

FREE STATE HIGH COURT, BLOEMFONTEIN
REPUBLIC OF SOUTH AFRICA

Review No. : 448/12

In the review between:-

THE STATE

and

LETSHEGO CHUKUDU

CORAM: KRUGER, J *et* DAFFUE, J

JUDGMENT BY: DAFFUE, J

DELIVERED: 20 DECEMBER 2012

[1] This matter was referred to the High Court as a special review in terms of section 304(4) of the Criminal Procedure Act 51 of 1977 (“the Act”).

[2] On 4 October 2012 the accused appeared before an acting magistrate in the Bloemfontein Magistrates’ Court on a charge of theft of liquor and cold drink to the value of approximately R2 000,00. He pleaded guilty. The magistrate invoked the provisions of section 112(1)(a) of the Act and convicted him accordingly. On the same day he was sentenced to pay a fine

of R400,00 or in default to undergo 40 (forty) days' imprisonment. He was not declared unfit to possess a firearm in terms of section 103 of the Firearms Control Act 60 of 2000.

[3] There is no proper record of the proceedings before the court *a quo*. However the record shows that the accused indicated that he wished to apply for legal aid, but that the proceedings were finalised whilst he appeared in person. There is no indication as to the steps taken to ensure that an application for legal aid was made and if so, what the outcome thereof was. Fact of the matter is that the accused was in custody as he was arrested the previous day and would not be able to, on his own accord and without the assistance of the clerk of the court or a representative of the Legal Aid Office, apply for legal aid. The matter was finalised the same day and it is uncertain how much time was allowed to obtain legal assistance.

[4] There is no indication on record that the charge was properly put to the accused, although it is recorded that he pleaded guilty as indicated by the magistrate. There is also no

indication that the accused's constitutional rights contained in section 35(3) of the Constitution have been explained to him.

[5] Furthermore there is no indication that the accused was given an opportunity to address the court or to lead evidence in mitigation of sentence. The accused's right to appeal was not explained to him.

[6] It is appropriate to quote some of the material constitutional rights contained in section 35(3):

“(3) Every accused person has a right to a fair trial, which includes the right-

(a) to be informed of the charge with sufficient detail to answer it;

(b) to have adequate time and facilities to prepare a defence;

(c)

(d)

(e)

(f)

(g) to have a legal practitioner assigned to the accused person by the state and at state expense, if substantial injustice would otherwise result, and to be informed of this right promptly;

(h) to be presumed innocent, to remain silent, and not to testify

during the proceedings;...”

- [7] Although the accused was informed of his right to legal representation, it is evident that the court *a quo* proceeded with the hearing without adhering to the accused's wishes. There is no indication that the accused on second thoughts waived his right to be assisted by a legal representative, and if so, whether he was fully informed of the consequences of his waiver. The proceedings before the magistrate took place during the course of one day, i.e. 4 October 2012, and it has to be accepted in the absence of any record or explanation by the magistrate that no proper opportunity was allowed to the accused to obtain legal representation.
- [8] In the circumstances the accused did not have a fair trial as the proceedings were not in accordance with justice. It is unnecessary to say anything further pertaining to the finding that the accused is not unfit to possess a firearm notwithstanding the fact that no enquiry was conducted as the ruling of the magistrate is in any event in favour of the accused. It needs to be emphasised, however, that no enquiry was called

for as section 103(2) read with item 7(c) of schedule 2 of Act 60/2000 did not apply: the accused did not receive a sentence of imprisonment without the option of a fine.

ORDER

[9] Consequently the conviction and sentence are set aside.

J.P. DAFFUE, J

I concur.

A. KRUGER, J