

A219/2005

IN THE HIGH COURT OF SOUTH AFRICA
(TRANSVAAL PROVINCIAL DIVISION)

DATE: 14/2/05

NOT REPORTABLE

Magistrate:

EVANDER

Review Case no.: A1568/2004

High Court Ref. No.: 26

THE STATE VS LUCKY DAN RADEBE

REVIEW JUDGMENT

WEBSTER J

This matter is before me by way of automatic review.

The accused was charged in the Magistrate's Court, Evander, with contravening section 65(5)(a) or (b) read with section 1, 65(6), (7), 69, 73 and 89 of the National Traffic Act No. 93 of 1996, the alcohol concentration in his breath having been 0.96 milligram per 1 000 milligrams, the legal limit being 0.24 milligram per 1 000 milligrams. He pleaded guilty and was duly convicted as charged. He was sentenced to two (2) years' imprisonment which was wholly suspended for five (5) years on certain conditions.

In sentencing the accused the Magistrate took into account that when the accused was stopped he was driving a Kombi taxi with seven (7)

passengers. As a professional driver the accused ought to have realised the hazards and dangers in drunken driving. The Magistrate further took into account that taxi's are involved in many collisions resulting in deaths. He took into account that the vehicle driven by the accused was a "coffin on wheels" as its rear lights were not in working order.

The Magistrate was of the view that the accused would not, in the light of his meagre earnings be in a position to pay a fine and that a deferred fine would be inappropriate as taxi drivers who had given deferred fines never pay such fines.

The Director of Public Prosecutions (DPP) was invited to comment on the sentence. The view of the DPP is that the extremely high percentage of alcohol in the accused's breath was an aggravating factor. I agree.

The accused is a father of two children. He earns R200 per week. He had no previous convictions. His vehicle was stopped because of defective rear lights.

In imposing a totally suspended sentence the Magistrate intended and succeeded in keeping the accused out of prison. What he overlooked, however, was that the suspended sentence is alive and can be brought into operation should the accused be again convicted for a contravention of the relevant section of the Act. Should that eventuate the accused will have to serve the current term of imprisonment unless it is further suspended. In my view the probabilities of that are not remote.

The DPP has suggested a custodial sentence of twelve months, again without the option of a fine.

It is my considered view that regard being had to the aggravating factors and the accused's personal circumstances that imprisonment with the option of a fine is an appropriate sentence.

The following order is made:

- 1. The conviction is confirmed;**
- 2. The sentence is set aside and substituted with:**
"The accused is fined R2 000 or 12 (twelve) months' imprisonment which is wholly suspended for 3 (three) years on condition that he is not convicted of contravening section 65(1), 65(2) or 65(5) of Act 93 of 1996, committed during the period of suspension."

G. WEBSTER
JUDGE OF THE HIGH COURT

I agree .

D S S MOSHIDI
ACTING JUDGE OF THE HIGH COURT