

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

Review No.: 21/2014

In the review between:-

THE STATE

and

PETRO DAVID

CORAM: KRUGER *et* VAN DER MERWE, JJ

JUDGMENT BY: VAN DER MERWE, J

DELIVERED ON: 27 FEBRUARY 2014

- [1] The accused was charged with exceeding the speed limit on the N1 national road. He pleaded guilty and the magistrate dealt with the matter in terms of section 112(1)(a) of the Criminal Procedure Act 51 of 1977 (the Act). The accused was then sentenced to a fine of R10 000,00 or, in the alternative to the fine, 2 (two) years imprisonment. The magistrate, however, ordered that the alternative sentence of 2 (two) years imprisonment be conditionally suspended for a period of five years. In terms of section 297(5)(b) of the Act arrangements were made for payment of the fine in instalments.

[2] Upon enquiry the magistrate concedes that the sentence is impermissible. This concession is undoubtedly correct. First, the fine of R10 000,00 exceeds the amount of R5 000,00 determined in respect of section 112(1)(a) of the Act in Government Notice No R62 published in the Government Gazette No 36111 of 30 January 2013. Second, in a case like this the purpose of the sentence of imprisonment in the alternative to the fine in terms of section 287(1) of the Act, is to compel payment of the fine. (See **S v Bokbaard** 1991 (2) SACR 622 (C).) When the alternative imprisonment is suspended, thus giving the accused a choice between a fine and a suspended sentence of imprisonment, this purpose is defeated. For this reason too, the sentence is wholly inappropriate and cannot stand.

[3] In the result the following order is issued:

1. The sentence is set aside.
2. The matter is referred back to the trial court for imposition of an appropriate sentence.

C.H.G. VAN DER MERWE, J

I concur.

A. KRUGER, J