



**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: R33/2018

In the matter between:

THE STATE

and

JOHN SITHOLE
SHIVIKO JOHANNES MAKHUBELA
JUSTICE BENDANI

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 the provisions of Section 304(4) of the Criminal Procedure Act. All three accused pleaded guilty to, and were convicted of, a contravention of Section 143(3) of the Mining Rights Act 20 of 1967 in the Magistrates Court of Phuthaditjhaba, in that they were found in possession of unwrought precious metal, namely gold dust.
- [2] In a note submitted in the request for a Special Review, the presiding magistrate remarked that it transpired after the conviction of accused, but before they were sentenced, that the charge was brought under the wrong legislation, with the result that they were also convicted under the wrong legislation.
- [3] I respectfully agree with the learned Magistrate. The legislation under which the accused were convicted, was repealed by Section 24(1) of the Precious Metals Act 37 of 2005, which Act is presently the applicable legislation prohibiting the possession of unwrought precious metal under certain circumstances, and more particularly Section 4 thereof. The conviction as it now stands, must therefore be set aside.
- [4] All three the accused have pleaded guilty to the charge under the repealed legislation, and statements in terms of Section 112(2) of the Criminal Procedure Act were handed in on their behalf. In such circumstances, the convictions cannot be substituted with convictions under the legislation now in force.

I therefore make the following orders:

1. The convictions of all three accused in terms of Section 143(3) of Act 20 of 1967 are set aside.
2. The matter is remitted to the Magistrate Court, Phuthaditjhaba, for the accused to plead *de novo* before a different magistrate to charges of contravening Section 4 of Act 37 of 2005.

P. J. LOUBSER, J

I concur:

C. REINDERS, J