

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

Special Review No. : 70/2006

In the review between:-

THE STATE

versus

THABO DAVID MBABA

CORAM: WRIGHT J *et* VAN ZYL J

JUDGMENT BY: WRIGHT J

DELIVERED ON: 16 NOVEMBER 2006

A letter was received from the acting regional court magistrate reading as follows:

- “1. The accused was charged with the offence of
Housebreaking with intent to Rape and Rape.
2. The accused pleaded guilty as charged. The defence attorney then handed a statement in terms of section 112(2) of Act 51 of 1977 and the Public Prosecutor accepted the plea of the accused.
3. On 10 October 2006 the accused was convicted as
charged.

4. It is my respectful submission that the conviction is not correct. Based on the statement in terms of section 112(2) of Act 51 of 1977, the accused was supposed to be convicted of Rape only. The section 112(2) statement lacked the necessary factual basis which could have satisfied the court that the accused was guilty to Housebreaking with intent to Rape. No admissions were made as to a common purpose or conspiracy to commit the crime of House Breaking with the intent to Rape.”

In view of the last paragraph it is necessary to set aside the conviction and to replace it with a conviction of rape.

With regard to the last paragraph of the magistrate's letter, the accused must be sentenced in accordance with the charge sheet to which he pleaded guilty (even if that charge sheet may be inadequate).

The conviction is therefore set aside and replaced with a conviction of rape.

G.F. WRIGHT, J

I agree.

C. VAN ZYL, J

/sp