

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

Review No: 133/2014(B)

In the review between:

THE STATE

and

KGOTHATSO JOEL RAISI

CORAM:

KRUGER, J et MOTLOUNG, AJ

JUDGMENT:

KRUGER, J

DELIVERED ON:

14 AUGUST 2014

REVIEW JUDGMENT

- [1] The accused was charged with robbery in the magistrates' court at Hoopstad. According to the record the accused was asked what he "intended" to plead. He said: "Not guilty". The court then asked: "Just make up your mind, do you still intend to plead guilty?". The accused responded: "I plead guilty because I fought with the complainant." The state accepted the "plea" and asked that the matter be disposed of in terms of section 112(1)(a). The accused was then convicted and sentenced to R1 000 or two months'

imprisonment, wholly suspended without either the state or the accused being afforded an opportunity to address the court or adduce evidence in mitigation of sentence. The same thing happened regarding the automatic declaration of the accused as being unfit to possess a firearm.

- [2] The matter was sent on Special Review by the senior magistrate at Welkom. She points out that at no stage was the charge ever put to the accused and he was not asked whether he understood the charge. She also points out that the accused disclosed a defence during his plea. At no stage were the rights of the accused before sentence explained to him. He was not given an opportunity to address the court before sentence. The senior magistrate says that robbery is a serious offence, which it undoubtedly is, and the accused was not given an opportunity to prepare. Further, section 112(1)(a) should only be used for minor crimes, as was pointed out in **S v Khoalane** 2012 (1) SACR 8 (FB). The senior magistrate says, correctly, that section 112 (1)(b) should have been employed, and the accused should have been questioned. Then it would have appeared that the accused did not admit all the elements of the offence, and a plea of not guilty would have been entered.
- [3] In this case the number, nature and extent of the irregularities are such that the conviction and sentence should simply be set aside. The rights of the accused were disregarded at a number of stages, and the accused should not have been convicted or sentenced without being afforded a fair trial.

[4] This court agrees with the senior magistrate regarding the irregularities that were committed as to:

- (1) The charge should have been stated to the accused after which he should have been asked if he understood it and followed by being asked whether he pleaded guilty or not guilty thereto.
- (2) Section 112(1)(a) was not an appropriate procedure to follow in this case as a charge of robbery is not a minor offence, and the procedure prescribed in section 112(1)(b) should have been followed in the light of the seriousness of the offence.
- (3) Both the state and the accused should have been afforded an opportunity to address the court and adduce evidence in aggravation or mitigation of sentence, before passing sentence in respect of the offence charged and the automatic disqualification to possess a firearm.

[4] **ORDER**

1. The conviction and sentence are set aside.

A. KRUGER, J

I agree.

I.M.M. MOTLOUNG, AJ