



**IN THE HIGH COURT OF SOUTH AFRICA**  
**FREE STATE DIVISION, BLOEMFONTEIN**

Reportable:	YES/NO
Of Interest to other Judges:	YES/NO
Circulate to Magistrates:	YES/NO

In the matter between:

Review no: R 04/2021  
Magistrate court no: B 24/2019

**THE STATE**

and

**TEBOHO VITALIS MOLABA**

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**CORAM:** MBHELE, ADJP et, MAJOSI, AJ

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**JUDGMENT BY:** MAJOSI, AJ

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**DELIVERED ON:** 29 JANUARY 2021

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- [1] This matter serves before us as a special review in terms of section 304(4) of the Criminal Procedure Act 51 of 1977 (the Act) as amended. The accused was charged with malicious injury to property and intimidation. He was legally represented and tendered a plea guilty on both counts and was convicted as charged on the strength of his statement in terms of s 112(2) of the Act.

- [2] Both counts were taken together for purpose of sentence and he was sentenced to twelve months' imprisonment suspended for three years on condition that the accused is not convicted of intimidation committed within the period of suspension. No order in terms of s 103(1) of the Firearm's Control Act 60 of 2000 was made as the accused was already declared unfit to possess a firearm.
- [3] This sentence was discovered during a routine Judicial Quality Assurance check at Bethlehem Magistrate's Court. The Head of Court referred the matter for special review on the basis that the trial Magistrate did not consider the conviction on malicious injury to property during sentencing as the conditions of suspension only made reference to intimidation. A request was made to confirm both convictions, set the sentence aside and remit the matter to the Magistrate to consider sentencing afresh on both counts as sentencing did not take place in accordance with justice.
- [4] The sentence imposed by the magistrate is indeed improper for two reasons. Firstly, the accused was convicted of two separate offences but the conditions of suspension have no bearing on the offence of malicious injury to property. Secondly, the offence of intimidation is in actual fact a statutory offence as it speaks to contravention of s 1(1)(a) of the Intimidation Act 72 of 1982 where the penalty clause prescribes a fine R 40 000.00 or imprisonment not exceeding 10 years or to both such a fine and such imprisonment. The reference to the statutory provision was thus also omitted from the sentence.

[5] In Rex v Cloete<sup>1</sup>, Reynolds, J said the following:

"While the words of sec. 360 (b) of Act 31 of 1917 are wide and the discretion of the judicial officer should not be lightly interfered with, it does seem that two principles at least should be observed in the imposition of the conditions. The first is that the condition imposed should bear at least some relationship to the circumstances of the crime which is being punished by the imposition of the suspended sentence. It need not be closely related but should be related to it in some degree at least, even though slightly related, and not divorced from it, or remote from it. The second is that the condition be stated with such precision that the convicted person may understand the ambit of the condition."

[6] The practice of taking more than one count together for the purposes of sentencing should be avoided<sup>2</sup> as the practical effect thereof might lead to an incompetent sentence being imposed. The purpose of a suspended sentence with negative conditions is to deter the offender from committing similar offence.<sup>3</sup> This entails that when the offender is sentenced by a court, he or she must know exactly what the conditions of suspension with reference to the actual offence or offences.

[7] The sentence imposed by the magistrate incomprehensibly does not include the accused's conviction for the offence of malicious injury to property. A proper reading of s 297 of the Criminal Procedure Act 51 of 1977 ought to have revealed to the magistrate that the sentence imposed would be unenforceable<sup>4</sup> in the unfortunate event that the

<sup>1</sup> 1950(4) SA 192 F- G.

<sup>2</sup> S v Kruger 2012(2) SACR 369 (SCA).

<sup>3</sup> S v Roscoe 1990 (2) SACR 125 (W) at 129 A-C.

<sup>4</sup> Section 297(9) of the Criminal Procedure Act.

accused is convicted again of malicious injury to property and that consideration should be given to sentence the accused separately for each conviction.

[8] In my view, the sentence imposed is not only incompetent, but also impractical as it excludes the possibility that the accused may in future, be convicted of the offence of malicious injury to property. The suspended sentence imposed here will thus have no deterrent effect on the accused which is one of the cornerstones of sentencing. The individual offences, though part of a single transaction, cannot be taken together for the purpose of sentence and ought to be considered separately to give effect not only to the prescribed penalty clause of the Intimidation Act, but also the common law offence of malicious injury to property.

[9] The transcribed record reveals that the accused was correctly convicted on both counts and I see no need deal with it further in this judgment. The sentence imposed as alluded to herein above, is not in accordance with justice and ought to be set aside and remitted to the trial court to consider sentencing afresh for both counts whilst keeping in mind the difference between statutory and common law offences.

### **ORDER**

1. The convictions on both counts are confirmed.

2. The sentence on both counts is set aside and remitted to the magistrate to consider sentencing afresh.

I concur



O.R. MAJOSI, AJ



N.M. MBHELE, ADJP