

FREE STATE HIGH COURT, BLOEMFONTEIN
REPUBLIC OF SOUTH AFRICA

Review No. : 74/2011

In the review between:

THE STATE

versus

MADELEINE BEUKMAN

CORAM: HANCKE, J *et* KRUGER, J

JUDGMENT BY: HANCKE, J

DELIVERED ON: 3 MARCH 2011

[1] The accused was charged of contravening the provisions of section 65(1)(a) or (b) read with sections 1, 33, 34, 35, 65(3), 65(4), 65(8), 65(9), 69(1), 73 and 89 of the National Road Traffic Act 93 of 1996 (driving under the influence of liquor or drugs).

She was also charged with a first alternative of contravening the provisions of section 65(2)(a) read with sections 1, 65(3), 65(4), 65(8), 65(9), 69(1), 73 and 89 of the National Road Traffic Act 93 of 1996 (excessive amount of alcohol in blood).

- [2] When the charge was put to her the accused pleaded guilty to the first alternative and her statement in terms of section 112(2) of Act 51 of 1977 was handed into court, justifying a conviction in respect of the first alternative count. When the magistrate enquired whether she was pleading guilty to the main charge, the prosecutor indicated that she was pleading guilty to the said alternative charge.
- [3] Despite the foregoing the magistrate erroneously convicted her on the main charge whereafter he sentenced her to a fine R4 000,00 or 18 (eighteen) months imprisonment suspended for three years on certain conditions.
- [4] The magistrate now sends the matter on special review with the request that the conviction on contravening section 65(1) of the said Act be set aside and replaced with one of contravening section 65(2) of Act 93 of 1996. As regards sentence, he suggested that it be left in the discretion of the reviewing court.
- [5] It is clear from the record that the accused pleaded guilty to contravening section 65(2) of the said Act and that she was

erroneously convicted of contravening section 65(1) of the said Act. It is settled law that contravention of this first alternative is not as serious as a contravention of the main charge and that the sentence must accordingly be reduced.

[6] Accordingly the following orders are issued:

The conviction and sentence are set aside. The magistrate's order is substituted with the following:

"The accused is convicted of contravening section 65(2) of Act 93 of 1996 (excessive amount of alcohol in the blood).

The accused is fined R2 000,00 or 9 (nine) months imprisonment suspended for three years on condition that the accused is not convicted of section 65(1), (2) and/or (5) of Act 93 of 1996, committed during the period of suspension. In terms of section 35 of the said Act the court orders that the driving licence of the accused is not suspended."

S.P.B. HANCKE, J

I agree.

A. KRUGER, J