



IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, PRETORIA

A 798/16

DATE: 21.11.16

HIGH COURT REF. NO. : 293/16  
CASE NO : A268/16  
MAGISTRATE'S SERIAL NO: 24/16

IN THE MATTER BETWEEN:

THE STATE

Vs

MBUYISELO NCUBE

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REVIEW JUDGMENT

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TOLMAY, J:

- [1] The accused, a 28 year old male, was convicted in the magistrate's court, Pretoria North on a charge of theft after a plea of guilty. He was sentenced to 24 months imprisonment half of which is wholly suspended for 3 years on condition that the accused is not convicted of theft during the period of suspension. He was declared unfit to possess a firearm in terms of section 103 of Act 60 of 2000.


- [2] The reviewing judge questioned the appropriateness of the sentence and the magistrate conceded that the sentence is unduly harsh.
- [3] The accused's previous conviction was committed during 2007, more than 7 years ago. I am of the view that the previous conviction should play a very limited role. Although it might not be as such an indication of remorse, it should at least be considered as a possible mitigating factor<sup>1</sup>. The plea of guilty must also be looked at in the broader context of all the relevant circumstances of the case. This will also include the fact that he and his wife were unemployed and have 2 children aged 4 and 2 years old and the goods were recovered. In the light of all the circumstances of the case the sentence is shockingly inappropriate and the Court should intervene.
- [4] I am of the view that a suspended sentence is appropriate under the circumstances and I am of the view that no cogent reason exist to declare him unlawful to possess a firearm.
- [5] Consequently I make the following order:
- The conviction is confirmed and the sentence is set aside and substituted with the following:**
- "The accused is sentenced to 8 months' imprisonment wholly suspended for 3 years on condition that he is not found guilty of theft during the period of suspension."**

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<sup>1</sup> S v Mvelase 1958(3) SA 126 (N) 127 D; S v Motaung 1959(1) SA 799 (T)

  
R G TOLMAY  
JUDGE OF THE HIGH COURT

I agree

  
C PRETORIUS  
JUDGE OF THE HIGH COURT