

IN THE HIGH COURT OF SOUTH AFRICA
EASTERN CAPE DIVISION

Case No: CA&R 288/2005

In the matter between:

SIYABONGA NCAMLA	Appellant
vs	
THE STATE	Respondent

APPEAL JUDGMENT

EBRAHIM J:

[1] The appellant was convicted of the offence of assault with intent to do grievous bodily harm and sentenced to a term of imprisonment for one year of which six months was conditionally suspended for a period of five years. The appeal, with the leave of the Court *a quo*, is against the sentence.

[2] The learned magistrate, in response to the grounds of appeal, stated that he had nothing to add to his *ex tempore* judgment.

[3] It is apparent from the magistrate's *ex tempore* comments when imposing sentence that he recognised, and correctly so, that the offence was of a serious nature and the interests of society had to be considered. However, he misdirected himself in over-emphasising these at the expense of the personal circumstances of the appellant, more particularly, his youthfulness.

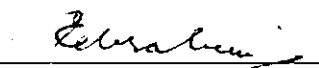
[4] While the Court was not bound to follow the recommendations of the probation officer there is no indication why her suggestion of a wholly suspended sentence would not have been appropriate. The magistrate accepted that the appellant's mother had conveyed that he was motivated to attend school and had performed well. Despite the appellant maintaining to the probation officer that he struck the complainant in self-defence (which the magistrate considered indicated a lack of remorse) the fact that the appellant was a first offender and committed the offence when only sixteen years and three months old, constituted a substantial and compelling reason not to impose a sentence of imprisonment for an effective period of six months. In failing to give proper weight to the youthfulness of the appellant the magistrate clearly erred.

[5] There is furthermore merit in the ground of appeal that the sentence imposed induces a sense of shock. I am not surprised therefore that the state has decided not to oppose the appeal.

[6] In my view, justice would be served by the sentence of imprisonment for one year being suspended in its entirety for a period of three years.

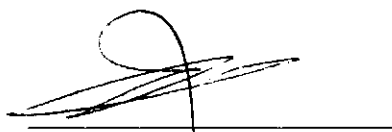
[7] In the result, the appeal against sentence succeeds and the sentence imposed by the Court *a quo* is amended to read as follows:

The accused is sentenced to a term of imprisonment for one year which is suspended for a period of three years on condition that the accused is not convicted of the offence of assault with the intent to do grievous bodily harm, committed during the period of suspension.


Y EBRAHIM
JUDGE OF THE HIGH COURT

30 April 2008

I agree, and it is so ordered.


R PILLAY
JUDGE OF THE HIGH COURT