

IN THE HIGH COURT OF SWAZILAND

In the matter of:

THE KING

vs

NHLANHLA MAVUSO

DISTRICT OF MANZINI

REVIEW CASE NO. 36/89

JUDGMENT ON REVIEW

The accused a 15 year old youth was charged with and convicted of the theft of a shirt valued at E19.59 from a store in Manzini.

The Magistrate sentenced the accused to 6 strokes with a light cane. In terms of Section 84(i) of the Magistrate's Courts Act No .66/1938 as amended and Section 309 of the Criminal Procedure as amended and Evidence Act No.67/1938/a sentence of whipping by a subordinate court can only be carried out after confirmation on review by the High Court. The present case highlights the problems that can and do arise under the present system.

The accused was sentenced on the 10th February 1989. The record consisting of 5 typed pages was sent to the High Court on the 21st February 1989. The Magistrate was requested to amplify his reasons regarding the sentence and the proceedings were finally confirmed by me on review on the 8th March 1989. The confirmation was communicated to the Magistrate's court on the same day. It then became the duty of the Clerk of the Court concerned to notify the Prison authorities of the confirmation and to make an entry in the Review Register and in the space provided on the review cover.

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The review cover does not indicate that this procedure was followed. The Commissioner of Prisons has by memorandum dated 13th June 1989 reported that the accused is still in custody awaiting the outcome of the review proceedings. The Commissioner has expressed his concern and points out that the accused has now been in custody for the equivalent of a sentence of 6 months imprisonment.

I have to-day ordered the immediate release of the accused from custody and that the sentence which has not been carried out be substituted by the following:-

The accused is sentenced to such term of imprisonment with effect from the 10th February 1989 as will, when calculated by the Prison authorities and taking into account such remission for good behaviour as the accused would have been entitled to, mean that the accused was due for release on the 21st June 1989.

It appears to me that the question of delay in carrying out sentences in cases of this nature is inherent in the present system. Records from the subordinate courts are known to take months before being sent on review due to circumstances beyond the control of the Magistrates, such as the shortage of typists and the breakdown of typewriters. Every effort should be made to minimise the delay in such cases even if this means that some cases have to be sent untyped for review. Magistrates should for their part:-

1. ensure that the Review Registers are properly kept and up to-date. Upon receipt of a record after review, Magistrates should ensure that the necessary notification is immediately given to the prison authorities and that an endorsement to that effect is made on the Review cover,

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2. consider in appropriate cases, the desirability of releasing an accused who has been sentenced to whipping, on bail or into the custody of a guardian or relative on such terms and conditions as will ensure that he attends court on a future date to be informed of the outcome of the review proceedings. This procedure is provided for under Section 84(2) of the Magistrate's Courts Act.

B. DUNN
JUDGE