

FORM A
FILING SHEET FOR SOUTH EASTERN CAPE LOCAL DIVISION
JUDGMENT

PARTIES: **THE STATE**

and

NKOSINATHI MANTLA

- Registrar: **CA & R 1/2009**
- Magistrate:
- High Court: **EASTERN CAPE DIVISION**

DATE HEARD:

DATE DELIVERED: **8/1/09**

JUDGE(S): **PLASKET, J.**

LEGAL REPRESENTATIVES –

Appearances:

- for the Appellant(s):
- for the Respondent(s):

Instructing attorneys:

- Appellant(s):
- Respondent(s):

CASE INFORMATION -

- *Nature of proceedings* : **REVIEW**

**IN THE HIGH COURT OF SOUTH AFRICA
(EASTERN CAPE DIVISION)**

DATE DELIVERED: 8/1/09

In the matters between:

Review no: 20080621

CA & R 1/2009

THE STATE

and

NKOSINATHI MANTLA

CASE NO: 20080619

THE STATE

and

DUMILE MICHAEL VAALTYN

CASE NO:20080618

THE STATE

and

SIYABONGA ZAMANI

JUDGMENT

PLASKET, J.

[1] The three matters dealt with in this judgment concern the same issue, namely the proper terms of a suspended sentence. They come before me on special review, having been referred to this court by the Chief Magistrate, Grahamstown. When they first came before Van de Byl AJ, he requested opinions from the office of the Director of Public Prosecutions. Those opinions have been furnished by Mr Marais SC and I record my gratitude to him for furnishing them within a matter of one or two working days.

[2] In each of the cases, the accused pleaded guilty (to the offences of stock theft, assault and theft respectively, were convicted on the basis of their pleas and were sentenced to a period of imprisonment or, in one case, a fine and an alternative of imprisonment, and the sentences was suspended on condition that the accused did not 'commit a similar offence during the period of suspension'.

[3] It is trite law that a condition of the suspension of a sentence must not be vague so that the accused knows what conduct he must avoid in order to ensure that the suspended sentence is not put into operation, and so that a court called upon to put a suspended sentence into operation will be able to determine what conduct falls within the terms of the conditions of suspension. See Kruger *Hiemstra's Criminal Procedure* Durban, LexisNexis: 2008, 28-79.

[4] In *S v Mothibi* 1972 (3) SA 841 (O), Kumleben AJ, in dealing with a condition of suspension that referred to a 'soortgelyke oortreding' held (at 841F) with reference to the word 'soortgelyk' that '[w]eens die inherente onpresiesheid van die woord, kan die betekenis daarvan gewoonlik nie met enige mate van akkuraatheid vasgestel word nie'. I agree with this *dictum*. The conditions of suspension are vague. For this reason, the sentences in the

above cases must be interfered with and more precise conditions of suspension must be imposed.

[5] The orders that I make are as follows:

(a) In the matter of *State v Nkosinathi Mantla* (case no: 2840/08; High Court reference: 20080621; Magistrate's serial no: 32/08), the sentence imposed by the magistrate is set aside and replaced with the following sentence, back-dated to 1 December 2008:

'The accused is sentenced to six months imprisonment suspended for three years on condition that he is not convicted of the offence of theft or of theft as contemplated by the Stock Theft Act 57 of 1959 committed during the period of suspension and for which he is sentenced to imprisonment without the option of a fine.'

(b) In the matter of *State v Dumile Michael Vaaltein* (case no. 951/08; High Court reference: 20080619; Magistrate's serial no: SR30/08), the sentence imposed by the magistrate is set aside and replaced with the following sentence, back-dated to 2 December 2008:

'The accused is sentenced to a fine of R500.00 or three months imprisonment suspended for three years on condition that he is not convicted of the offence of assault or an offence of which assault is an element committed during the period of suspension and for which he is sentenced to imprisonment without the option of a fine.'

(c) In the matter of *State v Siyabonga Zamani* (case no. 1076/08; High Court reference: 20080618; Magistrate's serial no: SR29/08) the sentence imposed by the magistrate is set aside and replaced with the following sentence, back-dated to 3 December 2008:

'The accused is sentenced to six months imprisonment suspended for two years on condition that he is not convicted of the offence of theft committed during the period of suspension and for which he is sentenced to imprisonment without the option of a fine.'

JUDGE OF THE HIGH COURT