

IN THE HIGH COURT OF SOUTH
AFRICA (TRANSVAAL
PROVINCIAL DIVISION)

CASE
NUMBER:14/00997/2008 H/C
REFERENCE:PR 3/09
REVIEW: 1/4/13SH
A149/09
2 March 2009

In the matter between:
THE STATE
And
JACOBUS JOUBERT

SPECIAL REVIEW JUDGMENT

TLHAPI, A.J

- [1] The Regional Magistrate, Pretoria, referred this matter on special review because the proceedings were not in accordance with justice. He released the accused on warning.
- [2] The accused was convicted of robbery in the Magistrate's Court and referred to the Regional Court for sentence in terms of section 122 (C)(2)(a) of the Criminal Procedure Act 51 of 1977 (hereinafter referred to as "the Act").
- [2] The case was postponed over several months before the record of proceedings was availed for scrutiny by the regional magistrate. According to him, the record revealed the following irregularities:
- (i) The accused conducted his own defence and pleaded not guilty on the 2 October 2007. He declined to disclose the basis of his defence. The magistrate swore in a state witness Jolanda Jacobs. Her evidence was not taken down due to the absence of on an Afrikaans speaking interpreter. The record then reflects that the matter proceeded on the 4 March 2008, on which occasion the accused's previous

convictions were proved.

- (ii) There was no record available of the evidence of the state witnesses, and of the accused (that is, if he had elected to testify). Furthermore, the judgment was not available. The regional magistrate could therefore not determine on what basis the accused had been convicted and whether the conviction was in accordance with justice.
- (iii) The accused was referred in terms of section 122(C)(2)(a) of the Act. This sections provides for the referral to the regional court for sentence where the accused had pleaded guilty and, the magistrate was satisfied that he admitted all the allegations in the charge. In this instance, the accused pleaded not guilty. The regional magistrate lacked the authority to refer the accused back to the magistrate's court in order for him to be properly referred to the regional court for sentence.

I referred the matter to the Director of Public Prosecutions. Mr E Leonard S C and Mr PCB Luyt of that office responded. They confirmed the erroneous referral and, submitted that neither was section 122(D) in the circumstance applicable. According to them, the accused should have been referred in terms of section 116 of the Act, which provided for the referral for sentence after a trial in the magistrate's court. In terms of section 116(3)(a) of the Act the regional magistrate was entitled to request the magistrate's reasons for conviction. It would have been appropriate that such request be coupled with an instruction that the record be reconstructed in accordance with the procedures stipulated in S v Joubert 1991 (1) SA 119(A). On completion of these tasks the matter could be referred back to the regional court in accordance with section 116 of the Act. Furthermore, that if the record could not be reconstructed, only then could the matter be referred to the High Court in terms of section 304(A) of the Act. I am in agreement with such view.

In the absence of any explanation from the magistrate about the state of the record of proceedings, his reasons for conviction and the reason why the record could not be reconstructed, the conviction of the accused cannot be set aside. A copy of this judgment should be sent to the magistrate concerned of the district court to further attend to the matter.

In the circumstances the following order is made;

1. The referral to the regional court for sentence in terms of section 122 (C) (2)(a) of Act 51 of 1977 be set aside;
2. That the accused be referred back to the magistrate's court and accused is to remain on warning.

TLHAPI V V



(JUDGE OF THE HIGH COURT, PRETORIA) I agree

MOLOPA, L

(JUDGE OF THE HIGH COURT, PRETORIA)