

REPUBLIC OF SOUTH AFRICA

A255/15



**IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)**

High Court ref. no. 112/2015

Magistrate case No: 494/07/2012

NOT REPORTABLE

NOT OF INTEREST TO OTHER JUDGES

In the matter between:

THE STATE

20/4/2015

and

CATHERINE MAHLANGU

REVIEW JUDGMENT

MAKGOKA, J:

[1] On 18 July 2012 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 a body lotion and a toy from Shoprite in Pretoria West. 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 on 20 July 2012.

[2] On 6 November 2014, the accused filed an affidavit with the clerk of court, in which she states that she was shopping with her small child who, without her being aware, placed those items in her hand-bag. She was only alerted by the security officer at the exit. When the police arrived they told her to pay an amount of R300. She did not know that this was an admission of guilt fine, which 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 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*.

[5] The accused's admission of guilt was paid and confirmed before the decision in *S v Tong*, above, the chief magistrate is of the view that in the light of the accused's averments that she was

unaware of the fact that she was admitting guilt and that it would be deemed to be a previous conviction, doubt could still exist whether the proceedings were in accordance with justice. I agree.

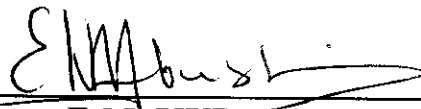
[6] In the result the following order is made:

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 her;
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 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