



**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

Review number: R25/2018

In the matter between:

THE STATE

and

BOITHATELO BEN MOTAKE

CORAM: REINDERS, J et LOUBSER, J

JUDGMENT BY: LOUBSER, J

DELIVERED ON: 15 MARCH 2018

JUDGEMENT ON SPECIAL REVIEW

- [1] This matter came before me as a Special Review in terms of **Section 304(4)** of the Criminal Procedure Act. It appears from the record of proceedings in the Magistrate's Court of Clocolan that the

accused has been found guilty of exceeding the speed limit in the area of Clocolan by driving his vehicle at a speed of 165 km per hour. The Magistrate sentenced him to a fine of R4000.00 or 12 months imprisonment,

*“half suspended for a period of 3 years on condition that the accused is not convicted of contravening **Section 59(1) Act 93/1996** committed during the period of suspension.”*

It was further ruled by the Magistrate that **Section 35** of the Act shall not take effect.

- [2] In a note requesting a special review of the sentence, the Magistrate remarked as follows:

“I concede that this is due to an oversight on my part and I apologise.”

The Magistrate did not indicate what the oversight was.

- [3] From the record of proceedings it appears that the Magistrate had intended to suspend half of the fine and half of the alternative term of imprisonment for a period of three years, and not only half of the alternative term of imprisonment.
- [4] The sentence imposed by the Magistrate creates the impression that only half of the alternative term of imprisonment was suspended, which makes no sense. Also, the suspension refers to a contravention of **Section 59(1)** which Section only provides that

the speed limit shall be as prescribed. **Section 59(4)** is actually the Section creating the offence.

[5] The following order is therefore made:

1. The sentence imposed by the Magistrate is set aside and substituted with the following:

The accused is sentenced to a fine of R4000.00 or 12 Months imprisonment, half of which fine and term of imprisonment is suspended for a period of 3 years on condition that the accused is not convicted of contravening Section 59(4) of Act 93/1996, committed during the period of suspension. **Section 35 Act 93/1996** shall not take effect.

P. J. LOUBSER, J

I concur:

C. REINDERS, J

/db