

FREE STATE HIGH COURT, BLOEMFONTEIN
REPUBLIC OF SOUTH AFRICA

Review No : 569/2010

In the review between:-

THE STATE

and

MAKHOTSO ELIZABETH NTLHOLA Respondent

JUDGMENT BY: VAN ZYL, J

DELIVERED ON: 26 MARCH 2012

[1] This matter served before me as a special review in terms of Section 304(4) of the Criminal Procedure Act, 51 of 1977 (hereinafter referred to as “the Act”).

[2] The accused pleaded guilty to three charges of theft, whereafter the learned Magistrate invoked the provisions of Section 112(1)(a), convicted the accused and then (taking all three counts together for purposes of sentencing) sentenced the accused to a fine of two thousand rand (R2 000-00) or sixty (60) days imprisonment. The Magistrate thereafter referred the matter to this court on special review based on

the fact that the fine which was imposed, is not within the parameters of Section 112(1)(a) of the Act.

[3] As also indicated in her letter accompanying the request for special review, the Magistrate submitted that the convictions of the accused were in accordance with justice. I cannot fault this submission and therefore the convictions are to be confirmed.

[4] With regard to the sentence, it is evident from the provisions of Section 112(1)(a) that the said section can only be invoked in, *inter alia*, circumstances where the fine does not exceed the amount of R1 500-00. See GOVERNMENT NOTICE R239 IN GOVERNMENT GAZETTE 24393 OF 14 FEBRUARY 2003. It is therefore evident that the imposed sentence is in fact outside the aforesaid parameters and has to be set aside.

[5] After having considered the seriousness of the three offences, the personal circumstances of the accused and the interests of the community, I consider a sentence of payment of a fine of one thousand five hundred rand (R1 500-00) or

forty-five (45) days imprisonment to be an appropriate sentence.

[6] I consequently make the following order:

6.1 The convictions of the accused are confirmed.

6.2 The sentence of the accused is set aside and replaced by the following:

“Payment of a fine of one thousand five hundred rand (R1 500-00) or forty-five (45) days imprisonment.”

C. VAN ZYL, J