

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

Review No. : 1765/2004

In a special review of:

THE STATE

versus

PAKANE ERNEST MATIEA

CORAM: WRIGHT J *et* VAN DER MERWE J

JUDGMENT: VAN DER MERWE J

DELIVERED ON: 11 NOVEMBER 2004

[1] In this matter the accused was found guilty of assault in terms of the provisions of section 112(1)(a) of the Criminal Procedure Act, No. 51 of 1977. He was thereafter sentenced to 3 months imprisonment suspended for a period of 3 years on condition that the accused is not convicted of assault with the intent to do grievous bodily harm committed during the

period of suspension.

[2] The magistrate sent the matter to this Court for purposes of special review on the basis that the aforesaid sentence was not competent. This view is correct, as in terms of section 112(1)(a) of Act 51 of 1977 only a fine of not more than the amount of R1 500,00 or alternative imprisonment may be imposed. It follows that the sentence must be set aside.

[3] I consider it in the interest of justice not to remit this matter to the magistrate for purposes of sentencing afresh.

[4] The accused is 43 years of age and a first offender. He is married and the father of five children who are attending school. The accused is unemployed. The assault in question consisted of hitting the complainant with open hands and took place because the accused became angry because of something said by the complainant. In all these circumstances a sentence of a fine of R300,00 or 30 days imprisonment wholly suspended for a period of 3 years on condition that the accused is not convicted of assault committed during the period of suspension, appears to me to be a suitable sentence.

- [5] Therefore the conviction is confirmed, but the sentence set aside and substituted with a sentence of a fine of R300,00 or 30 days imprisonment, wholly suspended for a period of 3 years on condition that the accused is not convicted of assault committed during the period of suspension.

C.H.G. VAN DER MERWE, J

I concur.

G.F WRIGHT, J