



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 No.: R 91/2018

In the review between:

THE STATE

versus

GODFREY MOTLADILE

CORAM: MBHELE, J et MOLITSOANE, J

JUDGMENT BY: MBHELE, J

DELIVERED ON: 21 SEPTEMBER 2018

- [1] The matter served before us by way of special review in terms of section 304(4) of the Criminal Procedure Act 51 of 1977. The accused, who was unrepresented, was convicted of contravention of Section 4(b) read with sections 1, 13,17,18,19,20,21, 22, 23, 24, 25 and 64 of the Drugs and Drug Trafficking Act 140 of 1992, possession of methaqualone in the form of 39 Mandrax tablets.
- [2] The accused pleaded guilty and was convicted summarily after the provisions of section 112(1) (a) of Act 51 of 1977 were invoked. The presiding magistrate failed to question the accused in terms of section 112 of the Criminal Procedure Act to establish whether the accused appreciated the consequences of his plea and whether he admitted all the elements of the offence he was charged of.
- [3] The charge as put to the accused reads as follows:
 “the accused contravened Section 4 (b) of Act 140 of 1992, in that upon or about the 4th day of November 2017, and at or near Heidedal in the Magisterial district of Bloemfontein, he (the accused) did and unlawfully have in his possession/ or use an undesirable dependence producing substance as listed in part III of Schedule 2 of the said Act.”

The charge sheet did not allege that the accused had an intention to possess the said undesirable dependence producing substance nor was the accused asked whether he knew and understood what an undesirable dependence producing substance was.

- [4] The above discrepancies caught the vigilant eye of the senior magistrate who invoked the provisions of section 304 (4) of the Criminal Procedure Act with the following request:

“In the light of the above irregularities, it is submitted that the proceedings were not in accordance with justice. Thus the Honourable reviewing Judge is requested to set aside the conviction and sentence. ”

[5] Having perused the record, I am in agreement with the senior magistrate that the proceedings in this matter were not in accordance with justice. The accused, unrepresented as he was, was confronted with legal phrases and statutory definitions which were beyond his purview. With the accused not asked to explain his personal knowledge of the substance he was being charged of, it follows that there was no proof that the substance allegedly found in the accused's possession was an undesirable dependence producing substance. The accused did not receive a fair trial in this respect.

[6] The right to a fair trial is confirmed by section 35(3) of the Constitution which, inter alia, provides as follows:

“(3) Every accused person has a right to a fair trial, which includes the right-

(a) to be informed of the charge with sufficient detail to answer it;”

[7] One of the elements of the offence the accused was found guilty of is possession. The presiding magistrate did not advise the accused of the defect in the charge sheet. It is clear from the record that the accused pleaded guilty to a defective charge. The presiding officer's failure to ensure that the charge is put to the accused with sufficient detail constitutes serious violation to the accused's right to a fair trial.

[8] The court has a duty to assist and give guidance to an unrepresented accused who lacks sophistication to understand complex court proceedings. The judicial officer is obliged to inform the accused of his rights at all stages of a criminal trial. The above includes a duty to explain the significance and purpose of each step during the trial.

[9] The authors of the work Hiemstra's Criminal Procedure at 17-3 state the following when dealing with section 112(1) (a):

"Whether the sentence can be a fine of more than R5 000.00 must not be decided lightly. There has to be information before court which information makes a judicial discretion possible. The presiding officer must have regard to (i) nature of the offence; (ii) any prescribed maximum; and (iii) the particulars in the charge. Where there is doubt about the seriousness of the transgression, questioning ought to take place."

I agree with the submission. In this matter it is apparent that the presiding magistrate did not embark on this exercise.

[10] The right to a fair trial is entrenched in the Constitution and failure of a judicial officer to inform the accused of any of his legal rights may lead to an injustice. Such rights are rooted in the principle that the accused must have a fair trial.

See: S v Zuma 1995 (2) SA 642 (CC).

[11] I am of the view that the magistrate committed several irregularities that warrant the setting aside of both conviction and sentence.

[12] I therefore make the following order:

1. The accused's conviction and sentence are set aside.

N.M. MBHELE, J

I concur.

PE MOLITSOANE, J