

FREE STATE HIGH COURT, BLOEMFONTEIN
REPUBLIC OF SOUTH AFRICA

Review No. : 619/2009

In the special review between:

THE STATE

and

JOHANNES JACOBUS COETZER

CORAM: CILLIé *et* MOLEMELA, JJ

JUDGMENT BY: MOLEMELA, J

DELIVERED ON: DECEMBER 2009

[1] This is a special review referred to this court in terms of section 304(4) of the Criminal Procedure Act, 51 of 1977.

[2] The accused person, an 18 year old youth, was arrested at a supermarket for allegedly stealing goods to the value of R73,04. He was taken to police cells and locked up in a cell. His parents later arrived at the cells where they were informed that their son would be released upon payment of an amount of

R200,00. Believing that the payment was in respect of bail, the parents paid the aforesaid amount and the accused was then released. The accused's mother subsequently filed an affidavit setting out the circumstances of the arrest and subsequent release of the accused, as mentioned above.

- [3] On the strength of the contents of the aforesaid affidavit, I find that the accused person paid the admission of guilt fine under a misapprehension. See **DIE STAAT V RUITER EN ANDERE** 1962 (1) SA 161 (O); **S V MOTHAE** (2) 1965 (2) SA 128 (O). To allow a conviction based on a misapprehension to stand, would be a serious miscarriage of justice. It is trite law that where there has been a failure of justice the reviewing court is entitled to set aside both the conviction and sentence.

I accordingly grant the following:

- (1) The conviction and sentence are set aside.
- (2) The matter is referred back to the magistrate's court for trial.

M.B. MOLEMELA, J

I agree.

C.B. CILLIÉ, J

MBM/sp