

FREE STATE HIGH COURT, BLOEMFONTEIN
REPUBLIC OF SOUTH AFRICA

Special Review No. : 79/2012

THE STATE

versus

MOSES MOROKA JABUZA

CORAM: HANCKE AJP *et* SNELLENBURG, AJ

JUDGMENT BY: SNELLENBURG, AJ

DELIVERED ON: 10 MAY 2012

- [1] This is a special review in terms of section 304(4) of the Criminal Procedure Act, 51 of 1977 as amended.
- [2] The accused was charged in the District Court, Bloemfontein on a charge of theft under case number 19/211/12. The accused was not represented and conducted his own defence.
- [3] The record shows that the accused was arrested on the 2nd of February 2012 whereafter his first appearance was on the 3rd of February 2012. He was duly informed of his rights to legal representation by the court through the official court

interpreter and elected to conduct his own defence. The matter was then remanded to the 6th of February 2012 for plea and trial and the accused was released on warning.

[4] On 6 February 2012 the accused pleaded guilty to the charge of theft. The court then went on to question the accused to ascertain whether the accused admitted all the elements for the crime he was charged with, namely that of theft. The state accepted the plea and the court was satisfied that the accused admitted all the allegations in the charge sheet (and hence the elements to sustain the charge of theft) and accordingly convicted the accused of theft.

[5] The stolen property is said to be a bible and a dictionary, the property of Exclusive Books Bloemfontein, to the total value of R396-00.

[6] The state did not prove any previous convictions of the accused. After questioning by the court, the court took into consideration for mitigation of sentence that the accused was a first offender and that he had pleaded guilty without wasting the court's time.

- [7] The accused was then sentenced as follows:
- “to pay a fine of R500-00 or to undergo 5 months imprisonment and which sentence is suspended for a period of 12 months on condition that the accused is not convicted of theft or a similar offence committed during period of suspension”.
- [8] The presiding officer did not endorse the charge sheet to the effect that the matter was subject to review nor did he explain to the accused his rights to review of the matter.
- [9] The Control Magistrate, however, brought it to the attention of the presiding officer that the matter was indeed subject to review in terms of section 302 of the Criminal Procedure Act, 51 of 1977 as amended, since the accused was not legally represented and also due to the fact that the presiding officer has not held the substantive rank of magistrate or higher for a period of seven years.
- [10] The presiding officer in his application for special review of the matter in terms of section 304 *supra*, concedes that he erred and that the matter should indeed have been sent on automatic review as he has not been holding the substantive rank of magistrate or higher for a period of seven years as

set out in section 302 *supra*. The presiding officer in his application for special review requests this court to condone the oversight and confirm the proceedings or make any order necessary under the circumstances.

[9] Section 302(1)(a)(i) and section 302(3)(a) provides that:

302 Sentences subject to review in the ordinary course

1) (a) Any sentence imposed by a magistrate's court-

(i) which, in the case of imprisonment (including detention in a child and youth care centre providing a programme contemplated in [section 191 \(2\) \(j\)](#) of the Children's Act, 2005 ([Act 38 of 2005](#))), exceeds a period of three months, if imposed by a judicial officer who has not held the substantive rank of magistrate or higher for a period of seven years, or which exceeds a period of six months, if imposed by a judicial officer who has held the substantive rank of magistrate or higher for a period of seven years or longer;

[Sub-para. (i) substituted by s. 13 (a) of [Act 26 of 1987](#) and by [s. 99 \(1\)](#) of [Act 75 of 2008](#).]

shall be subject in the ordinary course to review by a judge of the provincial or local division having jurisdiction.

(3) The provisions of subsection (1) shall only apply-

(a) with reference to a sentence which is imposed in respect of an accused who was not assisted by a legal adviser.

It is clear that section 302 *supra* indeed applies to this matter and that the matter should have been sent for automatic

review to this court.

[10] I am satisfied that the accused is indeed guilty as charged and that the sentence imposed by the trial court is in accordance with justice.

[11] Having regard to the fact that the matter was sent to this court on special review and also considering the sentence imposed by the trial court, I am further of the opinion that the accused does not suffer any prejudice by the matter being reviewed at this stage only.

[12] Accordingly, I make the following order:

12.1 The Magistrate's failure to advise the accused of his rights pertaining to the review of the matter is condoned and the conviction and sentence stands.

N. SNELLENBURG, AJ

I concur.

S.P.B. HANCKE AJP

/am