

A360/05 /SvH

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

DATE: 24/03/05

CASE NO: 1/2005

In the matter between:

THE STATE

APPELLANT

VS

JAN NONOSA MOLEFE

RESPONDENT

REVIEW JUDGMENT

ELS.J:

The accused, a 19 year old male was convicted of assault with intent to do grievous bodily harm and sentenced to R6 000,00 or 3 (three) months imprisonment wholly suspended for 5 (five) years on condition that the accused is not convicted of assault

committed during the period of suspension and further that in terms of section 103(2) of Act 60 of 2000, the accused is declared unfit to possess a firearm.

The matter was sent on automatic review and remarked as follows:

"Should the condition of the suspension of the sentence not read "guilty of assault with intent to do grievous bodily harm" instead of assault which could include common assault?"

The magistrate furnished his reasons stating *inter alia* that his intention was "to prevent him from committing any form of assault in the future".

If the Magistrate is correct it would mean that if the Accused is indeed in an argument and just threatens to smack a person he would be guilty of assault and although he could be cautioned and discharged it would mean that the suspended sentence can be put into operation.

I am of the opinion that the condition imposed by the Magistrate is not an appropriate one.

The conviction is confirmed and the sentence is altered to read:

"R6 000,00 or 3 (three) months imprisonment wholly suspended for 5 (five)

years on condition that accused not be found guilty of an assault during the period of suspension and for which imprisonment without an option of fine is imposed ."

J ELS
JUDGE OF THE HIGH COURT

I agree:

E JORDAAN
JUDGE OF THE HIGH COURT