



**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

Review number: R64/2021

In the matter between:

**THE STATE**

and

**PULE GIM HLONGWANE**

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**CORAM:** LOUBSER, J et DE KOCK, AJ

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**JUDGEMENT BY:** LOUBSER, J

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**DELIVERED ON:** 14 OCTOBER 2021

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- [1] This matter came before me in the form of a special review in terms of Section 304(4) of the Criminal Procedure Act 51 of 1977. It initially came before an Acting Judge of this Division on 16 September 2021. The Acting Judge, who is no longer available, considered the matter and gave directions which were not entirely clear and could lead to some confusion. The matter was then placed before me for a reconsideration of the issues raised.
- [2] The accused was charged with two counts of Contravening the Provisions of Section 17(a) of the Domestic Violence Act 116 of 1998 in the Magistrate's Court of Welkom. He was legally represented, and he pleaded guilty to the first count and not guilty to the second count. He was eventually convicted on the first count only, and sentenced as follows: "Fined R3000.00 (Three Thousand)

or 6 (six) months imprisonment which is wholly suspended for 3 (Three) years on conditions that accused is not convicted of the contravening the provisions of the Domestic Violence Act 116 of 1998 or any similar offence during the period of suspension.”

- [3] The record of the proceedings was referred to this Court on 13 August 2021 by the Senior Magistrate of Welkom for a special review. He pointed out that a statement in terms of Section 112(2) of the CPA was read into the record in relation to Count 1, but that the statement itself was never handed in. Since the trial Magistrate was not satisfied that all the elements of the offence were admitted in this statement, he entered a plea of Not Guilty on Count 1. He did so notwithstanding the fact that he never enquired from the prosecutor whether the State accepted the facts as set out in the statement.
- [4] The learned Senior Magistrate further points out that the Magistrate also did not enquire from the accused what the basis of his defense was in relation to Count 2. He adds however, and quite correctly in my view, that such a step is not mandatory in terms of the provisions of Section 115 of CPA, which govern the procedure where an accused pleads not guilty.
- [5] As far as the above is concerned, I am in respectful agreement with the learned Senior Magistrate that the shortcomings referred to, did not prejudice the accused in his trial. Therefore we need not address these issues any further. What is more concerning, however, is the wording of the sentence imposed in relation to Count 1, on which the accused was found guilty.
- [6] As pointed out by the Learned Magistrate, the condition of suspension is too widely stated and not precisely formulated. The condition that the accused is not again convicted of “contravening the provisions of Act 116 of 1998” fails the primary object that the accused must understand what he has to avoid in order to ensure that the suspended sentence is not put into operation. It could also lead to a situation that the court which later has to consider the possible putting into operation of the suspended sentence, would find it difficult to determine the ambit of the condition. These principles were clearly enunciated in a manner of

cases, such as **S v Ntembu 1973 (2) SA 937 (O)**, **S v Valashia 1973 (3) SA 934 (O)**, **S v Van Rooyen**; **S v Jantjies 1974 (3) SA 319 (NC)**, **S v Mjware 1990 (1) SACR 388 (N)** and others.

[7] It follows that the wording of the sentence cannot stand as it is. The following order is made:

7.1 The sentence of the accused on Count 1 is reviewed and set aside.

7.2 The said sentence is substituted with the following:

“Fined R3000.00 (Three Thousand Rand) or 6 (Six) months imprisonment, which is wholly suspended for 3 (Three) years on condition that the accused is not convicted of Violating a Protection Order (Section 17(a) of the Domestic Violence Act 116 of 1998) committed during the period of suspension”.

I concur

P. J. LOUBSER, J

D. DE KOCK, AJ