

Reportable:	YES /
NO	
Circulate to Judges:	
YES / NO	
Circulate to Magistrates:	
YES / NO	
Circulate to Regional Magistrates:	
YES / NO	

IN THE HIGH COURT OF SOUTH AFRICA (Northern Cape Division)

Case Nr: 89/2007

Magistrate's Case Nr: 10/07

Case Nr: M980/07

Date delivered: 14/09/2007

In the matter between:

Section I.1 The State

PLAINTIFF

and

Section I.2

Section I.3 Piet van Wyk

RESPONDENT

Section I.4

Section I.5 Coram: Olivier J et Mokgohloa AJ

JUDGMENT

Olivier J:

1. The accused was convicted in the magistrate's court of having driven a motor vehicle with "*defective*" lights on a public road in contravention of the provisions of the Road Traffic Act, 93 of 1996, read with regulation 157 (1) (a) of the regulations promulgated in terms of section 75 of the Road Traffic Act.
2. He was sentenced to a fine of R500,00 or, in default of payment, two years imprisonment, wholly suspended for three years "*on condition accused will not be convicted of driving a vehicle with defective lights during the period of suspension*".

3. The acting magistrate who had imposed the sentence submitted the matter for special review and remarked that the intention had been *“to impose alternative imprisonment of two months, but inadvertently wrote/said two years”*.
4. Apart from the fact that the magistrate had not intended to impose imprisonment for a period of two years (even if suspended), such a sentence would in any event have been grossly disproportionate to the offence, assuming that the accused was a first offender.
5. It would also appear as though imprisonment for a period exceeding one year for this type of offence would in any event not have been competent (see section 89 (6), read with section 89 (1) and the definition of the phrase *“this Act”* in section 1, of the Road Traffic Act, as well as section 75 (5) (b) and the regulations). It is therefore clear that the sentence has to be set aside.
6. It is not clear when the magistrate discovered the error, but it is assumed that it would not have been possible for the magistrate to correct the sentence in terms of the provisions of section 298 of the Criminal Procedure Act, 51 of 1977.
7. The condition of suspension is also not in accordance with the provisions of regulation 157 (1) (a), in terms whereof the offence would only be committed if the vehicle is driven on a public road. The word *“defective”* also does not appear in regulation 157 (1) (a).
8. In the circumstance the following order is made:
The sentence is set aside and substituted with the following sentence:
“R500,00 or two months imprisonment, wholly suspended for a period of three years on condition that the accused is not convicted of the offence of a contravention of regulation 157 (1) (a) of the regulations promulgated in terms of section 75 of the Road Traffic Act, 93 of 1996, committed within the period of suspension”.

C J OLIVIER
JUDGE
NORTHERN CAPE DIVISION

I agree:

F E MOKGOHLOA
ACTING JUDGE
NORTHERN CAPE DIVISION