



IN THE HIGH COURT OF SOUTH AFRICA,
FREE STATE DIVISION, BLOEMFONTEIN

Reportable:	YES/NO
Of Interest to other Judges:	YES/NO
Circulate to Magistrates:	YES/NO

Case number: R88/2018

In the matter between:

THE STATE

State

and

MASNEI MOTLIBELI

Accused

CORAM:

MHLAMBI J, *et* MOLITSOANE,J

DELIVERED ON:

19 SEPTEMBER 2019

REVIEW JUDGMENT

MHLAMBI, J

- [1] This matter came before us on automatic review in terms of section 302 of the Criminal Procedure Act 51 of 1997 (CPA). The state alleged that the accused drove a motor vehicle on a public road at a speed of 170 km per hour in excess of the general speed limit of 100 km per hour which was applicable to that road.
- [2] The accused pleaded guilty and was convicted of the contravention of section 59 of the National Road Traffic Act, 93 of 1996, in that he exceeded the general speed limit of 100 km per hour which was applicable to that road by driving a motor vehicle at 170 km per hour.
- [3] The accused was sentence to a fine of R 4 000.00 or 12 months' imprisonment, half of which was suspended for five years on condition that the accused was not convicted of the contravention of section 59(4) of Act 93 of 1996, committed during the period of suspension. It was further ordered that section 35(3) of Act 93 of 1996 should not take effect.
- [4] On 04 June 2019 I caused a letter to be addressed to the magistrate with the following queries:
- "1 Was it established during questioning in terms of section 112 of the Criminal Procedure Act to which "cards" and "cameras" the accused referred to?*
 - 2. In the light of the accused's statement contained in lines 10-23 of the prescribed record, was the presiding officer satisfied that the requisite admissions of the particular crime were made by the accused as required in **Sv Phuzi** (R254/20180 [2018] ZAFHC 213 (28 December 2018). Was the Judicial officer satisfied that the accused admitted all the allegations contained in the charge?"*

- [5] The magistrate responded as per letter dated 16 August 2019 which reads as follows:

"I concede that it was not established which cards and cameras the accused referred to and the requisite admissions made by the accused were not made by the accused as required in State vs. Phuzi.

I erred in finding that the accused admitted all the allegations contained in the charge, the conviction and sentence may be set aside.

I further apologise for the late response to this review, there was a delay in bringing the queries of the Judge to my attention."

- [6] In State **vs. Phuzi** *supra*, the full bench of this Division dealt extensively with the elements of this particular offence. The elements to be proven in this type of offence, in order to secure a conviction, were summed up as follows:

"(39)(a) Fault in the form of intention or negligence is an element of the offence of exceeding the speed limit

(b) When an accused is questioned in terms of section 112(1)(b), the magistrate must ascertain whether the accused admits:

- (i) The record speed;*
- (ii) The proper functioning of the speed measuring device; and*
- (iii) The competence of the traffic operator to set up and operate the speed measuring device."*

- [7] It is evident from the above that the proceedings were not in accordance with justice. The conviction and sentence stand to be set aside. The Director of Public Prosecutions is at liberty to institute fresh charges against the accused, should he/she so decide. It follows therefore, that the funds paid by the accused are to be repaid.

[8] The following order is made:

Order:

1. The conviction and sentence are set aside;
2. The order made in terms of section 35(3) of the National Road Traffic Act 96 of 1996 is set aside

MHLAMBI, J

I concur,

MOLITSOANE, J