

IN THE HIGH COURT OF SOUTH AFRICA
(TRANSVAAL PROVINCIAL DIVISION)

Date: 2/6/08

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THE STATE V MADALA PHILLIP NGWANA

REVIEW JUDGMENT

SOUTHWOOD J

[1] On 8 November 2007 the accused was found guilty of two counts of assault with intent to do grievous bodily harm in the Praktiseer magistrates' court and sentenced to R 1000 or six (6) months imprisonment wholly suspended for three years on condition that the accused is not found guilty of assault with intent to do grievous bodily harm committed during the period of suspension. The two counts were taken together for the purpose of sentence.

In response to questions from the review judges the presiding magistrate states that the accused was convicted on the basis of his plea of guilty and that he, the presiding magistrate, should have convicted the accused of common assault.

The proceedings were not conducted carefully and it is not clear from the record that the accused intended to plead guilty to assault with intent to do grievous bodily harm. I agree with the Deputy Director of Public Prosecutions that in the circumstances it should be inferred that the accused intended to plead guilty to the lesser charge of common assault and that he was wrongly convicted of assault with intent to do grievous bodily harm. I also agree that the sentence must be altered accordingly.

The following order is made:

1)The convictions are set aside and substituted with convictions on two counts of common assault.

2)The sentence is set aside and substituted with the following sentence:

'R 1 000 (one thousand Rand) or 6 (six) months imprisonment wholly suspended for a period of 3 (three) years on condition that the accused is not found guilty of assault committed during the period of suspension'.

B.R. SOUTHWOOD
JUDGE OF THE HIGH COURT

I agree

C. PRETORIUS
JUDGE OF THE HIGH COURT