

FREE STATE HIGH COURT, BLOEMFONTEIN
REPUBLIC OF SOUTH AFRICA

Review No. : 20/2095/2014

In the review between:-

THE STATE

Versus

ITUMELENG ELVIN PHEKO

CORAM: NAIDOO, J *et* TSATSI, AJ

JUDGMENT BY: TSATSI, AJ

DELIVERED ON: 04 DECEMBER 2014

TSATSI, AJ

[1] This is a special review against the decision of the Magistrate in Bloemfontein, which came before us in terms of section 304 (4) of the Criminal Procedure Act 51 of 1977 ("the Act"). The accused conducted his own defence.

[2] The accused was charged with assault and pleaded guilty on 1 October 2014. He was convicted as charged. The State

requested the Court to apply the provisions of section 112 (1) (a) of the Act. As a result he was sentenced as follows: Three months imprisonment which sentence is wholly suspended for a period of five (5) years on condition that the accused is not convicted of common assault committed during the period of suspension.

[3] Section 112(a) (1) provides that: *“(1) Where an accused at a summary trial in any court pleads guilty to the offence charged, or to an offence of which he may be convicted on the charge and the prosecutor accepts that plea- (a) the presiding judge, regional magistrate or magistrate may, if he or she is of the opinion that the offence does not merit punishment of imprisonment or any other form of detention without the option of a fine or of a fine exceeding the amount^{13*} determined by the Minister from time to time by notice in the Gazette, convict the accused in respect of the offence to which he or she has pleaded guilty on his or her plea of guilty only and- (i) impose any competent sentence, other than imprisonment or any*

other form of detention without the option of a fine or a fine exceeding the amount determined by the Minister from time to time by notice in the Gazette; or (ii) deal with the accused otherwise in accordance with law”

[4] The accused was not declared unfit to possess a firearm in terms of section 103 of Act 60 of 2000.

[5] As a result of an oversight the sentence imposed is contrary to the provisions of section 112(1) (a) of the Criminal Procedure Act 51 of 1977.

[6] Accordingly the following order is made:

6.1 The conviction is confirmed.

6.2 The sentence is set aside. The matter is remitted back to the trial court in terms of Section 312 of the Act, to impose an appropriate sentence.

E.K TSATSI. AJ

I concur.

S. NAIDOO. J

EKT