

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

Review No.: 703/2007

In the review between:

THE STATE

and

LEFU DISENYANE

CORAM: RAMPAL, J *et* VAN ZYL, J

JUDGEMENT: RAMPAL, J

DELIVERED ON: 22 NOVEMBER 2007

[1] The accused was convicted in the first place for contravening section 36 Act No. 62 of 1955. He was found in possession of stolen property, to wit 9kg copper cable valued at R441,00. The offence was committed in Welkom on the 19th April 2007. He was unable to give a satisfactory account of his possession in order to rebut the suspicion that the copper had been stolen. This was the verdict in respect of the first charge.

[2] The second charge was that the accused unlawfully and intentionally assaulted Luanne van der Walt at Bez Scrap Metal in Welkom on the 19 April 2007. As in the first charge he was also found guilty on the 20th July 2007 notwithstanding his plea of not guilty.

[3] He was then sentenced as follows:

3.1 In respect of the first charge, he was fined R1 000 or 5 months imprisonment.

3.2 In respect of the second charge the sentence imposed on him reads as follows:

“Fined R1500,00 (One thousand five hundred rands) or 5 months imprisonment **and or** further 3 months imprisonment is suspended for a period of 4 years on condition that the accused is not convicted on assault **and or** assault with intent to do grievous bodily harm committed during the period of suspension.”

[4] Subsequently the matter came before me on review. I then sent a query to the magistrate. I queried the wording of the sentence imposed in respect of the second charge as set

out in 3.2 above and advised the magistrate to rephrase it.

She did so.

[5] In her memorandum the magistrate stated that she intended the wording of the sentence to read as follows:

“Fined R1500,00 or 5 months imprisonment and a further 3 months imprisonment which 3 months is wholly suspended for a period of 4 years on condition that the accused is not convicted on assault and or assault with intent to do grievous bodily harm committed during the period of suspension.”

[6] The original sentence imposed on the accused on 20th July 2007 in respect of the second charge was unclear and confusing. The confusion lies in the use of the two words “and or” which was done twice, instead of one word “or”. The introduction of the preposition “and” was unnecessary. It only created unnecessary uncertainty. The magistrate concedes that the wording was defective and that it did not correctly reflect what she really intended. Therefore the sentence falls to be set aside on review.

[7] The nullified sentence is substituted with the following:

“The accused is fined R1500,00 or 5 months imprisonment. In addition to this sentence, he is sentenced to a further period of 3 months imprisonment which sentence is wholly suspended for a period of 4 years on condition that he is not again convicted of common assault or assault with intent to do grievous bodily harm committed during the period of suspension.”

[8] Apart from the foregoing query I am otherwise satisfied that the conviction and the sentence in respect of each charge were in accordance with justice. The foregoing order must be deemed to have been made on 20th July 2007.

M.H. RAMPAI, J

I concur.

C. VAN ZYL, J

/em