



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

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

Review No. : 48/2018

In the review between:-

THE STATE

and

ABDUL I ISSA

CORAM: DAFFUE, J *et* LOUBSER, J

JUDGMENT BY: DAFFUE, J

DELIVERED ON: 5 APRIL 2018

- [1] This review has been sent to the High Court as a special review in accordance with the provisions of s 304(4) of the Criminal Procedure Act, 51 of 1977 (“the Act”).

- [2] The accused was charged with and convicted of the offence of contravening s 59(4)(a) of the National Road Traffic Act, 93 of 1996 (“the Traffic Act”) in that he exceeded the speed limit of 100 km/h by driving a vehicle on a public road at a speed of 146 km/h. He was convicted on 28 February 2018 and sentenced to payment of a fine of R3 000 or 6 months’ imprisonment, half of which was suspended for a period of 3 years on condition that he is not convicted of contravening s 59(1) of the Traffic Act committed during the period of suspension. His driver’s licence was not suspended in terms of s 35 of the Traffic Act.
- [3] The presiding magistrate sent the matter to the High Court on special review without indicating why she believed the proceedings were not in accordance with justice. In her letter she went so far to inform this court that she had already informed the accused of the error. This appears to be premature and such action cannot be countenanced. In any event, she failed to explain the alleged error to this court.
- [4] The charge sheet refers to s 59(4)(a) and s 5a of the Traffic Act, but this Act does not contain a s 5a. Consequently the

charge sheet is defective. The local prosecutor shall ensure that the charge sheet read properly. A verdict that the accused is “found guilty as charged” is technically not in order for the reason mentioned, but the misdirection is not so severe to set aside the conviction on this ground.

[5] Magistrates sending matters on special review must ensure that the reviewing judges are not left in the dark in order for them to scrutinise proceedings that are not reviewable in the ordinary course. It causes an unnecessary waste of time.

[6] However and having said all this and after perusing the papers, it appears that the presiding magistrate was appointed as magistrate on 4 November 2013, the effect being that she did not hold the substantive rank of magistrate for more than 7 years when she presided over the matter. Therefore, the matter shall be regarded as a review in the ordinary course in accordance with s 302 of the Act. A sentence of 6 months’ imprisonment – greater than the 3 months mentioned in s 302(1) of the Act - was imposed as an alternative to payment

of a fine.

[7] I am satisfied that – save for the aspect to be dealt with in the next paragraph – the proceedings were conducted in accordance with justice. The accused can count him fortuitous for receiving such a lenient sentence. Review courts in this Province often find proceedings in the Magistrate's Courts in accordance with justice where much heavier sentences are imposed for similar offences. A speed of 146 km/h on the particular road borders on recklessness. The speed of the accused was one and a half times more than the speed limit on the particular road and 26 km/h in excess of the maximum speed limit applicable to freeways and other national roads.

[8] The presiding magistrate erred in respect of the condition of suspension. The reference to s 59(1) is wrong. That subsection deals with the prescription of general speed limits and not with offences. Section 59(1) should be deleted and substituted with s 59(4). The order to be issued will cater for

this amendment.

- [9] The conviction and sentence are confirmed, save that section 59(1) in the condition of suspension shall be deleted and substituted with section 59(4).

I concur.

J.P. DAFFUE, J

P. LOUBSER, J