

A254/15

REPUBLIC OF SOUTH AFRICA**IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)****High Court ref. no. 111/15****Magistrate case No: 126/09/2014*****NOT REPORTABLE******NOT OF INTEREST TO OTHER JUDGES***

In the matter between:

THE STATE

20/4/2015

and

SIPHALI DAKALO

REVIEW JUDGMENT

MAKGOKA, J:

[1] On 13 September 2014 the accused was arrested and issued with a written notice to appear in the Pretoria magistrate's court on a charge of shoplifting. It was alleged that she stole goods worth R62,77 from Checkers Gezina, Pretoria. The notice to appear in court made provision for payment of a guilt fine of R300, which she opted to pay instead of appearing in court. The accused's conviction and sentence were confirmed by a magistrate.

[2] On 27 October 2014, the accused filed an affidavit with the clerk of court, in which she states that she was given two options at the police station, either to pay a fine or to remain in custody over the weekend and appear in court the following Monday. She opted to pay the R300 as she had left a small baby and a sickly and infirm mother at home.

She further states that it was not explained to her that the payment of the fine was an admission of guilt, and that it would result in her having a criminal record.

[3] Upon receipt of the accused's affidavit, the chief magistrate of Pretoria laid the matter before this court for a special review in terms of s 304(4) of the Criminal Procedure Act 51 of 1977. He seeks the setting aside of the conviction, 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*.

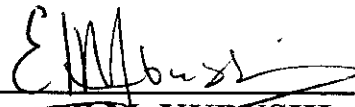
[5] In the result the following order is made:

1. The accused's conviction is set aside;
2. The accused's admission of guilt fine is set aside and the R300 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.
4. The Registrar of this court is directed to bring a copy of this judgment to the attention of the Senior Control Prosecutor of the magistrate's court, Pretoria.



T. M. MAKGOKA
JUDGE OF THE HIGH COURT

I agree



E.M. KUBUSHI
JUDGE OF THE HIGH COURT