


A671/08

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

Date: ~~15 AUG 2008~~

1/9/2008

Magistrate
SOSHANGUVE

DELETE WHICHEVER IS NOT APPLICABLE	
(1) REPORTABLE: YES/NO.	<input checked="" type="checkbox"/> NO
(2) OF INTEREST TO OTHER JUDGES: YES/NO.	<input checked="" type="checkbox"/> NO
(3) REVISED.	<input checked="" type="checkbox"/>
15 AUG 2008	
DATE	SIGNATURE

Case number: B603/2007
High Court reference number: 804

THE STATE VERSUS MPHO TELEKWA

REVIEW JUDGEMENT

Pretorius J

The accused appeared in the Soshanguve magistrate's court on a charge of assault with intent to do grievous bodily harm. He was sentenced to 18 months imprisonment without the option of a fine.

The accused personal circumstances were that he is 37 years old, a first offender who provides for himself from a RAF payout of R780 per month. He lives with his father. The accused expressed his remorse at what he had done and even called Nina Kwana to give evidence on his behalf and in mitigation of sentence. She testified that the accused was also injured on the night of the incident, although it was not clear what injuries he had sustained.

The court directed a query to the learned magistrate to establish which alternative sentences were considered before sentence of direct imprisonment was imposed.

The learned magistrate replied that due to the fact that the accused was only receiving R780 per month, he decided that imprisonment was the only option. He also mentions that after reconsidering, a more appropriate sentence would be 18 months in terms of section 276 (1) (i) of Act 51 of 1977.

At my request the Deputy Director of Public Prosecutions commented regarding the sentence.

It is clear from the evidence that the assault took place at a tavern where alcohol was consumed over a weekend and that liquor played some role at the time and should be considered as a mitigating fact.

It is also important that magistrates should establish personal circumstances of accused persons and take more time and effort when considering an appropriate sentence.

The magistrates misdirected himself to find that the accused would not be able to pay a fine.

If imprisonment was the only option, the magistrates should have considered the accused's personal circumstances but also the fact that liquor was involved, that the accused expressed remorse and that he is a first offender. Accused was sentenced on 8 April 2008 and has been in custody since then – a period of more than four months.

It is ordered:

1. The sentence of eighteen months imprisonment imposed on 8 April 2008 is set aside;
2. The accused is sentenced to 12 months imprisonment of which 6 months are suspended for 5 years on condition that the accused is not found guilty of assault with the intention to do grievous bodily harm during the period of suspension.

A handwritten signature in black ink, appearing to read 'C. Pretorius', with a horizontal line drawn underneath it.

C. Pretorius

Judge of the High Court

I agree,

G. Webster.

G. Webster

Judge of the High Court