

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

Review No. : 1903/2004

In the review between:

THE STATE

versus

NKOSANA CASWELL MNGOMEZULU

CORAM:

WRIGHT J *et* EBRAHIM J

JUDGMENT:

WRIGHT J

DELIVERED ON:

14 JANUARY 2005

The accused, a twenty nine year old first offender, was found guilty of contravening section 31(1) of Act 27 of 1998 by failing to comply with a maintenance order and sentenced to a fine of R2 000,00 or 8 months imprisonment.

The accused pleaded guilty and admitted that he was in arrear with maintenance in an amount of R1 700,00. He also mentioned

that he lost his employment due to dereliction of his duties and that he was regularly late for work. He also used his employer's vehicle for his own purposes.

It is trite law that all steps must be taken to keep a first offender out of jail if possible and there is no doubt that the accused in this case must be taught a lesson and that he cannot fail to provide maintenance as minor children are involved.

This is nevertheless his first offence and in view of the fact that he will in any case not be able to provide any maintenance while he is in prison, it is especially important that his term of imprisonment if he fails to pay the fine should not be too long.

Another important aspect of the matter is the proportion or ratio between the fine and the term of imprisonment which is imposed as alternative to the fine. In this respect I would refer to **S v KAPENG** 1992 (1) SASV 596 (O) and **S v MAKOA** 1997 (2) SASV 705 (O) especially on p 709 C – F.

In view of all the circumstances of this matter the conviction is confirmed but the sentence set aside and substituted with the following sentence:

A fine of R1 500,00 or 3 months imprisonment.

Sentence must be deemed to have been imposed on 16

November 2004.

G.F. WRIGHT, J

I concur.

S. EBRAHIM, J

/sp