

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

Review No: 147/2014

In the matter between:-

THE STATE

and

THABISO PETRUS MPHARU

CORAM:

JORDAAN, J *et* POHL, AJ

JUDGMENT BY:

POHL, AJ

DELIVERED ON:

4 SEPTEMBER 2014

- [1] This is a special review in terms of Section 304 (4) of the Criminal Procedure Act, Act 51 of 1977.
- [2] The accused in this matter had been charged on 23 June 2014 with housebreaking with the intent to steal and theft. He was legally represented and pleaded guilty to the charge and was duly convicted after the application of Section 112 (2) of the Criminal Procedure Act, Act 51 of 1977.
- [3] He was then sentenced as follows: 3 months imprisonment. No order was made in terms of Section 103 (1) of Act 60 of 2000. The magistrate however went further and made an order that the accused would not be eligible for parole. The magistrate thus

invoked the provisions of Section 276B(1)(a) of the Criminal Procedure Act, Act 51 of 1977. This Section reads as follows:

“Fixing of non-parole period

276B(1)(a) if a court sentences a person convicted of an offence to imprisonment for a period of 2 years or longer, the court may as part of the sentence, fix a period during which the person shall not be placed on parole.”

- [4] The control magistrate, Bloemfontein, Magistrate Matshaya, who sent this matter on special review, indicated that the Correctional Centre Head phoned the control magistrate reporting that the accused is due for parole but cannot be released due to the fact that the magistrate that sentenced him invoked the provisions of 276B of Act 51 of 1977.

- [5] It is clear from the wording of Section 276B(1) that the court that sentenced the accused was only allowed to invoke the provisions of Section 276B when a sentence of direct imprisonment for a minimum period of 2 years were imposed. In this case the magistrate imposed a sentence of only 3 months imprisonment and therefor did not have the power to fix a non-parollable period. The magistrate thus committed an irregularity which resulted in a failure of justice.

- [6] In the premises I would make the following order:
 “The magistrate’s order invoking the provisions of Section 276B of Act 51 of 1977 is set aside, otherwise the conviction and sentence are confirmed.”

L. le R. POHL, AJ

I agree and it is so ordered.

A F JORDAAN, J

/roosthuizen