

FORM A
FILING SHEET FOR EASTERN CAPE HIGH COURT, MTATA JUDGMENT

PARTIES: **The State**

VS

Olwethu Sotshangaye

- Registrar:
- Magistrate:
- High Court: **EASTERN CAPE HIGH COURT, MTATA**

DATE HEARD: N/A

DATE DELIVERED: 25 March 2009

JUDGE(S): Nhlangulela J.

LEGAL REPRESENTATIVES –

Appearances:

1. for the Appellant(s): N/A
2. for the Respondent(s): N/A

Instructing attorneys:

- Appellant(s): N/A
- Respondent(s): N/A

CASE INFORMATION -

1. *Nature of proceedings:* Review- Sentence.

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

REVIEW REF NO.:214596

In the matter between

THE STATE

And

OLWETHU SOTSHANGAYE

JUDGMENT

NHLANGULELA, J.:

[1] The accused, a 22 year old male and not being legally represented, appeared before the magistrate of Qumbu charged with assault with intent to do grievous bodily harm, read with s 4 (a) of the Dangerous Weapons Act 71 of 1968. Pursuant to a plea of guilty he was questioned in terms of s 112 (1) (b) of the Criminal Procedure Act 51 of 1977 with the result that he was found guilty of assault with intent to do grievous bodily harm. He was then sentenced to undergo imprisonment for 8 months without an option of a fine.

[2] When the matter was placed before me on automatic review in terms of s 304 of Act 51 of 1977 I found that the conviction was in accordance with justice. I queried the appropriateness of sentence on the basis that the magistrate did not give adequate weight to the personal circumstances of the accused, more particularly in that it was not desirable to incarcerate the accused who was a first offender and still a scholar. A reply to the query was :

“ Court did take into consideration personal circumstances of the accused and that he is a scholar.

- Court did not apply the provisions of Section 4 (1) Act 71 of 1968 – though they were invoked by the state as a result of the above point.
- Most of the crimes in this country are committed by accused of school going age and scholars.
- Looking at the injuries may appear to be minor but on sensitive parts of the complainant who is a female person.
- This court consider the assault of a female person on her breast, thighs, buttocks to be

very sensitive and serious – if the honourable reviewing judge considers the sentence to be too harsh, there is no objection to the sentence being substituted with a lesser one.”

[3] In my view the sentence imposed is unduly harsh that it calls for interference – *S v Pieters* 1987 (3) SA 717 (A).

[4] Du Toit *et al* in the “Commentary On The Criminal Procedure Act” at 28 – 18P state with reference to decided cases (*S v Holder* 1979 (2) SA 70 (A); *S v Abt* 1975 (3) 214 (A)) that a term of imprisonment should not be resorted to lightly because of the obvious negative consequences thereof . In this case, the personal circumstances of the accused are that he is 22 years of age, a scholar, first offender and single. The accused showed genuine remorse for assaulting his girlfriend over a love related quarrel. The accused used a plain barbed wire to assault the complainant which caused her bruises on the breast, thigh and buttocks. No permanent injuries were sustained. As already found at the trial the complainant did not suffer from aggravated assault and the mitigating factors justified imposition of a sentence which is less than the minimum prescribed sentence of 2 years imprisonment in terms of Act 71 of 1968. In the circumstances a

punishment aimed only at deterrence can only break the accused's resolve to repent and rehabilitate his violent behaviour – *S v Khulu* 1975 (2) SA 518 (N).

Therefore, a sentence that will ensure re-integration of the accused back to his community to pursue his schooling activity will be suitable to his deserts.

[5] I find that a sentence of imprisonment which is partly suspended will be appropriate.

[6] In the result I make the order as follows :

3. The conviction is confirmed.
4. The sentence is set aside and substituted by the following new sentence :

“ To undergo 8 months imprisonment, of which 7 months and 30 days are suspended for five (5) years on condition that the accused is not convicted of a crime involving violence on the person of another committed during the period of suspension.”

3. The new sentence is ante-dated to 18 February 2009.

Z. M. NHLANGULELA

JUDGE OF THE HIGH COURT

I agree : PAKADE, J

L. P. PAKADE

JUDGE OF THE HIGH COURT