

IN THE HIGH COURT OF SOUTH AFRICA
(NORTH GAUTENG HIGH COURT IN PRETORIA)

A394/15

11/6/2015
DATE: ~~10~~ JUNE 2015

In the matter between

STATE

vs

DELETE WHICHEVER IS NOT APPLICABLE	
(1) REPORTABLE: <u>YES</u> /NO.	
(2) OF INTEREST TO OTHER JUDGES: <u>YES</u> /NO.	
(3) REVISED. <u> </u>	
<u>10/6/2015</u> DATE	 SIGNATURE

	Case no:	Special Review no:
RONALD LEPURU	C1175/2014	2/2015
ASHIM RAMNAYAN	C108/2015	3/2015
JACOBUS ERASMUS	C106/2015	4/2015
NORMAN JANSE VAN RENSBURG	C31/2015	5/2015
MBHEKENI MASEKO	C1720/2015	6/2015
CYNTHIA ZANELE SHABANGU	C1651/2014	7/2015
MAKOPOTSA TEBELE	C105/2015	10/2015
JOSEPH MASHA	C33/2015	11/2015
MUZETHU DUZE	C1719/2014	12/2015
MAHALTSI MOEKETSI	C1530/2014	13/2015

REVIEW JUDGMENT

JORDAAN, J:

These 10 matters were sent on "Special Review". The accused persons were convicted in terms of section 112(1)(a) of the Criminal Procedure Act 51 of 1977 for contravening section 59(4)(b) read with section 59(1)(a), 35, 69(3), 89(1) and 89(3) and regulation 292(c) of The National Road Traffic Act 93 of 1996 (as amended) that is exceeding allowed speed limit.

They were sentenced to a fine to be paid within thirty (30) days. The Presiding Acting Magistrate made no order regarding the drivers' license.

In the matter of Norman Janse van Rensburg; Cynthia Zanele Shabangu; Muzethu Duze and Mahlatsi Moeketsi the accused persons' constitutional rights to legal representation in terms of section 35(3) (g) of The Constitution of the Republic of South Africa, Act 108 of 1996 read with 73 of the Criminal Procedure Act 51 of 1977, as amended were not explained on their first appearances before the Court. Their rights were only explained on the date their pleas were recorded.

Section 112 reads as follows:

(1). Where an accused at a summary trial in any court pleads guilty to the offence charged, or to an offence of which he may be convicted on the charge and prosecutor accepts that plea-

(a) The presiding judge, regional magistrate, or magistrate may, if he or she is of the opinion that the offence does not merit punishment in any form of detention without the option of a fine or a fine exceeding the amount determined by the Minister from time to time by notice in the Gazette, convict the accused in respect of the offence to which he or she has pleaded guilty on his or her plea only and-

(i) impose any competent sentence, other than imprisonment or any other form of detention without the option of a fine or a fine exceeding the amount determine by the Minister from time to time by notice in the Gazette; or

(ii) deal with the accused otherwise in accordance with the law;

The sentence imposed after accused persons pleaded guilty in terms of section 112(1)(a) of Act 51 of 1977 is not in accordance with justice because the Presiding Magistrate did not impose an alternative periodical sentence (imprisonment) in terms of section 276 (1)(c) of Act 51 of 1977.

Section 35 of the National Road Traffic Act 93 of 1996 reads as follows:

On conviction of certain offences licence and permit shall be suspended for a minimum period and learner's or driving licence may not be obtained:- (1) Subject to subsection (3), every driving licence or every licence and permit of any person convicted of an offence referred to in-

(a) section 59(4), in case of a conviction for an offence, where-

(i). a speed in excess of 30 kilometres per hour over the prescribed general speed limit in an urban area was recorded; or

(ii). A speed in excess of 40 kilometres per hour over the prescribed general speed limit outside an urban area or on a freeway was recorded.

(3). If a court convicted any person of an offence referred to in subsection (1) is satisfied, after the presentation of evidence under oath, that circumstances relating to the offence exist which do not justify the suspension or disqualification referred to in subsection (1) or (2), respectively, the court may, notwithstanding the provisions of those subsections, order that the suspension or disqualification shall not take effect, or shall be for such a shorter period as the court may consider fit.

(4). A court convicting any person of an offence referred to in subsection (1) shall, before imposing sentence, bring the provisions of subsection (1) or (2), as the case may be, and of subsection (3) to the notice of such person.

The Presiding Acting Magistrate's order was supposed to read as "suspension or disqualification of driver's licence shall not take effect" and not as "no order regarding driver's licence".

The Presiding Acting Magistrate has failed to bring to the accused persons' attention the provisions of section 35(4) as well as to satisfy himself after the presentation of evidence under oath that circumstances relating to the offence exist which justify him to grant an order that the suspension or disqualification of the driver's licence shall not take effect.

Some of the cases came to the attention of the Acting Senior Magistrate during the quality assurance inspection. Upon discussing the matter with the Presiding Acting Magistrate he brought to his attention that there are several cases he dealt with in

that matter hence all the mentioned cases were brought forward on special review at the same time.

The Acting Senior Magistrate suggests that the sentences are not in accordance with justice and request the Reviewing judge to remit the cases back to the Presiding Acting Magistrate for sentence and for the inquiry to be held in terms of section 35(3) of the National Road Traffic Act 93 of 1996.

I agree with the suggestion of the Acting Senior Magistrate.

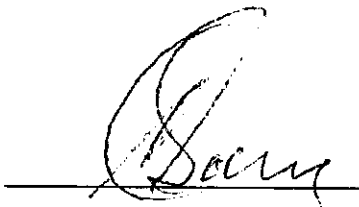
The matters are remitted to the magistrate for sentence and for the inquiry to be held in terms of section 35(3) of the National Road Traffic Act 93 of 1996.



E JORDAAN

JUDGE OF THE HIGH COURT

I AGREE:



A J BAM

JUDGE OF THE HIGH COURT