

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

Case No: 174/2014

In the matter between:-

THE STATE

And

FUNGANI SITHOLE

CORAM: VAN DER MERWE, J *et* TSATSI, AJ

JUDGMENT BY: TSATSI, AJ

DELIVERED ON: 6 NOVEMBER 2014

[1] The matter was referred to this court for special review.

[2] The accused was charged with three counts, namely:

2.1 Contravention of the provision of section 1(1) read with section 1(1A), 1(2) and 2 of the Trespass Act 6 of 1959 and further read with section 250(1)(d) of the Criminal Procedure Act 51 of 1977 (the Act) – trespass.

2.2 Attempted theft.

2.3 Contravention of the provision of section 49(1)(a) read with sections 1, 10, 25 and 26 of the Immigration Act 113 of 2000 – illegal foreigner.

- [3] The accused, who was legally represented, pleaded guilty. His statement in terms of section 112(2) of the Act was handed in. The accused was upon conviction of the crimes as charged sentenced as follows:
- 3.1 On count 1 – He was sentenced to one year direct imprisonment.
 - 3.2 On count 2 – He was fined R1 200.00 or four months imprisonment.
 - 3.3 On count 3 – He was fined R900.00 or three months imprisonment.
 - 3.4 It was ordered that the sentences on count 2 and 3 run concurrently with the sentence on count 1.
- [4] The accused was declared unfit to possess a firearm.
- [5] As a result of an oversight the statement in terms of section 112(2) did not indicate that the accused admitted that he entered on or was upon the land in question. The accused therefore did not admit all the elements of offence in count 1.
- [6] In the result the conviction and sentence on count 1 as well as the order that the sentences on counts 2 and 3 be served concurrently with the sentence on count 1, must be set aside and the matter remitted to the trial court in terms of section 312 of the Act. If sentence on count 1 is imposed afresh, the court must of course take into account the cumulative effect of the sentences on counts 1, 2 and 3 and it may order that the alternative sentence of imprisonment on counts 2 and 3 run concurrently with a sentence of imprisonment on count 1 (see **S v Lalsing** 1990 (1)

SACR 443 (N), **S v Mngadi** 1991 (1) SACR 313 (T) and **S v Hatton** 1998 (2) SACR 474 (E)).

[7] Accordingly the following order is made:

7.1 The conviction and sentence on count 1 as well as the order that the sentences on counts 2 and 3 must be served concurrently with the sentence on count 1, are set aside.

7.2 The matter is remitted to the trial court in terms of section 312 of the Act.

E. K. TSATSI, AJ

I agree.

C. H.G. VAN DER MERWE, J

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