

FREE STATE HIGH COURT, BLOEMFONTEIN
REPUBLIC OF SOUTH AFRICA

Review Case No 213/2010

In the case between:

THE STATE

versus

WYNAND RHEEDER

CORAM: BOONZAAIER, AJ *et* CILLIÉ, J

JUDGMENT BY: BOONZAAIER, AJ

DELIVERED ON: 19 MAY 2010

[1] This matter was brought before me in terms of section 304(4) of the Criminal Procedure Act, 51 of 1977, (“the CPA”). The accused appeared in the Magistrate Court, Bloemfontein, on a charge of contravening section 65(1) of Act 93/96 driving under the influence of intoxicating liquor having a narcotic effect. He was convicted and fined R4000,00 or 4 months imprisonment of which R2000,00 or 2 months is suspended for a period of 5 years on condition that the accused is not again convicted of

contravening section 65(3), (4) , 65 (8), 9 and section 69(1), 73 and 89 of Act 93/96 committed during the period of suspension. In terms of section 103(2) Act 60/2000 he was declared not unfit to possess a fire-arm. In terms of section 35 of Act 93/96 the suspension of accused driver `s license does not come into operation.

- [2] When perusing the record the magistrate realized that he omitted to ask the accused as to whether his driving skills were impaired due to intake of alcohol whilst driving a motor vehicle.
- [3] The matter was also supposed to have been sent immediately for review since the court has passed a reviewable sentence. The case was however mistakenly endorsed not reviewable instead of reviewable.
- [4] The accused pleaded guilty in terms of section 112 (1) (b) of the CPA and the court set out to establish from him whether if he was admitting the allegations in the charge sheet. To decide

whether he was in law guilty of the charge to which he pleaded guilty.

[5] There upon all the elements of the offence were admitted by the accused, except to admit that his driving skills were impaired due to the alcohol intake whilst driving the motor vehicle.

[6] The presiding officer correctly conceded that he omitted to ask the accused whether he also admitted that his driving skills were impaired due to intake of alcohol whilst driving a motor vehicle.

[7] This omission is of such a nature that it nullifies the conviction and justify that the Court should intervene.

[8] In the circumstances I make the following order:

ORDER :

1. **The conviction and sentence of the accused are set aside**

2. **The matter is remitted to the Magistrate for further questioning in compliance with section 112(1) (b) of the CPA.**

A.S. BOONZAAIER, AJ

I concur.

C.B. CILLIÉ, J