

FREE STATE HIGH COURT, BLOEMFONTEIN
REPUBLIC OF SOUTH AFRICA

Review No. : 410/2012

In the review between:-

THE STATE

and

P J CLAASEN

CORAM: MOLOI, J *et* MATLAPENG, AJ

JUDGMENT BY: MATLAPENG, AJ

DELIVERED ON: 13 DECEMBER 2012

[1] This matter came before me by way of a special review in terms of s304(4) of the Criminal Procedure Act 51 of 1977 (the CPA). The accused paid an admission of guilt fine in terms of s57(6) of the CPA on 24 December 2009 and he was deemed to have been convicted and sentenced. The conviction was also not set aside by a judicial officer in terms of s57(7) of the CPA.

[2] In October 2012 the accused forwarded an affidavit to the magistrate Heilbron with the following allegations: that he

owns a liquor store. On 24 December 2009 the complainant bought liquor from his store. The complainant left the store with the liquor and on his way home one of the bottles of liquor broke. He went back to the liquor store and demanded a replacement of the broken bottle. Naturally the accused refused and the complainant started making noise and generally made a nuisance of himself.

- [3] The complainant was told to leave but he refused. The accused's liquor store was full of clientele, this being a day before Christmas. The complainant's behaviour was not only intolerable, but was a source of annoyance to the accused and his customers. The accused took out a pepper spray and sprayed the complainant, who then left. It transpired later that the complainant went to the police station where he laid a charge of assault against the accused. The police arrived at the accused's place of business, arrested him and requested him to accompany them to the police station. Upon arrival there, the accused was appraised of his rights in terms of s35 of the Constitution. The accused elected to make an exculpatory statement, a copy of which he attached to the affidavit.

- [4] After making a statement, a police captain inquired from the accused whether he was not prepared to pay an admission of guilt fine of R150,00 in order to quickly dispose of the matter.
- [5] The accused decided to pay the fine notwithstanding his conviction that he was not guilty. The accused stated that because it was that time of the year when his business was doing a roaring trade, he could not afford to be kept away by a court case. Furthermore, he was assured by two police captains that paying an admission of guilt will not result in him having a criminal record.
- [6] It was only in 2012, when he tried to renew his professional driver's permit that he found out that he had a criminal record, not only assault but also of *crimen injuria*, which never featured anywhere when he paid the admission of guilt. He therefore requested that the matter be sent on review to set the conviction and sentence aside.
- [7] It seems to me that the accused does have a valid defence. According to the accused, it was never explained to him that

he was facing a charge of *crimen injuria*. The documents submitted as record of proceedings do not show that such a charge was ever at issue. He also paid the admission of guilt, notwithstanding the exculpatory statement that he made to the police.

[8] In **S v ESPOSITO** 2007 (1) SACR 527 (C) the following is said at paragraph [11]:

“The approach to be adopted and the principles applied in instances of review of payment of admission of guilt fines have been stated on several occasions and in a number of reported and unreported cases. The reported decisions that come to mind are those such as *S v Marion* 1981 (1) SA 1216 (T); *S v Mthiya*[1991 \(1\) SACR 615 \(E\)](#); and *S v Cedras*[1992 \(2\) SACR 530 \(C\)](#), to name but a few of the decisions pertinent to this point. The approach in dealing with this issue seems to be that the courts are prepared to come to the assistance of the accused and have had the deemed convictions and sentence set aside in instances where it is evident that the accused could be said to have an arguable defence and that, on consideration of equity and fair dealing, the admission of guilt ought to be set aside.”

This is the approach I also intend to follow.

[9] The accused was informed by the police officers that notwithstanding the payment of an admission of guilt fine, this would not result in him having a record of previous conviction. While this appears to be in line with general experience, sadly in the case of the accused the contrary happened. He not only had a previous conviction of assault but also of *crimen injuria*, a charge that was never preferred against him. In the result I believe it is only fair and equitable that the accused should be relieved of the unintended results of his ill considered action and the conviction and sentence that was imposed on the accused, be set aside.

[10] It is worth noting that the accused applied for the review of this matter after a lapse of a considerable period. This should be discouraged as it has unfair consequences for the administration of justice. The DPP makes a telling observation when he cautions:

“One should in my view be slow to overturn an admission of guilt which has been confirmed by the magistrate on account of some

dangers inherent to it. It is clear that the accused in this matter made a calculated decision to pay the admission of guilt, and only now at a much later stage realises the pinch that it has created. It is potentially unfair to the complainant, the prosecution and the administration of justice to embark upon this process after the lapse of a substantial period of time. Any application for a review must be made within a reasonable time. There are no fixed *dies induciae* as with appeals, and what constitutes a reasonable time would differ from case to case. However, setting aside an admission of guilt a substantial period after the payment thereof might make it impossible for the prosecution to be reinstated because witnesses tend to move and memories tend to fade. In the instant case, but for a week or two, three years have elapsed since payment of the fine. It is admittedly only the less serious matters which are settled by way of admission of guilt, but nonetheless the prosecution should not be made a dead letter because of such practical considerations.”

I totally agree with the observation.

[11] In the circumstances I make the following order:

1. The conviction and sentence that was imposed on the accused are hereby set aside.

2. The admission of guilt of a fine that he paid on 28 December 2009 is to be refunded to the accused.

D.I. MATLAPENG, AJ

I concur and it is so ordered.

K.J. MOLOI, J

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