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IN THE HIGH COURT OF SOUTH AFRICA

(Northern Cape Division)

High Court Review Case No: 185/03

Case No: B5820/2002

Date delivered: 2003-04-29

In the review matter of:

THE STATE

versus

LESLEY JORDAAN

ACCUSED

Coram: MAJIEDT J et WILLIAMS AJ

JUDGEMENT ON REVIEW

MAJIEDT J:

1. In this matter the accused had been correctly convicted of the offence of housebreaking with the intent to commit theft and was sentenced to twelve months correctional supervision in terms of the provisions contained in section 276(1)(h) of the Criminal Procedure Act, 51 of 1977 (*“the Act”*).
2. Thereafter the accused was brought before Court again, since the accused had failed to comply with the conditions of the sentence of correctional supervision. The Magistrate then found that the accused was not a suitable candidate for correctional supervision anymore. The sentence was thereafter amended to one of six months imprisonment wholly suspended on condition that the accused not be convicted of an offence of housebreaking with the intent to steal and of theft committed during the period of suspension of five years and an order in terms of

section 296 of the Act that the accused be referred to and detained in a treatment centre established under the Prevention and Treatment of Drug Dependency Act, 1992. The Magistrate further ordered that the accused remain in custody in a single cell under supervision of the prison authorities until such time as he is admitted into a treatment centre.

3. My colleague had queried the sentence, in particular the fact that the accused had to be detained in a prison cell pending his admission into a treatment centre. It appears from the record of the proceedings that the accused had initially, after his arrest, been detained in a place of safety, namely the Thusong shelter for homeless children. Williams AJ queried why the Magistrate had decided against an order that the accused be kept at such a place of safety again, pending his admission to a treatment

centre.

4. The Magistrate furnished reasons for his order to the effect that no proper supervision and control could be exercised at the Thusong shelter, hence his order that the accused be detained in custody in prison. In my view those reasons were entirely acceptable, but I in turn raised another query, namely whether it was fair and just towards the accused that he be kept for an inordinate length of time in a prison cell while he awaits admission to a treatment centre. I had raised this query, since it was apparent from the evidence on record that the Magalies Treatment Centre where the accused is supposed to be admitted, has a substantial waiting list and that the prospect is very real that the accused will have to spend several months in custody pending his admission to that treatment centre.

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5. The Magistrate has now responded to my query and has conceded that a limit should be placed on the length of time that the accused is to spend in custody in prison awaiting his admission.

6. In the premises I make the following order:

The conviction is confirmed but the sentence imposed by the Magistrate is set aside and substituted with the following:

- i) The accused is sentenced to six (6) months imprisonment which is wholly suspended for a period of five (5) years on condition that the accused not be convicted of an offence of housebreaking with the intent to steal and/or theft committed during the period of suspension.**

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- ii) **In terms of section 296 of the Criminal Procedure Act, 51 of 1977, it is ordered that the accused be referred to and detained in a treatment centre established under the Prevention and Treatment of Drug Dependency Act, 1992.**
- iii) **The Court further orders that the accused remains in custody as aforesaid for a period of three (3) months, pending his admission into a treatment centre. Should the accused, after the expiry of three months not have been admitted to a treatment centre, the accused shall be detained at a place of safety, pending his admission at a treatment centre.**
- iv) **It is further ordered that the accused be held in a single cell under supervision of the prison authorities for the period of three (3) months as**

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set forth in (iii) above

**SA MAJIEDT
JUDGE**

I concur.

**C.C. WILLIAMS
ACTING JUDGE**

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