

THE STATE**Versus****THANDEKILE MAPHOSA**

IN THE HIG COURT OF ZIMBABWE
MAKONESE J
BULAWAYO 24 MAY 2018

Criminal Review

MAKONESE J: It is important for trial magistrates to ensure that the sentences they impose against convicted persons are correct by double checking the sentence that has been handed down before signing and submitting the record for scrutiny. The terms of community service that are usually recorded on an annexure to the charge sheet must also be verified to ensure that the recorded terms are accurate and in sync with the sentence imposed. Failure to do so may have far reaching effects on the fate of a convicted person who may serve an entirely wrong sentence.

The accused appeared before a Provincial Magistrate at Western Commonage on the 27th December 2017. She was facing a charge of deliberately supplying false information to a public authority as defined in section 180 (1) (a) (b) of the Criminal Law Codification & Reform Act (Chapter 9:23). The allegation against the 19 year old accused being that she unlawfully and intentionally supplied information to Memory Moyo, a police officer to the effect that she had been raped by one Bernard Ndlovu. The false information had led to the arrest of Bernard Ndlovu on rape allegations. She pleaded guilty and was duly convicted. The accused then appears to have been sentenced twice. On the charge sheet the learned magistrate recorded that accused was sentenced to 6 months imprisonment of which 3 months imprisonment was suspended for 5 years on the usual condition of future good conduct. On the annexure to the community service form the sentence recorded, however, was 6 months imprisonment of which 3 months imprisonment was suspended for 5 years on condition accused did not within that period commit any offence of which falsely supplying information is an element and for which upon conviction, she is sentenced to imprisonment without the option of a fine. In addition a further 3 months was suspended on

condition accused performed 105 community service at Ngwalongwalo Primary School. The community service was to commence on 2 January 2018 and was to be completed within 3 weeks. Such community service was to be performed as follows:

“Between 0800 hours to 1300 hours to 1400 hours to 1600 hours every Monday to Friday or Saturday and Sunday which is not a public holiday ... (sic)”

The community service forms contained many glaring errors, which would affect the terms of the community service.

The scrutinizing Regional Magistrate brought the attention of the Provincial Magistrate to the various anomalies in the sentence and the response from the trial magistrate was in the following terms:

“May the following record of proceedings be placed before the learned Regional Magistrate with the following comments:-

It was never the intention of the magistrate to send the accused to prison for the offence pleaded to as canvassed in the reasons for sentence. The magistrate erred by not endorsing the community service order on the charge sheet and solely relied on the community service annexure.

The trial magistrate is indebted by the comments raised by the learned Regional Magistrate and undertakes never to make such mistakes in future.

The trial magistrate will always stand guided.” (emphasis added)

What belies the explanation and response by the trial magistrate is that there was no intention to send the accused to prison. However, it is clear that the intended sentence was not what the record reflects. I find this disturbing. If care is not taken in recording the correct sentence and double-checking that the sentence imposed is correct, a convicted person may very well find himself serving a wrong sentence. For this reason, trial magistrates are implored to verify the sentence by checking the sentence, before signing and sending the record for scrutiny. I do not perceive that this process would take much of the magistrate’s time and ought to be done as a matter of course.

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This record shows that the correct sentence in this matter ought to have been the one on the annexure to community service form. Further, there are errors that have to be corrected on the terms of the community service. I would direct that this judgment be circulated by the Chief Magistrate, for magistrates to be encouraged to double-check the sentences they impose.

In the result, and in order to correct the sentence it is ordered as follows:

1. The matter is remitted to the trial magistrate.
2. The accused shall be recalled to court for the correct sentence to be recorded and read to the accused.

Makonese J

Moyo J I agree