IN THE HIGH COURT OF SOUTH AFRICA
(WITWATERSRAND LOCAL DIVISION)

REVIEW CASE: HIGH COURT REF NO:365/06
MAGISTRATE'S SERIAL NO 24/06
ROODEPORT CASE NO: DH 3593/2005

In the matter between:

THE STATE

and

JOEL ZWANE

JUDGMENT: AUTOMATIC REVIEW

WILLIS J:

[1] This matter was referred to me by way of automatic review in terms of section 303 of the Criminal Procedure Act, No. 51 of 1977, as amended.

[2] The accused had been charged in the District Court held at Roodepoort with one count of theft. It was alleged that he had stolen

some blue fitted sheets from Dion's, Westgate. The value of the goods was some R270,00. The offence had allegedly been committed on 20th October, 2005.

[3] The accused pleaded not guilty but later admitted that he had indeed stolen the sheets. He was found guilty. The conviction was clearly correctly made.

[4] The accused had a string of previous convictions for theft. The learned magistrate then imposed a sentence of 18 months direct imprisonment and declared the accused unfit to possess a firearm.

[5] In view of the overall circumstances of this case, set out very carefully by the learned magistrate, I was not inclined to interfere with the direct custodial sentence of 18 months imposed by him. The same applies in respect of the declaration that the accused is unfit to possess a firearm.

[6] A probation officer, Mr Wolmarans gave evidence. It appears that the accused is probably an illegal immigrant from Zimbabwe whose personal circumstances are obscure. The probation officer recommended that the provisions of Section 276 (1) (i) of the Criminal Procedure Act should apply. The learned magistrate seems to have confused the provisions of section 276 (1) (i) with 276 (1) (h). This

constitutes a misdirection. I think a sentence in terms 276 (i) (h) would indeed have been inappropriate.

[7] Nevertheless, I was inclined to think that this is indeed a case where one should direct that the provisions of Section 276 (1) (i) of the Criminal Procedure Act should apply. In other words, the imprisonment would be subject to the discretion of the Commissioner to place the accused under correctional supervision. This would give the accused the incentive to cooperate with the excellent rehabilitative schemes that are available nowadays and seems especially suited to these kind of "petty" offenders.

[8] I wrote to both the Director of Public Prosecutions and the magistrate (through the clerk of the court) in which I set forth such views and invited their comment.

[9] The office of the Director of Public Prosecutions has delivered most helpful opinion, in which they agreed that this was a matter in which it would be appropriate to make such an order. They say it seems that this is indeed what the learned magistrate had intended to do but had omitted to say so at the end of her judgment. As they observe, the prison authorities can be relied upon not to effect a conversion in terms of section 276 (1) (i) if they think it is not appropriate.

[10] The following is the order of the Court:

> The conviction and sentence imposed by the learned magistrate are confirmed save that it is ordered that the provisions of Section 276 (1) (i) of the Criminal Procedure Act, No. 51 of 1977, as amended are to apply to the sentence – in other words, the sentence of imprisonment is subject to the discretion of the Commissioner to place the accused under correctional supervision.

DATED AT JOHANNESBURG THIS 8th DAY OF JUNE, 2006

N.P.WILLIS

JUDGE OF THE HIGH COURT

I agree.

R.S.MATHOPO

JUDGE OF THE HIGH COURT