tamper with the sentence imposed by another court only if it is convinced that the sentencing discretion was exercised improperly by the presiding officer in one way or another. In my view, overemphasizing the seriousness of the offence and under-emphasizing the personal circumstances of the offender constituted a misdirection that warrants interference with the sentence imposed. It is this misdirection that resulted in the harsh sentence imposed by the presiding magistrate. The office of the Director of Public Prosecutions has conceded that the sentence imposed is too harsh. In my view, this concession was properly made. It stands to reason that the sentence falls to be set aside.

In the circumstances I made the following order:

1. The conviction is confirmed.
2. The sentence of 2 (two) years imprisonment imposed by the presiding officer on the 15th of April 2008 is set aside and substituted by the following:

2 (two) years imprisonment, of which 8 months is suspended for a period of 4 (four) years on condition that the accused is not convicted of the crime of assault, committed during the period of suspension and for which imprisonment without the option of a fine is imposed.

3. The sentence is antedated to the 15th of April 2008.

M B MOLEMELA, J

I concur.

K J MOLOI, AJ

/am