

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

Review Nr. : 15/2016

In the matter between:-

**THE STATE**

And

**THABO JOHANNES MASILO**

---

**CORAM:** MOLOI, J et CHESIWE, AJ

---

**DELIVERED ON:** 11 FEBRUARY 2016

---

**REVIEW JUDGMENT**

---

**MOLOI, J**

- [1] This matter was referred to me by the Magistrate, Welkom, on special review in terms of section 304(4) of the Criminal Procedure Act, 51 of 1977, as amended (the CPA).
- [2] The accused was charged with Intimidation in contravention of section 1 of the Intimidation Act No 72 of 1982 by threatening to kill his live-in partner after a disagreement in their common home. The accused pleaded guilty to the charge on 3 November 2010. When he was questioned by

the magistrate in terms of section 112(2)(b) of the CPA, it became clear that he did not admit all the elements of the offence charged. The presiding magistrate consequently entered a plea of not guilty in terms of section 113 of the CPA. The matter was remanded to 1 December 2010 for the leading of the evidence.

- [3] The accused failed to appear in court on 1 December 2010. Only on 1 October 2015 did he appear and the case was remanded first to 9 and later to 25 November 2015 for evidence. When the accused appeared for trial on 25 November 2015, the charge against him was withdrawn without much ado. The withdrawal of the charge was clearly not in terms of section 6(a) of the CPA as he had already pleaded neither was in terms of section 6(b) authorising the prosecutor to stop the prosecution.

- [4] Section 106(4) of the CPA provides as follows:

*“An accused who pleads to a charge, other than that the court has no jurisdiction to try the offence, or an accused on behalf of whom a plea of not guilty is entered by the court, shall, save as it is otherwise expressly provided by this Act or any other law, be entitled to demand that he be acquitted or be convicted.”*

From the above it is clear that once an accused has pleaded he is entitled to a verdict of guilty or not guilty. The withdrawal of the charge is not an appropriate step to take and cannot be simply withdrawn once the accused has pleaded or a plea has been entered on his behalf, like in this

matter: **S v Sibuyi** 1993(1) SACR 235(A). In **S v Sithole** it was said that where an accused had pleaded to certain charges in respect of which no judgment was given, he must be acquitted on all those charges. The relevance of the pronouncement of the verdict stems of the provisions of the pleas of *autrefois convict* and *autrefois acquit*:

[5] In the circumstances the mere withdrawal of the charge after the accused had pleaded thereto is not sufficient to bring the matter to a close and the matter may continue to hang over the head of an accused indefinitely: **Delpont & Others v S** [2015] 1 All SA 286 (SCA) at [34]. The prosecution must be allowed to deal with the matter in terms of its authority to bring the matter to a close. Simple withdrawal is not according to law.

[6] Consequently the following order is made:

6.1 The withdrawal of the charges against the accused on 25 November 2015 is set aside.

6.2 The prosecution is allowed to act in terms of its powers.



4  
K.J. MOLOI, J

I concur



S. CHESIWE, AJ