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**FREE STATE HIGH COURT, BLOEMFONTEIN
(REPUBLIC OF SOUTH AFRICA)**

REVIEW NO: 61/2013

In the matter between:-

THE STATE

and

RIAAN WIESE

CORAM:DAFFUE, J *et* VAN ROOYEN, AJ

JUDGEMENT BY:VAN ROOYEN AJ

DELIVERED ON: 23 MAY 2013

- [1] This is an automatic review. The accused was charged in the Magistrate's Court, Bloemfontein for negligent driving of a Toyota Bakkie, registration number PJB 153 GP. He pleaded guilty, as charged of negligent driving and sentenced to pay a fine of R2 000,00 or to undergo imprisonment for a period of six months.
- [2] The review was initially referred to Bloem AJ who directed the following enquiries to the Presiding Magistrate:

“The accused pleaded guilty. He said the following in his plea explanation:

- 1 *He was driving his vehicle along Jan Spies and Karl Kielblock Street, Bloemfontein on **29 May 2010**.*
2. *He was on his way to a friend. He was alone in his vehicle.*
3. *It was approximately 10h00. The road was dry.*
4. *He wanted to turn left when another vehicle, coming from the right, turned sharply. The accused did not see that vehicle. The accused's vehicle collided with the other vehicle from behind.*
5. *At the time the accused drove slowly- approximately 30 km/h.*
6. *No one was injured in the collision. There was no serious damage to the other vehicle. The accused's vehicle was not damaged.*

In the absence of facts, to show that a reasonable person in the position of the accused would have foreseen the possibility of an accident occurring, that a reasonable person would have taken steps to avoid the accident and that the accused failed to take those steps, on what factual basis did the Magistrate convict the accused?”

[3] To this enquiry the Magistrate gave reasons:

“I concede to the fact that there was no facts to show that a reasonable person in the position of the accused could have foreseen the possibility of an accident occurring, that a reasonable person would have taken steps to avoid the accident occurring, that a reasonable person would

have taken steps to avoid the accident and that the accused conduct thus conform to that of a reasonable person.

I humbly request the Honourable Judge to set aside the conviction and sentence.”

I have read the record and I am satisfied that the conviction and sentence cannot stand and should be set aside.

ORDER:

Therefore the following order is made:

The conviction and sentence of the accused are set aside.

P C F VAN ROOYEN, AJ

I concur.

J P DAFFUE, J