

REPUBLIC OF SOUTH AFRICA



A26/2015

IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)

22/01/2015

High Court ref. no. 835/2014

Magistrate case No: 6/2014

NOT REPORTABLE

NOT OF INTEREST TO OTHER JUDGES

In the matter between:

THE STATE

and

LESIBANA BLONDI MOKWELE

REVIEW JUDGMENT

MAKGOKA, J:

[1] On 20 December 2012 the accused was issued with a written notice to appear in the Mokerong magistrate's court on a charge of being in possession of dagga in contravention of section 4 Act 140 of 1992. Apparently the police had found dagga plants growing outside the fence surrounding his premises in Mahwelereng, near Mokopane. The notice to appear in court made provision for payment of a guilt fine of R200, which he opted to pay instead of appearing in court. The accused's conviction and sentence were confirmed by a magistrate on 3 January 2013.

[2] On 14 November 2014, the accused filed an affidavit with the clerk of court, in which he states that payment of the admission of guilt fine was preceded by threats from the police to arrest him unless he paid an admission of guilt fine. To avert that, and to secure his employment at a mine, he complied. He further states that it was not explained to him that the payment of admission of guilt fine would result in him having a criminal record, and that had that been explained to him, he would have pleaded not guilty.

[3] Upon receipt of the accused's affidavit, the senior magistrate laid the matter before this court for a special review in terms of s 304(4) of the Criminal Procedure Act 51 of 1977. The senior magistrate seeks the setting aside of the conviction and sentence, mainly on the authority of *S v Parsons* 2013 (1) SACR 38 (WCC) and *S v Tong* 2013 (1) SACR 346 (WCC). The upshot of the decisions in both matters is that police officers should warn an accused of the full consequences of paying an admission of guilty fine, including that the conviction will appear on the accused's criminal record. Failure to do so resulted in the convictions and sentences being set aside in both matters.

[4] I am in respectful agreement with the reasoning of the Western Cape Court in both the above matters. Accordingly, the conviction and sentence in the present matter should be set aside. The National Prosecuting Authority may, in the exercise of its discretion, decide to prosecute the accused afresh. It is not for this court to order that the prosecution should commence de novo, as requested by the senior magistrate.

[5] In the result the following order is made:

1. The accused's conviction is set aside;
2. The accused's admission of guilt fine is set aside and the R200 paid by the accused should be refunded to him;
3. The National Prosecuting Authority is given leave to prosecute the accused afresh, such trial to be presided over by a magistrate other than the one who confirmed the accused's conviction and sentence on 3 January 2013.



T. M. MAKGOKA
JUDGE OF THE HIGH COURT

I agree



M. J. TEFFO
JUDGE OF THE HIGH COURT