

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

Review No. : 183/2014

In the review between:-

THE STATE

Versus

THABISO MOSOEU

CORAM: RAMPAL, AJP *et* JORDAAN, J

JUDGMENT BY: JORDAAN, J

DELIVERED ON: 9 OCTOBER 2014

- [1] In this matter the accused was charged with the crime of housebreaking with the intent to commit a crime unknown to the State. He pleaded guilty to the crime of housebreaking with the intent to steal and filed a statement in terms of section 112(2) of the Criminal Procedure Act, No 51 of 1977 in which he admitted breaking into the premises with the intent to steal, but indicating that he was caught red-handed before he stole anything. Because of that he was then convicted and the learned magistrate convicted him of housebreaking with the intent to steal and theft.

- [2] After the conviction and sentence the learned magistrate realised that the conviction is not in order in that no theft was committed.
- [3] In view of the aforesaid the matter was forwarded to this court for a special review in terms of section 304(4) of the Criminal Procedure Act, 51 of 1977.
- [4] After the aforesaid conviction the accused was sentenced to a fine of R2 000,00 or 6 (six) months imprisonment of which half was suspended for a period of three years on condition that the accused is not again convicted of housebreaking with intent to steal and theft committed during the period of suspension. The accused was also declared unfit to possess a firearm.
- [5] I agree with the learned magistrate that the conviction should be amended and the sentence accordingly amended as well.
- [6] I am satisfied that the plea explanation of the accused covers the crime of housebreaking with the intent to steal and that the conviction as far as that is concerned, is in order, excluding the conviction of theft. I am also satisfied that the sentence is in order, except for the reference to theft and should be amended accordingly.
- [7] In the result the conviction and sentence are set aside and the following orders substituted therefore:
1. The accused is convicted of housebreaking with the intent to steal.

2. The accused is fined R2 000,00 or 6 (six) months imprisonment of which half is suspended for a period of three years on condition that the accused is not convicted of housebreaking with the intent to commit a crime committed during the period of suspension.
3. The remainder of the proceedings are confirmed.

A.F. JORDAAN, J

I concur.

M.H. RAMPAL, AJP

/spieterse