

Circulate to Magistrates: Yes / No

IN THE HIGH COURT OF SOUTH AFRICA

(Northern Cape Division)

Magistrate Case No: C742\05
Date delivered: 2006\06\02
High Court Review Case No: 82\06

In the review matter of:

THE STATE

versus

JOSEPH MOTEME

ACCUSED

Coram: MAJIEDT J *et* WILLIAMS J

JUDGEMENT ON SPECIAL REVIEW

MAJIEDT J:

1. This matter has been submitted on special review. The senior magistrate in Upington is of the view that the conditions of the suspension of the sentence imposed herein have not been framed with sufficient clarity by the presiding magistrate who is no longer employed as a magistrate.
2. The accused was convicted on his plea of guilty of assault with intent to do grievous bodily harm. The following sentence was

imposed:

“A fine of R500.00 or 3 months imprisonment suspended for 5 years. The fine and the 3 months are suspended for 5 years on condition that he is not found guilty of an offence of this nature which involves the injuries to the human being within the period of suspension which is within the period of five years.”

3. The senior magistrate, in his memorandum submitting the matter on review, is quite correct in his observation that the sentence does not clearly inform the accused as to what he is supposed not to do in order to avoid serving the sentence and also that the wording “*committed during the period of suspension*” is omitted from the sentence imposed.
4. Our courts have in a long line of cases, developed a requirement that conditions attached to the suspension of sentences must be framed carefully and clearly, since the primary objective is that the accused understands what he/she is required to do to avoid the suspended sentence being put into operation. In this Division a useful set of guidelines had been issued in the matter of: **S v Van Rooyen, S v Jantjies en ‘n ander 1974(3) SA 319 (NK)** which can be summarised as follows:
 - a) In the conditions reference should be made to specific offences and not to a group of offences.
 - b) While there is frequently reference made in conditions of

suspension to “*any offence which is a competent verdict on a charge of (for example) theft*” or “*any offence for which (for example) theft is a competent verdict*”, such references should be avoided since it refers to a group of offences.

c) In the conditions of suspension reference should only be made to those offences which are directly related to the nature and circumstances of the offence on which the accused had been convicted.

d) The number of offences mentioned in the conditions of suspension should be limited, i.e. not too many of them should be mentioned.

e) Where possible a qualification should be attached, for example “*that the accused is not convicted on (for example) theft committed during the period of suspension and for which he/she is sentenced to imprisonment without the option of a fine or a fine not more than Rx.*”

5. I am of the view that these guidelines remain extremely useful and magistrates should be encouraged to follow them whenever sentence is imposed.

6. Where the conditions of suspension is related to the prevention of future criminal conduct by the accused, it should be made clear that the conviction on an offence committed within the period of suspension will break that particular condition;

See in this regard: **S v Malgas en andere 1979(3) SA 178 (A) at 181;**

State v Xhaba 1971(1) SA 232 (T).

With regard to the requirement that the conditions of suspension should have some relation to the crime and should be stated with precision and be reasonable, see in general:

S v Benn; S v Jordaan; S v Gabriels 2004(2) SACR 256 (C).

7. In the premises I am of the view that the sentence imposed with regard to the conditions of suspension lacks the requisite precision and clarity as required by our courts.

8. The following order is issued:

8.1 The accused's conviction is confirmed.

8.2 The sentence imposed is set aside and substituted with the following:

“A fine of R500.00 or 3 months imprisonment, suspended for 5 years on condition that the accused is not convicted of an offence of which the infliction of bodily harm to another is an element and which is committed during the aforementioned period of suspension.”

8.3 The sentence is antedated to 13 January 2006.

**SA MAJIEDT
JUDGE**

I concur.

**CC WILLIAMS
JUDGE**