FREE STATE HIGH COURT, BLOEMFONTEIN
REPUBLIC OF SOUTH AFRICA

Review No. : 451/12

In the review between:-

THE STATE

and

PAULOS JABULANI RADEBE

CORAM: KRUGER, J *et* DAFFUE, J

JUDGMENT BY: DAFFUE, J

DELIVERED: 20 DECEMBER 2012

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

[2] On 27 February 2012 the accused, who was unrepresented, but whose rights pertaining to legal representation were explained to him by the presiding magistrate, pleaded guilty of theft of five gravel hoods of an unknown value. The magistrate did not invoke the provisions of section 112(1)(b) of the Act, but

convicted the accused based on his plea of guilty. On the same day he was sentenced to a fine of R2 000,00 or 90 (ninety) days' imprisonment wholly suspended for three years on condition that he is not convicted of theft committed during the period of suspension. He was not declared unfit to possess a firearm in terms of section 103(2) of the Firearms Control Act, 60 of 2000.

[3] The head of the Magistrates' office in Harrismith referred the matter as a special review to this court upon becoming aware of the matter during a routine inspection. The particular magistrate who conducted the trial is not in the employ of the Department of Justice and Constitutional Development anymore.

[4] In terms of section 112(1)(a) of the Act the maximum fine that could be imposed upon the accused is R1 500.00, whether or not the fine or any portion thereof is suspended. As indicated there is no indication as to the value of the stolen goods and

whether or not these were retrieved. It appears from the record that the accused is employed as a driver and that he earns R1 000.00 per fortnight. He also indicated that he could afford to pay a fine. In the circumstances the sentence should be reviewed and set aside with reference to the fine imposed in order to replace the R2 000.00 with an amount of R1 500.00. This is in line with the submission of the head of the Harrismith Magistrates' office to whom I am indebted.

[5] The High court was also requested to provide guidance pertaining to the apparent illogical situation created by the legislature with reference to sections 56(1), 57 and 112(1)(a) of the Act. The following is a summary of the various sections.

[6] Where an accused at a summary trial in any court pleads guilty to the offence charged, or to an offence of which he may be convicted on the charge and the prosecutor accepts that plea, the presiding officer, whether a judge, regional magistrate or magistrate, may under certain circumstances convict the

accused and impose any competent sentence other than imprisonment or any other form of detention without the option of a fine, or a fine exceeding the amount determined by the Minister from time to time by notice in the Government Gazette which presently is R1 500.00.

[7] Contrary to the above provisions, sections 56(1) and 57(1) provides for the imposition of much higher sentences by peace officers and public prosecutors respectively. Again in these instances, as is the case in section 112(1)(a) proceedings, the idea of the legislature is to provide for the payment of fines for relatively minor offences. However, section 56(1) and sub-section 56(1)(c) in particular stipulates that a peace officer may in certain circumstances issue a written notice to an accused with an endorsement in terms of section 57 of the Act that the accused may admit his guilt in respect of the offence and pay a fine to a maximum of R2 500.00 without appearing in court. In similar vein a public prosecutor or clerk of the court may in terms of section 57, and when a summons has been issued against an accused in accordance with section 54, endorse the

summons to the effect that the accused may admit his guilt in respect of the offence in question by paying a fine to a maximum of R5 000.00. Once the fine has been paid in the last-mentioned scenario, the further sub-sections of section 57 have to be complied with. The clerk of that magistrates' court shall enter the essential particulars in a criminal record book for admissions of guilt whereupon the accused shall be deemed to have been convicted and sentenced by the court in respect of the relevant offence, although the judicial officer presiding at the court in question may set aside the conviction and sentence on examination of the relevant documents.

[8] The head of the Harrismith Magistrates' court is of the view that the aforesaid discrepancies do not make sense. Not only can relatively stiff sentences be imposed upon accused persons without them appearing in court contrary to the provisions of section 112(1)(a), but there is also no justification for allowing peace officers, public prosecutors and clerks of the court to impose sentences much higher than presiding officers such as judges, the regional magistrates and magistrates if section

112(1)(a) is invoked. Obviously all presiding officers are bound by the provisions of the Act and they are constrained not to impose sentences in excess of the stipulated maximum if section 112(1)(a) procedure is followed. I am indebted to the head of the Harrismith Magistrates' court for his insight and initiative shown. Although presiding officers should not traverse the boundaries of their own power and should show due deference to the domain of the other arms of State, such as the legislature, the legislature should take cognisance of the discrepancies in order to possibly revisit these matters and to increase the maximum fine in section 112(1)(a) proceedings to at least an amount equal to the amount prescribed in section 57, to wit R5 000.00. There appears to be no reason why a presiding officer must utilise the more cumbersome section 112(1)(b) procedure in order to satisfy him- or herself that the accused is indeed guilty of the offence to which he has pleaded guilty in all cases where a fine in excess of R1 500.00 is considered to be realistic.

ORDER:

[9] Consequently the following orders do issue:

9.1 The conviction is confirmed.

9.2 The sentence is set aside and substituted with the following sentence:

"Payment of a fine in the amount of R1 500.00 or 90 (ninety) days' imprisonment, wholly suspended for three years on condition that the accused is not convicted of theft committed during the period of suspension."

9.3 The Registrar of this court is directed to send a copy of this judgment to the State Law Advisors in the Department of Justice and Constitutional Development.

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J.P. DAFFUE, J

I concur.

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A. KRUGER, J

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