



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

A123 / 17
20/3/2017

DELETE WHICHEVER IS NOT APPLICABLE

- (1) REPORTABLE: YES/NO
(2) OF INTEREST TO OTHER JUDGES: YES/NO
(3) REVISED

DATE:.....

SIGNATURE:.....

HIGH COURT REF. NO. 63/2017
CASE SERIAL NO. RC 5/15/2016
REVIEW CASE NO. 1/2017

In the matter between

THE STATE

and

HERMANUS WILLEM ROODT

REVIEW JUDGMENT

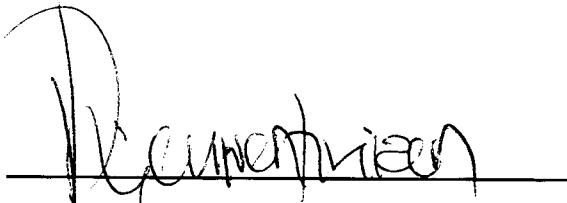
JANSE VAN NIEUWENHUIZEN J

1. The accused pleaded guilty, in terms of the provisions of section 105A(1)(a)(i) of the Criminal Procedure Act, 51 of 1977 ("the Act") to nine charges of fraud amounting to R 449 564, 86. In terms of the agreement the parties agreed that the accused will be sentenced to eight years' imprisonment.
2. The court *a quo* duly convicted the accused in terms of the plea agreement.
3. Subsequent to the conviction, the court *a quo*, in direct conflict with the provisions of section 105A of the Act, informed the prosecutor and the accused that the court is not satisfied with the agreed sentence and proceeded to impose a sentence of ten years' imprisonment.
4. In terms of section 105A(8) a court may only convict an accused in terms of the plea agreement if the court is satisfied that the agreement is just.
5. In the event that the court is not so satisfied, the provisions of section 105A(9) apply. The section provides that the court should announce its view that the plea agreement is unjust *prior* to convicting the accused in terms thereof. The prosecutor and the accused are then afforded an opportunity to either proceed with the agreement or withdraw therefrom.
6. Should either the prosecutor or accused decide to withdraw from the agreement, the trial must start *de novo* before another presiding officer.
7. In view of the aforesaid, the court *a quo* referred the matter to this court for a special review in terms of the provisions of section 304(4) of the Criminal Procedure Act, 51 of 1977.
8. Having had regard to the facts *supra*, I am satisfied that the proceedings in the court *a quo* were not in accordance of justice and stand to be set aside.

In the premises, the following order is granted:

Order

1. The conviction and sentence is set aside.
2. The matter is referred back to the Klerksdorp Regional Court to commence with the trial *de novo* before another presiding officer.



N. JANSE VAN NIEUWENHUIZEN J

JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG, DIVISION

I agree and it so ordered



C.P. RABIE J

JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG, DIVISION