

FREE STATE HIGH COURT, BLOEMFONTEIN
REPUBLIC OF SOUTH AFRICA

Case No. : 366/2010

In the case between:-

THE STATE

and

NKOPELENG JOEL MOKOTJO

CORAM: CILLIé, J *et* JORDAAN, J

JUDGMENT BY: JORDAAN, J

DELIVERED ON: 29 JULY 2010

[1] This matter has been sent for special review by the additional magistrate of Welkom. The accused was charged on count 1 with contravention of section 65(1)(a) of act 93 of 1996, driving under the influence of liquor or drugs or alternatively contravention of section 65(2)(b) of the same act, driving whilst the concentration of alcohol in his blood sample exceeded the prescribed maximum, being in actual fact 0,11 grams per 100 millilitres. On count 2 he was charged with assault.

[2] The accused was initially unrepresented and pleaded not guilty to all the charges. Thereafter the matter was postponed to enable the accused to obtain legal representation which he did and when the case resumed, the charge on count 2 was withdrawn and the accused pleaded guilty to the alternative on count 1, namely driving a vehicle whilst the concentration of alcohol in his blood exceeded the prescribed maximum. At that stage the accused was represented by an attorney. A statement in terms of section 112(2) of the Criminal Procedure Act was handed in, in which the accused admitted all the elements of the alternative charge to count 1. He was then found guilty as charged on that count and sentenced to a fine of R200,00 or alternatively imprisonment for 20 days. His drivers' license was not suspended nor endorsed.

[3] When completing the charge sheet, form J175, the aforesaid magistrate erroneously indicated that count 1 was withdrawn and that the accused was found guilty on count 2. In view of

that the magistrate asks for rectification of the said charge sheet.

[4] In view of the aforesaid it is necessary that the record be rectified and for that purpose:

In as far as the record shows that the accused was convicted on count 2 and count 1 was withdrawn, the conviction is set aside and substituted with the following:

1. Count 2 is withdrawn.
2. The accused is convicted of the alternative charge to count 1, contravention of section 65(2)(b) of Act 93 of 1996, driving a motor vehicle whilst the concentration of alcohol in his blood exceeded the prescribed maximum.
3. The sentence is confirmed.

A. F. JORDAAN, J

I concur.

C. B. CILLIÉ, J

/EB