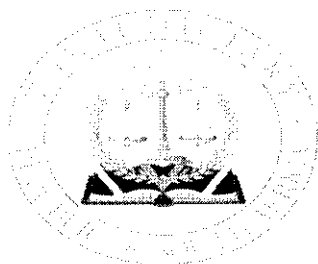


REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

A215/17

HIGH COURT REFERENCE: 92/17

MAGISTRATE CASE NUMBER: S166/2006

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


SIGNATURE21/4/2017
DATE

25/4/2017

THE STATE

VS

GARY OLIVIER

SPECIAL REVIEW JUDGMENT

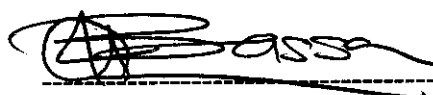
AC BASSON, J

- [1] Mr Olivier ("the accused") was arrested on a J50 which was authorized after the SAPS could not find the accused on a bench warrant when he failed to appear in court in 2006 for sentencing proceedings.
- [2] The Clerk of the Magistrate's Court could not find the original charge sheet and the Prosecutor therefore compiled a Duplicate J15 in order for the accused to appear. It appears from the file placed before this Court that the original J15 could not be located despite various attempts to locate the original charge sheet.
- [3] According to the Prosecutor at the time as well as the accused, the accused had already pleaded and the matter was remanded for sentence on the day that he failed to appear. The only information that the accused was able to provide is that he was convicted of theft of lawn chairs. He is unable to recall the date of the theft and how many chairs he had stolen. He is also unable to confirm who the presiding Magistrate was at the time and was also unable to recall whether he was questioned by the Magistrate who convicted him. The accused also cannot recall who the prosecutor was. He was unable to even recall if it was a male or female Magistrate.
- [4] Magistrate de Kok (Add Magistrate Stilfontein) undertook to investigate the matter further. Magistrate de Kok was able to locate a copy of the court book of 6/2/2006 and from that he was able to establish that Magistrate Flip du Toit convicted the accused on 6/2/2006 and remanded the matter until 22/3/2006 for sentence. Magistrate du Toit has since passed away.
- [5] Magistrate de Kok states that he is unable to reconstruct the charge sheet and is therefore unable to proceed in terms of section 118 of the Criminal Procedures Act, 51 of 1977.
- [6] I have considered the submissions submitted by Magistrate de Kok and I am in agreement with the submission that under these circumstances the

proceedings as well as the conviction of the accused must be set aside in order for the accused to plead afresh.

[7] I accordingly make the following order:

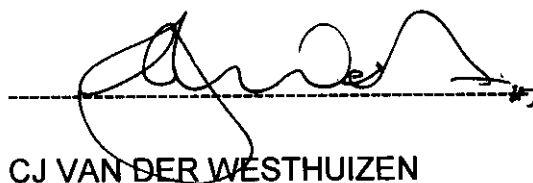
1. The proceedings and the conviction are set aside.
2. The matter is remitted to the magistrate's court for a trial *de novo*.

A handwritten signature in black ink, appearing to read 'AC Basson', written over a horizontal dashed line.

AC BASSON

JUDGE OF THE HIGH COURT

I agree

A handwritten signature in black ink, appearing to read 'CJ Van der Westhuizen', written over a horizontal dashed line.

CJ VAN DER WESTHUIZEN

ACTING JUDGE OF THE HIGH
COURT