

FREE STATE HIGH COURT, BLOEMFONTEIN
REPUBLIC OF SOUTH AFRICA

Review No. : 593/2010

In the review between:-

THE STATE

versus

PAUL MZWAKE NYAILE

JUDGMENT BY: CILLIÉ, J

DELIVERED ON: 6 JANUARY 2011

JUDGMENT

[1] This matter was heard by an acting magistrate. It was sent for review by the control magistrate in terms of section 304(4) Act 51 of 1977 on account of serious flaws in the proceedings.

[2] The record does not indicate what plea the accused tendered, no indication that section 112(1)(a) or (b) of the Act was applied, personal and mitigating factors extracted from the accused before sentence, no indication of whether previous convictions were proven, no explanation to the

accused that he may call witnesses on mitigation and ultimately an incompetent sentence was imposed.

- [3] The control magistrate's request that the proceedings be set aside, must be granted.

The following order is made:

The conviction and sentence is set aside and the matter is remitted to the magistrate for a *de novo* trial.

C.B. CILLIÉ, J