

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

A 434/15
1/7/15

HIGH COURT REF NO: 190/2015

REVIEW CASE NO: SR 07/2015

THE STATE

VS

GAVIN JOSEPH

ACCUSED

SPECIAL REVIEW JUDGMENT

TEFFO J

1. On 21 November 2012 the accused pleaded guilty in the Magistrate's court, Vereeniging, on a charge of contravention of section 4(b) of the Drugs and Drug Trafficking Act, Act 140 of 1992 ("the Act") - possession of a dangerous dependence producing substance. He appeared in person and the court invoked the provisions of section 112(2) of Act 51 of 1977 ("the Criminal Procedure Act"). He was found guilty as pleaded and sentenced on 4 February 2013 to two years imprisonment wholly suspended for five(5) years on condition that he is not again convicted of the offence of contravention of sections 3,4 and 5 of the Act committed during the period of suspension. He was also ordered to submit

himself to a treatment programme placement under a supervision officer with a program content in order to realise the objective of a suspended sentence and then enrol and attend the SANCA rehabilitation centre at Eldorado Park Ext 5 under the supervision of Ms Dube.

2. The matter was subject to automatic review.
3. The matter is before me on review and I have been requested to set the conviction and sentence aside on the basis that the mechanical recordings of the plea proceedings as well as the judgment, sentence and the reasons thereof are not available. The stenographer confirms that the proceedings were not mechanically recorded due to a technical fault with the recording equipment.
4. I referred the matter to the office of the National Director of Public Prosecutions (NDPP) for comment. The comments were received and noted.
5. Where a matter is subject to automatic review and the missing record cannot be reconstructed, the conviction and sentence will be set aside. In the absence of a record of the proceedings a court of review will also not be able to determine if the proceedings were in accordance with justice or not. (S v Williams 1982(4) SA 363(C) on p364; S v Fredericks 1992(1) SA SASV 561(C).
6. There is no record of the proceedings in this matter, viz, the guilty plea

proceedings, judgment and sentencing proceedings. Reconstruction of the record appears to be impossible. Without the record of the proceedings in the court a quo, a court of review will not be in a position to determine if the proceedings were in accordance with justice.

7. Under the circumstances the proceedings in this matter ought to be set aside.

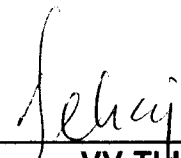
8. I therefore propose the following order:-

8.1 The conviction and sentence of the accused is set aside.



MJ TEFFO
JUDGE OF THE HIGH COURT

I agree



VV TLHAPI
JUDGE OF THE HIGH COURT

Dated at **PRETORIA** on this the 23rd day of June 2015