

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

Review No.: 4/2016

In the review between:

THE STATE

and

MPHO TOLO

CORAM: VAN ZYL, ADJP *et* EBRAHIM, J

JUDGMENT: EBRAHIM, J

DELIVERED ON: 4 FEBRUARY 2016

[1] This is a special review in terms of section 304(4) of the Criminal Procedure Act 51 of 1977. In this matter the presiding Magistrate sentenced the accused on conviction of two counts of culpable homicide (taken together) to a sentence of 5 years imprisonment wholly suspended for 5 years on condition that the accused is not convicted of culpable homicide involving a vehicle alternatively reckless or negligent driving alternatively inconsiderate driving committed during the period of suspension. The accused's driver's license was neither endorsed nor suspended.

[2] On reconsideration of the sentence, a colleague of the presiding Magistrate realised, quite correctly that in

imposing the said sentence the presiding Magistrate had exceeded the limits of his punitive jurisdiction which is 3 years in terms of section 92(1) (a) and (b) of Act 32 of 1944 (The Magistrate's Court Act 1944), as amended. He also considered that the Magistrate had acted irregularly in coming to a decision not to suspend the driver's licence of the accused without hearing *viva voce* evidence as required by Section 35 of the National Road Traffic Act 93 of 1996 but had based his decision in this regard on the oral submissions of the accused's legal representative.

[3] The presiding Magistrate did not act in compliance with statutory precepts and perquisites laid down in the Magistrate's Court Act 1944 and the National Road Traffic Act 1996. The proceedings were not conducted in accordance with justice and the sentence must therefore be set aside.

[4] The following order is therefore made:

1. The sentence of 5 years imprisonment wholly suspended for a period of 5 (five) years on condition that the accused is not convicted of culpable homicide where a vehicle is involved, alternatively reckless or negligent driving alternatively inconsiderate driving committed during the period of suspension is set aside and the matter is remitted to the magistrate for sentencing afresh.

S. EBRAHIM, J

I concur.

C. VAN ZYL, ADJP

/em