

IN THE HIGH COURT OF SOUTH AFRICA
(ORANGE FREE STATE PROVINCIAL DIVISION)

Review Case No.: 1335/2006

In the case between:

THE STATE

and

THABO MOTSAMAI

CORAM: VAN DER MERWE, J *et* VAN ZYL, J

JUDGEMENT: VAN DER MERWE, J

DELIVERED ON: 1 FEBRUARY 2007

[1] In consequence of his plea of guilty, the accused was convicted of housebreaking with intent to steal and theft and was sentenced to 6 months imprisonment.

[2] When the charge was put to the accused, he pleaded guilty on the basis thereof that 4 bottles of liquor were involved and not 6 as stated in the charge sheet. However, during questioning in terms of section 112(1)(b) of the Criminal

Procedure Act, he said that when he and his companion reached the building in question, they found that a windowpane had already been removed and that they entered into the building through this opening. He said that he and his companion then removed the bottles of liquor. However, the accused said that he thought that the liquor belonged to his companion, that he did not at the time realise that he was committing an offence, that he had the permission of the owner thereof, that is his companion, to do so and that he did not have the intention to deprive the owner of the liquor thereof.

- [2] From what is stated above it is clear that whatever one may think of the veracity of the statements of the accused, he did not admit to housebreaking nor theft. A plea of not guilty should have been entered in terms of section 113 of the Criminal Procedure Act. This is acknowledged by the magistrate upon enquiry. The conviction and sentence must therefore be set aside. In terms of section 312 of the Criminal Procedure Act, the matter must be remitted to the

magistrate.

- [3] In the result the conviction and sentence are set aside and the matter is remitted to the magistrate in terms of section 312 of Act Nr. 51 of 1977.

C.H.G. VAN DER MERWE, J

I concur.

C. VAN ZYL, J

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