

**IN THE HIGH COURT OF SOUTH AFRICA
(NORTHERN CAPE DIVISION)**

**KIMBERLEY
CASE NO.:89/2001
DATE:07-09-2001**

In the review matter between:

THE STATE

and

NGIPISO JOHANNES JEKO

Accused

CORAM: BUYS J et MAJIEDT J

REVIEW JUDGMENT

MAJIEDT J:

1. This matter came on review before me and I queried various aspects thereof, only two of which remain relevant. The original record has been lost and the Magistrate has, with the assistance of the prosecutor, reconstructed the record now before us.
2. The accused was charged with a contravention of the provisions contained in section 65(2) of Act 93 of 1996

(driving a motor vehicle while his blood alcohol level exceeded the legal limit).

He pleaded guilty and, while being questioned in terms of section 112(1)(b) of Act 51 of 1977, the following transpired:

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“Q: Are you entitled to drive a vehicle on a public road with a concentration of alcohol exceeding 0.05g per 100ml?”

A: I am not entitled.”

The above extract is the only reference in the record to the question of unlawfulness as well as to the aspect relating to whether the accused admitted that he was driving on a public road.

3. The Magistrate in his response conceded that the aspect of unlawfulness was not adequately dealt with in the questioning of the accused and requests that the matter be remitted.

He, however, makes no such concession in respect of the aspect relating to the public road (*supra*). In my view this matter has also not been addressed properly. The accused should make an unequivocal admission that he had been driving on a public road at the relevant time.

4. I have queried the sentence as well. It is my *prima facie*

view that the sentence is excessive to the extent that it can be said to be shockingly inappropriate.

I attach hereto a copy of the judgment of Van den Heever AJ, with which Buys AJP had concurred, in the matter of State v Phillip Harris, Review Case no.1152/00, delivered on 12 December 2000. I believe that this judgment may provide some guidance to the Magistrate when he considers sentence afresh. I point out, however, that the said judgment dealt with a contravention of section 122(1)(a) of Act 29 of 1989 (Drunken driving) which is, of course, a more serious offence than the one in the present matter.

I would accordingly set aside the conviction and sentence of the accused and remit the matter in terms of section 312 of Act 51 of 1977 for the proper compliance with the provisions of section 112(1(b) of the said Act.

S.A. MAJIEDT
JUDGE

I concur and it is so ordered.

A.J. Du P. BUYS

JUDGE