

**FREE STATE HIGH COURT, BLOEMFONTEIN**  
**REPUBLIC OF SOUTH AFRICA**

Review No. : 399/2010

In the review between:

**THE STATE**

*versus*

**NTSANE PETRUS DIKETSO**

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**CORAM:** HANCKE, J *et* WRIGHT, J

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**JUDGMENT BY:** HANCKE, J

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**DELIVERED ON:** 11 NOVEMBER 2010

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- [1] The accused was convicted on Count 1 of contravening the provisions of section 3 read with section 1, 103, 117, 120(1) (a), 121 read with schedule 4 and section 151 of the Firearms Control Act, 6 of 2000, further read with section 250 of the Criminal Procedure Act, 51 of 1977 (possession of a firearm); and on Count 2 – contravening section 90 of the same Act (possession of ammunition). He was sentenced to ten years imprisonment, both counts to be taken as one for the purpose of sentence.

- [2] When the matter came on review, Moloi J queried the sentence with the following remarks:

“Is the sentence of ten (10) years imprisonment not too harsh in the circumstances of the case?”

- [3] In the reply the magistrate stated that the accused is a Lesotho citizen who entered the Republic of South Africa from Lesotho in possession of that firearm “meaning that he was exporting it from Lesotho to South Africa”. The magistrate also took into account the type of firearm used, being a .38 special revolver, as well as the provisions of section 3 of Act 60 of 2000 providing that the person can be sentenced up to fifteen years imprisonment for contravening the said Act.

- [4] It is an aggravating factor that the accused, a Lesotho citizen, brought the .38 special revolver with 14 living rounds ammunition across the border into South Africa when he was arrested.

- [5] On the other hand, he is a 28-year old first offender who

pleaded guilty and expressed his remorse for his wrongful conduct. In his statement in terms of section 112(2) of the Criminal Procedure Act, he stated that he “was using that firearm as protection against thieves as I work as a head boy”.

[6] Although the accused was convicted of a serious offence, I am of the view that the sentence of ten years imprisonment is too severe in the circumstances.

[7] The conviction appears to me to be in accordance with justice.

Accordingly the following order is made:

1. The conviction is confirmed.
2. The sentence of the magistrate is set aside and substituted with the following sentence:

Four (4) years imprisonment antedated to 29 July 2010. The accused is declared unfit to possess a firearm.

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**S.P.B. HANCKE, J**

I agree.

**G.F. WRIGHT, J**

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