

*A127/2005*

**IN THE HIGH COURT OF SOUTH AFRICA  
(TRANSCAAL PROVINCIAL DIVISION)**

Case Number:  
Date: 24/1/2005

*REPORTABLE*

Magistrate: Wonderboom Pretoria North  
Case Number: SH784/04  
High Court Ref No: 5706

**THE STATE v THALITHA OUMA KGOEBANE**

**REVIEW JUDGMENT**

**DE VOS, J:**

[1] The accused, in a written statement, pleaded guilty in the court *a quo* to two charges relating to the possession of an unlicensed firearm and unlawful possession of ammunition. (S.3 *r/w* s.120(1 )(a) and s.90 *r/w* s.120 of Act No 60 of 2000). The accused, who was legally represented at the time was thereupon correctly found guilty on both charges.

[2] The trial was then postponed in order for the due preparation of certain reports for the hearing on the determination of sentence. On the date of hearing a pre-sentence report was placed before the magistrate and based upon this and

submissions made by the legal representatives, the magistrate delivered judgment on sentence and imposed a sentence of seven years imprisonment, wholly suspended for a period of three years upon certain relevant conditions.

[3] The pre-sentence report revealed that the accused had stolen a firearm in order to commit suicide. The report also reveals the circumstances of the accused's life which lead to such a state of mind. The report and its contents were not contested in any way by the State.

[4] The magistrate sent the matter on review stating that her initial intention was to impose a five year sentence but that, during the delivering of the judgment in open court, she changed her mind and imposed a harsher sentence. Her reason for sending the matter on review seems therefore to be that this impulsive change of her initial thought rendered the matter reviewable. This however does not constitute a valid reason for review or interference. (See *du Toit et al* Commentary on the Criminal Procedure Act pp.28-52).

[5] However, in the light of the circumstances set out in the pre-sentencing report, I find the sentence imposed to be shockingly severe and inappropriate. Furthermore, the suspension of a lengthy term of imprisonment is in itself inappropriate. Interference on this basis is warranted in terms of section 304(4) of Act 51 of 1977.

[6] I therefore make the following order:

The sentence imposed by the magistrate is set aside and the following is substituted therefor:

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"Count 2: Three years imprisonment wholly suspended for three years on condition that the accused is not convicted of contravening section 3 read with section 120(10)(a) of Act 60 of 2000 committed during the period of suspension.

Count 3: Six months imprisonment wholly suspended for three years on condition that the accused is not convicted of contravening section 90 read with section 121 (a) of Act 60 of 2000 committed during the period of suspension.

The sentences imposed on counts 2 and 3 are suspended upon the further condition that the accused attend conflict management, life skills and responsibility programmes by the Department of Correctional Services at Soshanguve Nafcoc Centre."

A de Vos  
Judge of the High Court

I agree:

G WEBSTER  
JUDGE OF THE HIGH COURT

**IN THE NORMAL COURSE OF EVENTS**