

Reportable: Yes / No
Circulate to Judges:
Yes / No

Circulate to Magistrates: Yes / No

IN THE HIGH COURT OF SOUTH AFRICA
(Northern Cape Division)

High Court Review Case No: 61/06
Magistrate Case No: B9593/04
Date delivered: 2006-04-28

In the review matter of:

THE STATE

versus

**ARMANDONIEKERK
WILLEM KOCK**

**ACCUSED 1
ACCUSED 2**

Coram: MAJIEDT J *et* TLALETSI J

JUDGEMENT ON SPECIAL REVIEW

MAJIEDT J:

1. This matter was placed on special review, since the inspecting

magistrate was of the view that the accused had been wrongly convicted.

2. The accused were charged with the offence of housebreaking with the intent to steal and were convicted of trespassing.
3. According to the charge sheet the accused had broken into the house of the complainant, Mr. Marthinus van der Westhuizen, in West-End, Kimberley on or about 28 August 2004. In the charge sheet attention was drawn to the provisions of section 262 of the Criminal Procedure Act, 51 of 1977 (*“the Act”*). That section deals with competent verdicts on the offence of housebreaking with the intent to commit an offence.
4. On 11 November 2005 the attorney for the two accused proffered a written section 112(2) plea explanation upon his clients’ plea of guilty. The written plea explanation was clearly inadequate and the magistrate stood the matter down to consider aspects of the charge and the plea explanation.
5. The record of the proceedings indicate that upon resumption, the attorney for the accused applied that the matter be adjourned to 14 November 2005 in order for him to take proper instructions from the accused and to prepare another explanation of plea.

6. On 14 November 2005 a new written plea explanation in terms of section 112(2) was handed up after it had been read into the record by the attorney for the accused. In terms thereof the accused pleaded guilty to the "*crime of trespassing*". The explanation therein contained was to the effect that the accused had entered the house of the complainant wrongfully and unlawfully with the intent to steal certain goods therein.
7. Section 262(1) of the Act sets out the competent verdicts on the offence of housebreaking with the intent to steal. It is clear that the crime of trespassing is not one of those.

See generally the discussion in **Hiemstra SUID-AFRIKAANSE STRAFPROSES 6th EDITION at 665 – 666.**

The crime of housebreaking with the intent to contravene the provisions contained in section 1(1) of Act 6 of 1959 (i.e. remaining in the premises after breaking in) is a competent verdict under section 262(2) of the Act which deals with competent verdicts on a charge of housebreaking with the intent to commit an offence unknown to the prosecutor.

See in this regard generally the discussion in:

R v Badenhorst 1960(3) SA 563 (A);

S v Jasat 1997(1) SACR 489 (SCA).

8. In the premises the conviction is unsound in law and should be set aside. The inspecting magistrate has correctly alluded to the fact further that there are a number of deficiencies regarding the

sentence imposed, but given the fact that the conviction has to be set aside, the sentence requires no further consideration herein.

9. The accused's convictions and sentences are set aside.

**SA MAJIEDT
JUDGE**

I concur:

**PL TLALETSI
JUDGE**