



IN THE HIGH COURT OF SOUTH AFRICA  
(GAUTENG DIVISION, PRETORIA)

A918/13  
CASE NO.:  
DATE: 14/11/13

|     |                                     |
|-----|-------------------------------------|
| (1) | REPORTABLE: YES / NO                |
| (2) | OF INTEREST TO OTHER JUDGES: YES/NO |
| (3) | REVISED.                            |

12 Nov 2013

*[Signature]* Jansen

MAGISTRATE: PRETORIA  
HIGH COURT REF NO.: 994  
MAGISTRATE'S SERIAL NO.: H37/2013  
MAGISTRATE'S CASE NO.: D26/278/2010

THE STATE V FABIAN ALJERAUE APPELS

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REVIEW JUDGMENT

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JANSEN AJ

1. This matter came before us by way of a special review in terms of section 304(4) of the Criminal Procedure Act 51 of 1977 from the Chief Magistrate, Pretoria, namely Mr D Nair.

2. The following was stated by the Chief Magistrate:

"1. Attached please find the following documents:

1.1 A letter from Johan van Zyl Attorneys dated 10 September 2013, addressed to the Chief Magistrate, Pretoria;

1.2 An affidavit of Fabian Aljeraue Appel deposed to on 4 March 2013;

- 1.3 *An affidavit of Monrachè Irene Appél deposed to on 4 March 2013;*
  - 1.4 *A copy of the receipt dated 26 July 2010 in respect of an admission of guilt fine of R500.00 paid by F Appél;*
  - 1.5 *A copy of a clearance certificate dated 25 April 2012, issued by the SAPS Criminal Record System in respect of Mr Appél;*
  - 1.6 *The control document of summons 32/507/10 issued to Fabian Appels on 26 July 2010;*
  - 1.7 *Copies of a charge sheet (J15 and annexure) in respect of Fabian Appél;*
  - 1.8 *The original of the criminal record book of admissions of guilt for 30 July 2010 with admission of guilt case 00110AOG002651: F Appels appearing as the fourth from last entry on page 1; and*
  - 1.9 *A certificate copy of folio number H 3383339 of the criminal record book for Court D for 26 July 2010, showing the entry of case no D26/278/2010: Fabian Appél.*
2. *From the above documents, the following sequence of events was established:*
    - 2.1 *Mr Fabian Aljeraue Appél was arrested on 24 July 2010 (Eersterust CAS 147/07/2010).*
    - 2.2 *It is not clear what he was arrested for. According to his affidavit and the clearance certificate obtained from the SAPS Criminal Record System, the charge was robbery but according to the charge sheet, the charge was one of assault.*
    - 2.3 *The matter was enrolled in Court D on 26 July 2010 under case number D26/278/10. A J15 indicating the name of the accused as Fabian Appels and an annexure setting out the charge, were completed but no case number is indicated on the J15 (see the area on the J15 where it appears that a label was affixed).*

2.4 In the criminal record book for Court D for 26 July 2010 under case number D26/278/10: Fabian Appél, the following entries appear:

*By the presiding magistrate, Mr D v Z vd Merwe: "Van die rol verwyder. EVS betaal."*

*In red pen: "AOG 00110 AOG 002651; Date: 2010-07-26; Amount: R500.00"*

2.5 On 26 July 2010, a summons was issued to Fabian Appél.

2.6 On 26 July 2010 a cash amount of R500.00 was paid by F Appél as an admission of guilt fine in respect of summons number 32/507/10 and an admission of guilt serial number 00110AOG2651 was allocated.

2.7 The matter was entered in the criminal record book for admission of guilt on 30 July 2010 resulting in the accused being deemed to have been convicted and sentenced of assault (see section 57(6) of the Criminal Procedure Act, 1977).

2.8 The documents were examined by a magistrate on 4 August 2010 as required by section 57(7) of the Criminal Procedure Act, 1977 and found to be in order.

2.9 On 4 March 2013, the accused deposed to the fact that:

- He was in detention;
- Was brought before court and told that he may leave;
- After his release he learned that his sister had paid R500.00 for his release;
- He later learned that the money paid was actually and admission of guilt fine;
- His sister never consulted with him before paying the fine;
- She could not admit guilt on his behalf;
- He never signed any admission of guilt;

- *He maintains his innocence.*

2.10 *On 4 March 2013, the accused's sister, Monrachè Irene Appél deposed to the fact that:*

- *She approached the prosecutor on 26 July 2010 who then indicated that the accused may be released if she paid an amount of R500.00;*
- *She did not talk to the accused before she deposited the money;*
- *She merely paid the money to effect the accused's release.*

3. *The following comments are made in respect of the above:*

3.1 *Comments relating to the issuing of the summons:*

3.1.1 *Only the copy of the summons commonly referred to as the "control document" is available;*

3.1.2 *Serial number 32/507/10 was allocated to the summons;*

3.1.3 *The date of trial is indicated on the summons as 26 July 2010, Court D, Pretoria;*

