

S. v. DLAMINI.

(NATAL PROVINCIAL DIVISION.)

1971. September 30. HENNING and SHEARER, JJ.

*Criminal procedure.—Sentence.—Two different sentences for the same offence suspended.—Undesirability of.*

After a magistrate had convicted an accused of a contravention of section 140 of Ordinance 21 of 1966 N) in that he had driven a motor vehicle on a public road whilst under the influence of intoxicating liquor, he sentenced him to both a fine, of which half was suspended, and imprisonment, which was suspended on the same conditions. On review,

*Held*, that it was undesirable to suspend more than one of the sentences imposed for an offence.

Review.

HENNING, J.: Accused was properly convicted of contravening sec. 140 (1) of Ord. 21 of 1966 in that he drove a motor vehicle on a

public road while under the influence of alcohol. No previous convictions were proved and the accused was sentenced as follows:

"Fined R100 or 100 days' imprisonment of which R50 or 50 days' imprisonment is suspended for three years on condition that during this period the accused does not again contravene sec. 140 (1) of Act 21 of 1966 and a further 80 days' imprisonment suspended on the same conditions as mentioned above. Accused is declared to be disqualified from obtaining a driving licence for six months."

The accused paid the R50 fine and was therefore released.

In reply to a query as to why he imposed two suspended sentences, the magistrate replied:

- "(1) The magistrate's objective was to keep the accused, a first offender, out of prison, without suspending the entire sentence. A fine of R100 would have forced the accused to go to prison while he could possibly pay R50 although at the time of sentence it was uncertain whether he could get the R50 immediately.
- (2) A further objective was to create a strong deterrent for the future in the form of 130 days' imprisonment without option of a fine should he again commit the same offence.
- (3) In order to achieve these objectives without disturbing the ratio between the fine and the alternative imprisonment too much, two portions of the sentence were suspended.
- (4) It is respectfully submitted:
  - (a) That it does not amount to two suspended sentences for the same offence because a sentence of R100 or 100 days' imprisonment plus 80 days' imprisonment, suspended on certain conditions is not two sentences. Mere suspension of part of the fine and alternative imprisonment cannot make it two sentences.

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- (b) The sentence, although prolix, is competent because it is within the magistrate's jurisdiction, it is not vague, nor does it conflict with decided cases.
- (c) Only one other sentence could achieve the same objectives and that is the following:

Fined R50 and a further 130 days' imprisonment, suspended, etc. Since it was uncertain whether the fine could be found at once, such a sentence was not practical."

Although the magistrate is correct when he says that he only sentenced the accused once, the sentence indeed contains more than one punishment. Apart from the disqualification the accused was sentenced to:

- (a) a fine of R50 or 50 days' imprisonment;
- (b) a fine of R50 or 50 days' imprisonment, conditionally suspended; and
- (c) 80 days' imprisonment, conditionally suspended.

Although the sentence is within the jurisdiction of the magistrate, it is strange, in my experience of our practice, to suspend more than one sentence for an offence. Should the accused contravene the said section during the period of suspension he will not only be punished therefore, but two suspended sentences will presumably be put into operation against him. Such a situation is clearly undesirable and should be avoided.

Apart from the above remarks, it is clear that the magistrate became confused and misdirected himself. It is praiseworthy that he was concerned that the fine which was immediately payable should be within

the means of the accused. But then the magistrate says that he intended to create a strong deterrent for the future in the form of 130 days' imprisonment without the option of a fine, and that a fine of R50 and 130 days' imprisonment of which the latter is suspended, would have the same effect. It must be accepted, according to his reasons, that the magistrate envisaged a suspended sentence of 130 days without the option of a fine. The sentence actually imposed does not amount to this, because the 130 days includes 50 days which are coupled with an option of a fine of R50. Should the accused contravene again he will be entitled to pay this fine and so avoid 50 days' imprisonment. I may mention that the 130 days' suspended imprisonment envisaged by the magistrate is materially more severe than the sentences usually imposed.

For the preceding reasons and particularly because the sentence, as it is worded partially frustrates the magistrate's objective, it is desirable to alter the sentence to read:

"Fined R50 or 50 days' imprisonment and a further 80 days' imprisonment which is suspended for three years on condition that during that period the accused does not again commit the statutory offence of driving a vehicle while under the influence of liquor or a drug with a narcotic effect."

The conviction and the disqualification from obtaining a driving licence are confirmed, but the sentence is otherwise amended as set out in the preceding paragraph.

SHEARER, J., concurred.

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