

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 NUMBER: 43/2007

41/2007

DATE DELIVERED: 04-05-2007

In the case of:

THE STATE

Vs.

JOHNSON CHARLES

And

THE STATE

Vs.

JOHANNES WITBOOI

CORAM: WILLIAMS J et OLIVIER J

JUDGMENT ON SPECIAL REVIEW

WILLIAMS J:

1. The accused in both these matters were convicted of

contravening section 31(1) of Act 99 of 1998 in that they failed to pay maintenance as ordered and were sentenced as follows:

1.1 Case no F208/04, S v Johnson Charles;

“3 months imprisonment suspended for five years on condition that he is not found guilty for contravening s31 Act 99/98 with the condition that he pays R100 towards arrears of R1440, 00 from 02-01-2006 until arrears is settled.”

1.2 Case no F72/05, S v Johannes Witbooi;

“3 months imprisonment suspended for five years on condition that he is not found guilty for contravening s31 Act 99/98 with the condition that he pays R200 towards arrears of R3600, 00 on a monthly basis commencing from 01-08-2005.”

2. The senior magistrate, Upington remitted these matters on special review to this court, citing with regard to both matters the following reason:

“The sentence is worded incorrectly and as such of no value as an essential averment committed during period of suspension has been omitted after “contravening sect. 31 of Act 99/1998.”

3. With regard to case no F208.04 a further reason is stated as:
“The condition pertaining to the repayment of R100 towards arrears is open ended as it does not contain any particulars as

to the fact that the R100 is payable in installments and within which periods.”

4. The senior magistrate is correct that the conditions of suspension of these sentences are inappropriate in that they are not framed with the precision and clarity required to enable the accused to reasonably comply therewith. The sentences therefore need to be corrected.

The following orders are made:

- a) **In case no F208/04, s v Johnson Charles, the sentence imposed is corrected to read:**

“Three months imprisonment suspended for five years on condition that the accused is not found guilty of contravening sec 31 of Act 99 of 1998 committed during the period of suspension, and on the further condition that he pays the arrear maintenance of R1440, 00 in monthly instalments of R100, 00, the first payment to be made on or before 2 January 2006 and thereafter on or before the 2nd *day of every consecutive month.*”

- b) **In case no F 27/05, S v Johannes Witbooi, the sentence imposed is corrected to read:**

“Three months imprisonment suspended for five years on condition that the accused is not found guilty of contravening

sec 31 of Act 99 of 1998 committed during the period of suspension, and on the further condition that he pays the arrear maintenance of R3600, 00 in monthly instalments of R200, 00, the first payment to be made on or before 1 August 2005 and thereafter on or before the 2nd **day of each consecutive month.**”

C C WILLIAMS
JUDGE
NORTHERN CAPE DIVISION

I concur

C J OLIVIER
JUDGE
NORTHERN CAPE DIVISION