

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



Case number: A438/15
Date: 1/7/2015

DELETE WHICHEVER IS NOT APPLICABLE
(1) REPORTABLE: YES/NO
(2) OF INTEREST TO OTHERS JUDGES: YES/NO
(3) REVISED

29/6/2015
DATE
Pretori
SIGNATURE

STATE V ABRAM SIPHO MASEKO

MAGISTRATE SERIAL NO.: 01/2015

MAGISTRATE CASE NO.: G775/2014

HIGH COURT REF NO.: 219/2015

JUDGMENT

PRETORIUS J.

- [1] This matter came before me as a review in terms of section 304(4) of Act 51 of 1977 from the Magistrate's Court, Groblersdal.
- [2] The accused was charged with contravention of section 117(a) read with section 1 of the Correctional Services Act 111 of 1998 – escaping from custody and with a second charge of fraud. The

accused pleaded not guilty to both charges and was unrepresented in the Magistrate's Court, during the trial. He was convicted on both charges. The charges were taken as one for purpose of sentence and he was sentenced on 10 April 2015 to 36 months' imprisonment and declared unfit to possess a firearm in terms of section 103(2) of Act 60 of 2000.

- [3] The evidence was that on 21 August 2014 there were 51 prisoners in the cells at Groblersdal Police Station. The accused was one of the prisoners. At 11h00 Mr Mmako, a police officer, went to the cell to fetch the accused to take him to Witbank prison, but he was not in the cell.
- [4] He received information that the accused had been released on bail, but according to the records no bail had been granted to the accused. The bail receipt was for Mr Onias Mbedzi, but the said Mr Mbedzi was still in custody in the cell.
- [5] Captain Herbst's evidence was that members of the public wanted to pay bail for Mr Mbedzi when the accused told her he was Mr Mbedzi. This resulted in the accused being released on bail on Mr Mbedzi's name, whilst no bail had been set for the accused.
- [6] It was then discovered that the accused had pretended to be Mr Mbedzi and was thus released on bail. The accused's version that he had been lawfully released from custody was, in my view, correctly rejected by the magistrate.
- [7] In this instance this court enquired from the magistrate whether the accused had not been convicted on a duplication of charges. The

magistrate's comment was that the charge of fraud should be set aside.

[8] Section 83 of the **Criminal Procedure Act, 51 of 1977** provides:

"If by reason of any uncertainty as to the facts which can be proved or if for any other reason it is doubtful which of several offences is constituted by the facts which can be proved, the accused may be charged with the commission of all or any of such offences, and any number of such charges may be tried at once, or the accused may be charged in the alternative with the commission of any number of such offences."

[9] In **R v Johannes 1925 TPD 782** it was held at p786:

"It seems to me that the court can safely lay down that under certain circumstances both those tests, or the one, or the other, may be applied, namely the test of whether two acts are done with a single intent and constitute one continuous criminal transaction, and the test as to whether the evidence necessary to establish one crime involves proving another crime"

[10] In this instance it is clear that the two crimes were committed with a single intent, to escape from custody. His action was to commit fraud to enable him to escape and he had no intent to defraud anybody, save to accomplish his escape. Therefor the second count of fraud should be set aside.

[11] I therefor make the following order:

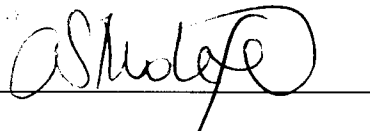
1. Count 2 of fraud imposed on 10 April 2015 is set aside;
2. The sentence of 36 (thirty-six) months' imprisonment is set aside;

3. The matter is remitted back to the magistrate to impose a proper sentence on the first count.



Judge C Pretorius

I agree.



Judge DS Molefe