

(Inlexso Innovative Legal Services) / as

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: A123/2018

DATE: 2019-04-18

BEFORE HONOURABLE YACOOB J AND DU PLESSIS AJ

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DELETE WHICHEVER IS NOT APPLICABLE
 (1) REPORTABLE: ~~YES~~ / NO
 (2) OF INTEREST TO OTHER JUDGES: ~~YES~~ / NO
 (3) REVISED

.....
 DATE: 04/10/2019 SIGNATURE

In the matter between

THE STATE

and

BEN NKOMO

Accused

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J U D G M E N T

We have considered the record in this matter and heard argument from counsel. We have come to the conclusion that the magistrate correctly applied her discretion, save for having made an error regarding whether the appellant should

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be treated as a first offender or second offender. The state conceded in argument that the appellant should be treated as a first offender.


We also consider that the magistrate, in considering whether to take into account the time served, overcompensated for the fact that the appellant was illegally in the country. This was already taken into account by the Magistrate in considering the sentence itself, and in applying section 276B (1)(a) of the Criminal Procedure Act. It is
10 therefore our view that it would be in the interest of justice that the sentence be back-dated to the date on which the appellant was incarcerated. In our view, there are no substantial or compelling circumstances to deviate from the minimum sentence and in fact, as the magistrate correctly considered, there are circumstances justifying an additional or longer sentence.

Under the circumstances, the sentence imposed by the magistrate is substituted by the following:

1. The accused is sentenced to 19 years' imprisonment in
20 terms of section 51(2) of Act 105 of 1997.
2. The sentence will run from the date of arrest, that is 5 September 2013.
3. In terms of section 276(B) (1)(a) of the Criminal Procedure Act, the accused should not be considered for parole until he has served two thirds of this sentence.

4. In terms of section 103(1) of Act 60 of 2000, the accused is declared unfit to possess a firearm.

DU PLESSIS, AJ: I AGREE



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YACOOB, J

JUDGE OF THE HIGH COURT

DATE: *04 October 2012*.....