

IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN

Special Review No.: 115/2015

In the matter between:

THE STATE

and

MVOYO MPENYANE

JUDGMENT BY: VAN ZYL, J

DELIVERED ON: 24 JULY 2015

[1] This matter was sent on special review in terms of section 304(4) of the Criminal Procedure Act, 1977, by the Control Magistrate, Bloemfontein, with an accompanying letter stating the following:

- “1. The accused appeared before an Acting Magistrate on a charge of contravening section 11(2) of Act No. 13 of 2002 - conducting work without worker's permit.
2. His rights regarding legal representation were not explained.

3. He pleaded guilty to the charge and the Magistrate invoked section 112(1)(a) of the Criminal Procedure Act, 1977 (Act No. 51 of 1977) and convicted and sentenced the accused as follows:

‘R600.00 fine or 6 months imprisonment wholly suspended for 3 years on the condition that accused is not found guilty of the offence of Hawking in the period of suspension.’

4. Upon regular checks by the Control Magistrate the following irregularities were detected:

- 4.1 The manner in which the sentence was phrased is incorrect as the words ‘not convicted of contravening section 11(2) of Act 13 of 2002’ and ‘committed during the period of suspension’ were omitted and the reference to ‘Hawking’ is very vague.

- 4.2 Review and Appeal rights were not explained to the accused whereas the proceedings are subject to automatic review by virtue of the sentence imposed.

- 4.3 The accused’s rights before sentencing were not explained to him and the accused was not given the opportunity to give evidence, address the court and to call witnesses on sentence.

- 4.4 The Prosecutor was not given the opportunity to address the court before sentence.

5. In light of the above gross irregularities, it is submitted that the proceedings were not in accordance with justice.

6. The Honourable Reviewing Judge is requested to set aside the proceedings and to order that the case should start *de novo*.

7. The defects in these proceedings have been brought to the attention of the Magistrate in question and we hope that similar mistakes will not be committed in future.

8. The record of proceedings is forwarded herewith.”

[2] It is evident that the issues raised by the Control Magistrate indeed constitute gross irregularities. I therefore agree that the proceedings were not in accordance with justice and should be set aside.

[3] The following orders are made:

1. The conviction and sentence are set aside.
2. The matter is referred back to the Court *a quo* for the accused to be prosecuted *de novo* before a different presiding Magistrate.

C VAN ZYL, J