

IN THE HIGH COURT OF SOUTH-AFRICA (NORTHERN CAPE DIVISION)

KIMBERLEY

CASE NO.:139/2006

DATE: 18-08-2006

In the Judgment of:

THE STATE

And

SIMON MAASDORP

CORAM: WILLIAMS J et OLIVIER J

J U D G M E N T

WILLIAMS J:

1. The accused in this matter pleaded guilty to and was convicted on a charge of assault with intent to do grievous bodily harm. He was sentenced as follows:

“R350, 00 or 3 months imprisonment suspended for 5 years on condition that you are not found guilty of committing similar offences or injury to a person during the period of suspension.”

2. Since the conditions of suspension do not conform to the degree of clarity required, the senior magistrate, Upington, submitted this matter for special review – the presiding magistrate not being available for comment since her contract has expired.

3. One of the requirements for a condition of suspension is that it be related to the offence in question and be certain and clear. The accused must be able to know exactly what conduct may lead to his having to serve the sentence. *In casu* the condition of suspension that the accused not be found guilty of committing “*similar offences or injury to a person*” is framed far too widely and may cause confusion as to what particular conduct the accused should refrain from during the period of suspension.
4. Furthermore, a condition of suspension aimed at the prevention of criminal conduct should be phrased in such a way that it is clear that the conviction of an offence committed within the period of suspension will break the condition. The sentence as it stands is ambiguous in this respect since it is not clear whether the prohibition relates to the conviction or commission of a particular offence during the period of suspension.

For the reasons stated above the following orders are made.

- a) The conviction is confirmed.
- b) The sentence is set aside and replaced with the following:

“R350, 00 or 3 months imprisonment which is suspended for 5 years on condition that the accused is not convicted of assault with intent to do grievous bodily harm committed during

the period of suspension.”

C.C WILLIAMS
JUDGE

I concur.

C.J OLIVIER
JUDGE