



**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 number: R174/2016

In the matter between:

**THE STATE**

And

**EDDIE MOTLOGELWA PITSO**

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**JUDGMENT:** FISCHER, AJ

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**DELIVERED ON:** 18 AUGUST 2016

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- [1] This matter comes before me on special review as envisaged in terms of section 304(4) of the Criminal Procedure Act 51 of 1977 (“the Act”) in the following circumstances.
- [2] The accused, one Eddie Motlogelwa Pitso was charged with contravening of section 12(a) of the National Road Traffic Act, number 93 of 1996 in that it was alleged that on or about 28 November 2015 and at Hoopstad in the Free State Province he drove a motor vehicle without a driver’s license.

- [3] Pursuant thereto the accused was issued with a written notice as envisaged in terms of section 56(1)(c) as read together with section 57 of the Act thereby providing the accused with an opportunity of an admission of guilt fine in the sum R500,00 payable on or before 19 January 2016 at the police station in Hoopstad as opposed to appearing in court.
- [4] An admission of guilt fine in the amount of R500,00 was paid by the accused on 13 January 2016 and on 25 January 2016 the admission of guilt fine was confirmed by the magistrate at Hoopstad as envisaged in terms of section 57(7) of the Act.
- [5] During a subsequent quality assurance it was discovered that at all material times the accused was only 14 years of age and in fact 15 years old when the payment of the fine was effected on 13 January 2016. In terms of section 304(2)(a) of the Act and if it appears to a judge, upon considering the relevant proceedings, that such are not in accordance with justice, such judge may, in terms of section 304(2)(c)(i) and (iii) quash the conviction, alternatively set aside the proceedings.
- [6] In terms of section 73(3) of the Act as read with sections 1, 2, 3 and 4 of the Child Justice Act, number 75 of 2008, the accused was at all material times entitled to be assisted by a guardian of choice in deciding whether or not to admit guilt and pay an admission of guilt fine in the sum of R500,00.
- [7] The senior magistrate of Welkom, magistrate S. F. Ferreira, in written submissions suggested that the confirmation of the

admission of guilt by the accused be set aside and that the fine in the amount of R500,00 be refunded to him.

- [8] Differences of opinion exist regarding the question as to whether or not the relevant magistrate, once he or she has perused the documents as envisaged in terms of section 56(7) is *functus officio* or not. See **S v Louw** 1982 (4) SA 556 (C) and **S v Muller** 1981 (C) SA 560 (O) as opposed to **S v Shange** 1983 (4) SA 46 (N).
- [9] I am of the view that I am entitled to follow the approach adopted in the **Louw** case *supra* as the full bench in the **Shange** case *supra* made no reference whatsoever to the **Louw** case. In the circumstances I am of the opinion that the magistrate is *functus officio* and that the proceedings can only be set aside by this court.
- [10] If regard be had to the relevant facts, which as such are not in dispute, as read together with the relevant provisions of the Child Justice Act, number 75 of 2008 and section 304(2)(c) of the Act, the proceedings in question were not in accordance with justice as, notwithstanding the fact that the accused's age was quite clearly stipulated as 14 years of age in the body of the section 56 notice, he was nevertheless allowed to plead guilty whilst unassisted and pay the stipulated fine in the amount of R500.00.
- [11] In the circumstances the admission of guilt relating to the contravention of section 12(a) of the National Road Traffic Act, number 93 of 1996 is set aside and the sum of R500,00, being

the amount paid in admission of guilt, is to be refunded to Eddie Motlogelwa Pitso.

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**P. FISCHER, AJ**