

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

Review No. : 10/2013

THE STATE

versus

NDABATHATHWA WILLIAM MPOMPI

CORAM: VAN ZYL, J *et* REINDERS, AJ

JUDGMENT BY: REINDERS, AJ

DELIVERED ON: 14 NOVEMBER 2013

- [1] This is a special review referred by the senior magistrate, Welkom.
- [2] The accused was charged with contravening section 4(b) read with sections 1, 4, 13(d), 17(d), 18, 19, 20, 25, 35, 64 and Part III schedule 2 of the Drugs and Drug Trafficking Act NO 140 of 1992 in that he had about 974 g of cannabis in his possession on 25 May 2013.
- [3] On 28 August 2013 the accused pleaded guilty to the said charge. However, a plea of not guilty in terms of section 113 of the Criminal Procedure Act No 51 of 1977 ("the CPA"), was entered by the magistrate.

- [4] The matter was hereupon remanded to 26 September 2013 for trial.
- [5] On 26 September 2013 the matter was erroneously remanded to 11 October 2013 in order to have the accused pay admission of guilt.
- [6] Admission of guilt was fixed by the prosecutor on 4 October 2013 in the amount of R800,00. The accused duly paid the said amount on the same day.
- [7] In terms of section 57(7) of the CPA the said admission of guilt was confirmed by another magistrate without knowing that the accused had already pleaded on the same offence.
- [8] Section 57A(1) of the CPA stipulates that a prosecutor may only fix an admission of guilt fine after the accused appeared in court, but before the accused has entered a plea.
- [9] The said confirmation by the magistrate on 4 October 2013 of the admission of the guilt fine paid by the accused as in paragraphs [6] and [7] above, was thus in contravention of section 57A(1) of the CPA and should be set aside.
- [10] In **S v Miller** 1981 (3) SA 560 (O) at 561A Erasmus J stated that, where an admission of guilt has been paid by an accused and the conviction and sentence is confirmed by the magistrate in terms of section 57 of the CPA, the matter can be taken on review by this court only.

[11] Accordingly the following order is made:

ORDER:

1. The confirmation of the admission of guilt on 4 October 2013 is set aside.

C. REINDERS, AJ

I concur and it is ordered.

C. VAN ZYL, J

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