



IN THE HIGH COURT OF SOUTH AFRICA

(NORTH GAUTENG HIGH COURT. PRETORIA)

DATE: 25 SEPTEMBER 2009

MAGISTRATE BRAKPAN

CASE NO: A258/08

MAGISTRATE'S SERIAL NO:

19/2009

HIGH COURT REF NO: 964

THE STATE VS JOEY LEROY VAN WYK AND NICO HERMANS

REVIEW JUDGMENT

BOTHA J:

This is a special review from the magistrate of Brakpan.

Two issues were raised:

- (a) that the magistrate omitted to make a finding on count 1 and
- (b) that the accused were not given an opportunity to address the court in regard to section 103 of the Firearms

Act 2000 (Act 60 of 2000).

The two accused were charged with assault with the intent to do grievous bodily harm (count 1) and robbery (count 2)

It is clear from the judgment that the magistrate considered count 1 to be a duplication of count 2 Hence the accused were only found guilty on count 2 It is very technical but as a matter of form it can do no harm for this court to record that the accused were found not guilty on count 1.

In respect of the Firearms Act the magistrate insists that he was addressed on the issue He was addressed on sentence by the accuseds' attorney, but his address was recorded as being inaudible. The prosecutor whose address was recorded, did ask that the accused be declared unfit to possess firearms.

In the circumstances I am satisfied that the magistrate was addressed on the provisions of the Firearms Act.

In the result the following order is made:

- 1. The convictions and sentences of the accused on count 2 are confirmed.**
- 2. It is recorded that the accused were by implication found not guilty and discharged on count 1.**

I agree

C BOTHA

JUDGE OF THE HIGH COURT

C.J EKSTEEN

ACTING JUDGE OF THE HIGH COURT