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HE HIGH COURT OF THE FREE STATE: BLOEMFONTEIN**

Review No. 32/2015

In the review between:

THE STATE

versus

JUSTICE M MOTSOAHE

CORAM: Boonzaaier AJ

JUDGMENT BY: Boonzaaier AJ

DELIVERED ON: 4 June 2015

[1] The matter came before me on special review in terms of section 304(4) of the Criminal Procedure Act, 51 of 1977, ("the CPA"). The accused appeared in the Kroonstad Traffic Court on the 12th of January 2015 on a charge of exceeding the general speed limit on the 11th day of January 2015 on the Heuningspruit/Kroonstad N1 public road in the district Kroonstad. He drove a

limit on the 11th day of January 2015 on the Heuningspruit/
Kroonstad N1 public road in the district Kroonstad. He drove a
Mercedes Benz with the registration number [.....] at a speed in
excess of the general speed limit of 120 km/h which applied to that
road, at a speed of 190 km/h.

The aforesaid contravening section 59(1) (b), 59(1) (c), 59(4)(a)
read with sections 69(1), 73(1), 75, 89(1) and 89(3) of the National
Road Traffic Act, Act 93 of 1996 and also read with Section 35(1);(2);
(3); (4); (5); 57(9); 58(1); 58(2) 59 (2); (3) (4) and Regulations 291,
292, 293, 294, 295 of the National Road Traffic Regulations, 2000.

The first alternative to the above charge being Reckless driving and
the second alternative being Inconsiderate driving.

2] The accused pleaded guilty to the main charge, the first alternative
and the second alternative charges. The court found accused guilty
on all the counts to which he pleaded guilty.

3] This happened after the accused was questioned in terms of section
112(1)(b) Act 51 of 1977. He was convicted as charged on all three
charges.

- 4] The sentence was a fine of R2500 (Two thousand five hundred rand) or 2 (two) years imprisonment wholly suspended for a period of 5 (five) years on condition that accused is not convicted of contravention of section 59(4); 63(1), 64 of Act 93/96 committed during the period of suspension .
- 5] During a routine checking of completed work the senior magistrate in Kroonstad became concerned that the convictions and sentence in this instance could possibly not be in accordance with justice. His concern is based on the following:
- 5.1] That the questioning of the accused by the court was not fair. Leading questions were directed to the accused and he simply agreed to what the court read to him. The court is obliged to ensure that accused admits all the element of the offence, freely, consciously and reliably. The record does not suggest that the court proceeded in the spirit as alluded above. It does not show the traditional question and answers in narrative form.
- 5.2] That the record shows that the accused answers suggests a possible defense which leaves room for a reasonable explanation in which

case a plea of not guilty should have been entered by the court;

5.3] The court convicted the accused on all 3 counts but passed and noted only one sentence.

6] The Senior Magistrate is of the opinion that the proceedings herein were not in accordance with justice. The matter was discussed with the Magistrate concerned and she did not give any reason or explanation for the oversight.

7] It is clear from the record, including the Senior Magistrate's concerns that the convictions and sentence be set aside and the matter be remitted to court to start *de nova* before another magistrate.

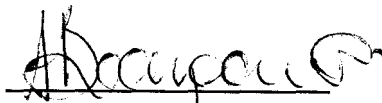
8] In the circumstances I make the following order:

Order:

8.1] The convictions and sentence of the accused are set aside.

8.2] The matter is remitted to court to start *de nova* before another

Magistrate in compliance with section 112(1) (b) of the CPA.


AS BOONZAAIER AJ