

FREE STATE HIGH COURT, BLOEMFONTEIN
REPUBLIC OF SOUTH AFRICA

Review No.: 60/2011

In the review between:

THE STATE

and

ELIZABETH MPHO MOTSEARE

CORAM: KRUGER, J *et* VAN DER MERWE, J

JUDGMENT: VAN DER MERWE, J

DELIVERED ON: 17 FEBRUARY 2011

[1] The accused in this matter was charged with two counts of theft. She pleaded guilty on both counts and a statement in terms of section 112(2) of the Criminal Procedure Act, nr. 51 of 1977 was handed in.

[2] In the statement in terms of section 112(2) the accused admitted theft of all the items mentioned in count 1 but only some of the items mentioned in count 2. The prosecutor did not accept the plea in respect of count 2 and indicated that

he wished to present the evidence of the complainant. The magistrate then convicted the accused on count 1 and proceeded to sentence the accused in respect of count 1 to a fine R1 200,00 or 6 six months imprisonment wholly suspended for a period of two years on condition that the accused is not convicted of theft committed during the period of suspension.

[3] The magistrate now recognises that he erred in sentencing the accused on count 1. He therefore requests that the sentence in respect of count 1 be set aside and asks for directions by this court as to how the matter should proceed.

[4] I agree that the sentence in respect of count 1 should be set aside. The plea of the accused on count 2 must be regarded as a plea of guilty to a lesser charge. As the prosecutor did not accept this plea, a plea of not guilty in respect of count 2 must be entered and the trial must proceed in respect of count 2. Only after the determination of the guilt of the accused in respect of count 2 or otherwise, must the magistrate proceed to sentence the accused.

- [5] In the result the sentence in respect of count 1 is set aside and the matter is remitted to the magistrate to be dealt with in accordance with this judgment.

C. H. G. VAN DER MERWE, J

I concur.

A. KRUGER, J

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