

REVIEW CASE NO. 92/2000

In the matter between

REX

Vs

MFUMBAMFUMBA MHLUPHEKI DLAMINI

**RULING ON REVIEW
(22/01/01)**

This matter came for automatic review before me on the 19th June 2000, and after perusing the court record I duly certified that the proceedings were in accordance with real and substantial justice.

It has since been brought to my attention that the trial Magistrate when passing sentence omitted to specify whether the sentences were to run concurrently or consecutively. It has also been brought to my attention that the Magistrate intended that the sentences run consecutively. The learned Magistrate seeks to effect the amendment but is of the view that he is now *functus officio* in the matter.

The accused person was charged with two counts under the *Opium and Habit Forming Drug Act of 1922 (as amended)* and convicted of same. He was sentenced as follows:

“Count 1 – Two (2) years imprisonment, one (1) year suspended conditionally.

Count 2 - Two (2) years imprisonment, one (1) year suspended conditionally”.

The warrant of committal is silent as to what order the sentences should take.

It is trite law that the court may order the sentences to be served in a specific order but in the absence of any order sentences will be served cumulatively. When the court is of the view that sentences should not be served cumulatively, but concurrently, a definite order in this regard must be made (*See S vs Brummer 1974 (4) S.A. 846 (N) at 847*).

It would appear to me that in the interest of fairness and justice to the accused person this principle should apply in the circumstances of this case.

I thus order that the sentences are to run concurrently as follows:

Count 1 - Two (2) years imprisonment, one (1) year suspended conditionally.

Count 2 - Two (2) years imprisonment, one (1) year suspended conditionally.

The sentences are to run concurrently. I direct, therefore, that the committal warrant be amended accordingly and the accused to appear before the trial Magistrate for the sentence to be explained to him.

S.B. MAPHALALA
JUDGE