

*A71/2006*  
IN THE HIGH COURT OF SOUTH AFRICA  
(TRANSVAAL PROVINCIAL DIVISION)

Magistrate  
Phalaborwa

NOT REPORTABLE

DATE: 30/1/06

Case no. 331/05  
High Court Ref no. 3439

**STATE VS SIPHO MAHLO**

REVIEW JUDGMENT

LEGODI J. When this matter was initially brought before Bosielo J on automatic review, he raised the issue with the magistrate whether the sentence was not shocking and whether the possibility of paying the fine in instalment should not have been investigated.

The accused in this case was found guilty of theft of an article worth R49-00. He was sentenced to a fine of R3000-00 or six months imprisonment suspended on certain conditions. The accused had two previous convictions of theft committed during 1995 and 1997 respectively. For the 1997 theft charge he was sentenced to five months imprisonment.

The office of the Director of Public Prosecutions is of the view that the sentence is indeed harsh particularly taking into account the value of the article stolen. The accused was sentenced on the 1 September 2005 and in all probabilities did not pay fine. In my view therefore a three months imprisonment would be appropriate.

I need also in brief deal with the issue which was raised by Bosielo J. Once an accused person is given an option of fine, this is intended to keep an accused person out of jail. This will be defeated

unless it is clear that an accused person will be in a position to pay the whole fine immediately. In this case, the accused indicated that he was doing some piece jobs and was earning round about R550-00 per month. Clearly in my view the accused would not have been in a position to pay R3000-00 instantly. It is on this basis that the trial magistrate should have investigated the possibility of monthly payments and this should have been seriously considered.

Lastly, in my view the conviction was in order and accordingly I make the following order:

1. Conviction is confirmed.
2. Sentence imposed on the accused is set aside and hereby substituted by the following:  
*"The accused is sentenced to three months direct imprisonment".*
3. The accused should therefore immediately be released from prison.

M F LEGODI  
JUDGE OF THE HIGH COURT

I, agree  
IT IS SO ORDERED

J N M POSWA  
JUDGE OF THE HIGH COURT