

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

Review No. 902/2004

In the review between:

THE STATE

and

BOTHA MASUKELA

CORAM: **CILLIé *et* VAN DER MERWE, JJ**

JUDGMENT BY: **CILLIé, J**

DELIVERED ON: **10 JUNE 2004**

After his conviction of contravening section 31(1), Act 99 of 1998 (failing to comply with a maintenance order), the accused was sentenced as follows:

“In terms of section 297(1)(b), Act 51 of 1977 the accused is sentenced to a fine of three thousand Rand (R3 000,00) or three (3) months imprisonment which is wholly suspended for a period of four (4) years on the following conditions:

- (i)
- (ii) That he performs community service at Leratong Children’s

Home Phuthaditjhaba for a period of three (3) months, three days per week, between the hours 09h00 until 15h00 – Mondays to Wednesdays, with effect from 07/07/2003.

(iii)”

(The conditions in (i) and (ii) *supra* are irrelevant for present purposes and therefore omitted).

The presiding magistrate in his explanatory letter accompanying this special review now reports as follows:

“However, the Management of the institution declined the referral of the accused to them per letter dated 08/07/03.”

In the mentioned letter the manager of the institution states that there is no specific job that can be allocated to the accused.

For that reason the magistrate requests a deletion of this specific condition. There is no other solution than to accede to the magistrate’s request.

The following order must follow:

Sub-paragraph (ii) of the conditions of suspension of the sentence imposed on the accused is deleted.

C.B. CILLIé, J

I CONCUR

C.H.G. VAN DER MERWE, J

/scd