3.1.4 *An endorsement that an admission of guilt fine of R500.00 may be paid appears on the document. It had clearly been entered with a pen different from the one with which the rest of the document was completed;*

3.1.5 *Letters (ostensibly the initials of the person who made the endorsement) appear next to the endorsement);*

3.1.6 *A single date stamp, that of the Control Prosecutor, Pretoria, appears on the document. The date on the stamp is for 2010-07-26;*

3.1.7 *There is no indication that the clerk of the court has issued the summons as required by section 54(1)(a) of the Criminal Procedure Act, 1977;*

3.1.8 *There is no indication that the summons was served on the accused as required by section 54(2) of the Criminal Procedure Act, 1977;*

3.1.9 *The date of trial is the same as the date on which the summons was issued. The requirements of section 54(3) of the Criminal Procedure Act, 1977 were, therefore, not adhered to.*

3.2 *Resulting from the comments in paragraph 3.1 above, it is submitted that the issuing of the summons and, consequently, the subsequent proceedings in terms of section 57 of the Criminal Procedure Act, 1977, were irregular.*

3.3 *The accused, having been arrested and brought before court in custody, could only have paid an admission of guilt fine in terms of section 57A of the Criminal Procedure Act, 1977.*

3.4 *The section provides as follows:*

**57A Admission of guilt and payment of fine after appearing in court**

*(1) If an accused who is alleged to have committed an offence has appeared in court and is-*

*(a) In custody awaiting trial on that charge and not on another more serious charge;*

*(b) Released on bail under section 59 or 60; or*

*(c) Released on warning under section 72, the public protector may, before the accused has entered a plea and if he or she on reasonable grounds believes that a magistrate's court, on convicting such accused of that offence, will not impose a fine exceeding the amount determined by the Minister from time to time by notice in the Gazette, hand to*

*the accused a written notice, or cause such notice to be delivered to the accused may admit his or her guilt in respect of the offence in question and that he or she may pay a stipulated fine in respect thereof without appearing in court again.*

*(2) Such notice shall contain-*

*(a) The case number;*

*(b) A certificate under the hand of the prosecutor or peace officer affirming that he or she handed or delivered, as the case may be, the original of such notice to the accused and that he or she explained to the accused the import thereof; and*

*(c) The particulars and instructions contemplated in paragraphs (a) and (b) of section 56(1).*

*(3) The public protector shall endorse the charge-sheet to the effect that a notice contemplated in this section has been issued and he or she or the peace officer, as the case may be, shall forthwith forward a duplicate original of the notice to the clerk of the court which has jurisdiction.*

*(4) The provisions of sections 55, 56(2) and (4) and 57(2) to (7), inclusive, shall apply mutatis mutandis to the relevant written notice handed or delivered to an accused under subsection (1) as if, in respect of section 57, such notice were the written notice contemplated in that section and as if the fine stipulated in such written notice were also the admission of guilt fine contemplated in that section.*

*[S. 57A inserted by s. 1 of Act 86 of 1996.]*

3.5 *None of the provisions of the above-quoted section have been adhered to. The prosecutor neither:*

- *Handed a written notice to the accused containing an endorsement in terms of section 57 that he may pay the stipulated fine without appearing in court again or caused such notice to be delivered to the accused by a peace officer; nor*
- *Endorsed the charge sheet to the effect that a notice as contemplated in section 57A had been issued.*

3.6 *It cannot be argued that the R500.00 admission of guilt fine was paid in terms of the said section 57A because the proceedings that were followed were irregular.*

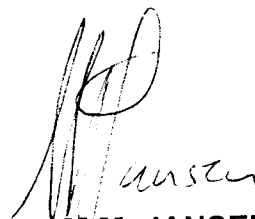
4. *It appears that the entire process relating to the appearance of Mr Appél in court and the subsequent payment of an admission of guilt fine of R500.00 was irregular and not in accordance with justice. It will therefore be appreciated if the matter could be placed before the Honourable the Review Judge in terms of section 304(4) of the Criminal Procedure Act, 1977 for consideration."*

3. It is clear that the proceedings were indeed irregular.

4. Hence the alleged admission of guilt in respect of robbery by Mr Fabian Aljeraue Appél (although the charge against him was apparently that of assaulting an individual by hitting him with his fists) on 26 July 2010 should be set aside as no admission of guilt was made by Mr Appél. According to the sworn affidavit made by Mr Appél, on 4 March 2013, the complainant also withdrew the complaint.

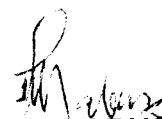
5. In the result, the following order is made:

The admission of guilt made by Mr Fabian Aljeraue Appél on 26 July 2010 in respect of a robbery is set aside, the entry of his name in the AOG Classification Register (G114) is ordered to be deleted, and repayment of the amount of R500.00 to Mr Fabian Aljeraue Appél is ordered within ten (10) days of this court order.



**M.M. JANSEN**  
**ACTING JUDGE IN THE HIGH COURT**

I agree.



**P.M. MABUSE**  
**JUDGE IN THE HIGH COURT**