



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: R79/2018

In the matter between:

THE STATE

State

and

MOSUPELI BOLAE

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 151 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, read with sections 1, 33, 34, 35, 59(1), 59(4), 69(1), 73(1), 75 and 89(3) of the National Road Traffic Act, 93 of 1996. He was sentenced to a fine of R 3 000.00 or six 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 ordered that section 35(3) Act 93 of 1996 should not take effect.
- [3] On 04 June 2019 I caused a letter to be addressed to the presiding officer with the following queries:
- "1. The accused stated in his plea explanation on page three of the transcribed record, that he pleaded guilty to the charge because he was made aware that he drove at an excessive speed when he was not aware he did so.*
 - 2. In the light of Phuzi (R254/2018) (2018) ZAFHS page 6 to 13 (28 December 2018), was the judicial officer satisfied that the accused admitted all the allegations contained in the charge?"*
- [4] The magistrate responded as follows on 16 August 2019:
- "1. Kindly be advised that this review was send (SIC) by the clerk of the court to the reviewing Judge at a later stage upon him realising that it was supposed to have been sent in January 2019 already.*
 - 2. I concede that accused's admissions were not admitting all the allegations in the charge as prescribed in State vs. Phuzi. Court erred in finding that the accused admits all the allegation in the charge.*

3. *Conviction and sentence may be set aside."*

[5] In the **State vs. Phuzi**¹ the full bench of this Division summed up the elements to be proven in this type of offence as follows in order to secure a conviction:

"(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 term 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."

[6] A presiding officer can only convict if he or she is satisfied that the accused is indeed guilty of the offence of which a guilty plea has been entered. If not, the provisions of section 113 must be invoked.²

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

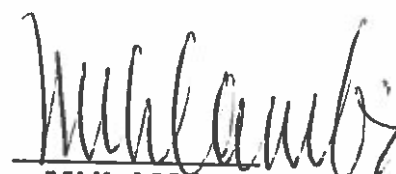
[8] The following order is made:

¹ (R254/2018) (2018) (ZAFSH 213) (28 December 2018)

² State vs. Mshengu 2009 (2) SACR (SCA) 316 at 319

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