

**IN THE HIGH COURT OF SOUTH AFRICA**  
**BOPHUTHATSWANA PROVINCIAL DIVISION**

**THE STATE**

**VS**

**DANIEL TSHEPO NNONE**

**REVIEW**

**Pako AJ:** The accused, a 20 year old boy, stole a motor vehicle radio from an unlocked motor vehicle. He was charged in the magistrate's court with theft of this radio. He pleaded guilty and he was found guilty as charged. The conviction is in order and will be confirmed. The magistrate imposed the following sentence:

“Twelve (12) months imprisonment which is wholly suspended for a period of 5 years *on condition that the accused is not convicted of any offence involving theft from motor vehicle* committed during the period of suspension” (my emphasis).

On review I queried the condition of the suspension with the question posed as to why did the magistrate limit the scope of the condition by stipulating that “..... the accused is not convicted of any offence involving theft from motor vehicle”.

The other question posed was whether the sentence should not have been suspended on condition “that the accused is not convicted of theft committed during the period of suspension”.

In response to the query the magistrate stated, *inter alia*, that the suspended sentence imposed was deliberately framed in the afore-going manner so that it should not be put into operation in the event the accused commits “any other offence except theft from a motor vehicle”. He further stated that the formulation of the condition of suspension which I have recommended “is the usual condition which our courts normally give...” By any other offence the magistrate must be referring to any other form of theft except theft from a motor vehicle.

It is always incumbent upon a judicial officer to take great care in formulating conditions of suspension. Inappropriate conditions defeat the purpose of suspension. (See S v Tom, S v Bruce 1990(2) SA 802 (A) at 821 A-B). In formulating the condition of suspension the magistrate, in this present case, must carry out the intention of the legislature, namely the prevention of criminal conduct by the accused (ie to obtain good behaviour from the accused). In this regard see section 297(1) (a) (i) (gg) of the Criminal Procedure Act 51 of 1977.

If a person, for example, steals from a shop; from a train; from a motor vehicle; or from another person’s pocket; he/she commits the offence of theft. The seriousness of these forms of theft will differ according to the circumstances of each case. In order to achieve the main aim of obtaining good behaviour from the accused, the condition of the suspended sentence must be formulated in such a way that the accused is not only prevented from committing a specific form of theft but is prevented from committing any form of theft. The manner in which the magistrate formulated the condition of the suspended sentence will encourage the accused to commit other forms of theft and avoid committing theft from a motor vehicle. This in fact defeats the purpose of suspension.

In my view, since the object of the suspended sentence was to give the accused a clear warning that he must not commit any future offence of theft, a reference in the condition of suspension simply to “theft or attempted theft” and not to “theft from a motor vehicle” would have been justified.

If the condition of suspension is formulated in that way a substantial deterrence would be achieved. The same applies to assault cases where a condition of suspension is limited to ‘assault with intent to do grievous bodily harm’. (See S v Louw and Another 1992(1) SACR 688 (Nm)). The formulation of the condition of suspended sentence by the magistrate in the present case, in my view, is not *per se* a misdirection but undesirable.

The condition of suspension in this case must also be formulated in such a way so as to avoid putting into operation the suspended sentence of twelve months imprisonment for a petty theft. (See S v Mguni and Others 1985(2) SA 448 (N) at 451 E-F and S v Mziyane and Others 1985(2) SA 844 (T) at 848 H-I).

In the result, the conviction is confirmed but the sentence is amended as follows:

“Twelve (12) months imprisonment which is wholly suspended for a period of five (5) years on condition that the accused is not convicted of theft or attempted theft committed during the period of suspension and for which he is sentenced to imprisonment without an option of a fine’.

**O.A. PAKO**

**ACTING JUDGE OF THE HIGH COURT**

I agree

**H.N. HENDLER**

**JUDGE OF THE HIGH COURT**

**DATED: 06 JUNE 2002**