

REPUBLIC OF SOUTH AFRICA



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG**

Case Number: Review 87/2025
Magistrate's Serial nr 04/25

(1)	REPORTABLE: YES
(2)	OF INTEREST TO OTHER JUDGES: YES
(3)	REVISED: NO
15 December 2025	
DATE	SIGNATURE

In the matter between:

THE STATE

and

MICHAEL PELSER

ACCUSED

JUDGMENT (SPECIAL REVIEW)

PJ DU PLESSIS AJ

- [1] The accused pleaded guilty in the Boksburg Magistrates Court to contravening Section 59(4)(b), read with Sections 59(2) and 89(1) of the National Road Traffic Act 93 of 1996 (NRTA), for exceeding the speed limit. The charge stemmed from an incident where he was according to the tendered and accepted facts test-

driving his red Alfa Romeo motor vehicle after repairs, travelling at 124 km/h in an 80 km/h zone.

- [2] The Acting-Magistrate sentenced the accused to a R1000 fine, did a Section 103 (2) Act 60 of 2000 (The Firearms Control Act) enquiry, making “no order”.
- [3] The Acting-Magistrate submitted this special review explaining that she had realised after passing sentence she failed to “conduct an enquiry” in terms of Section 35 NRTA.
- [4] This entails, failing her statutory imposed duty, resting on any presiding officer convicting a person of a Section 35 (1) (a-c) NRTA offence, to explain to the accused, before sentence, the consequences of the *ex lege* automatic suspension of his driver’s licence or permit, or disqualification from obtaining same¹ for a determined period², and then affording the accused the opportunity to present evidence on oath, relevant to the offence, to determine if the *ex lege* suspension or disqualification is sustained, that the suspension or disqualification shall not take effect, or shall be for such shorter period as the court may consider fit³.
- [5] This Special Review is in terms of Section 304(4) of the Criminal Procedure Act, Act 51 of 1977 (CPA). This section acts as a special safety net for review. It grants a Judge of the High Court the power to intervene and correct proceedings from a Magistrate’s Court that is not automatically reviewable under section 302, CPA. This correcting intervention is done on information brought to the High Court’s attention suggesting the proceedings in the lower court were not in accordance with justice. The Judge of the High Court may then exercise the same review powers as in cases brought, through the ordinary review process.⁴
- [6] Before dealing with the specific facts of this special review, the following:

¹ **Section 35 (4) NRTA** - A court **convicting** any person of an offence referred to in subsection (1) **shall, before imposing sentence**, bring the provisions of subsection (1) or (2), as the case may be, and of subsection (3) to the notice of such person

² Section 35 (1) (i-iii) NRTA

³ Section 35 (3) NRTA

⁴ Section 302 Act 51 of 1977

Our National Road Traffic Act 93 of 1996 is a crucial piece of legislation whose proper application and efficient enforcement can bring about real, tangible change on our roads, directly countering the prevalent lawlessness and daily carnage reported in the media. The failure to enforce the NRTA effectively contributes directly to an immense volume of Road Accident Fund (RAF) claims, which, in turn, results in the constant inundation of the High and lower Courts with civil litigation and the lower courts with mostly criminal litigation.

- [7] This Legislative effort to improve enforcement is supported by the Constitutional Court's confirmation of the validity of the Administrative Adjudication of Road Traffic Offences Act, Act 46 of 1998 (AARTO Act). In the *Organisation Undoing Tax Abuse (OUTA) v Minister of Transport and Others*⁵ judgment. In it, Chief Justice Zondo confirmed that the AARTO Act's core objective is to promote road traffic safety and affirmed the State's comprehensive national strategy to enforce road traffic laws, encourage compliance, and impose penalties through the demerit points system.
- [8] It is therefore incumbent upon all courts to definitively and effectively deal with the offenders that do end up before them in criminal matters under the NRTA. Courts must use the penalties and sanctions available in the legislation not only to effectively punish offenders, but also send strong messages of deterrence to would be offenders. The message must be clear, be a responsible, courteous and law-abiding road user, or suffer the sanction the legislator intends, the possible complete loss of your privilege as a driver to use our country's roads
- [9] There are a few points to be raised by this special review that needs to be pronounced upon and or affirmed from case law.

The first, the failure by the Acting-Magistrate to comply with Section 35 of Act 93 of 1996

The second, the Acting-Magistrate's request that the "sentence" be reviewed and set aside and referred back to her to "hand down the correct sentence".

⁵ Organisation Undoing Tax Abuse v Minister of Transport and Others 2024 (1) SA 21 (CC)

The third, the applicability of Section 103(2) Act 60 of 2000 in a speeding case under the NRTA.

The fourth, various things noticed by this court in the record of proceedings that requires future compliance and or correction.

- [10] This court agrees with two Free State High Court decisions, that first of *S v Swartz*⁶ delivered by Lekale, J, dealing specifically with the fact that a presiding officer has a mandatory duty to conduct an enquiry under Section 35(3) of the National Road Traffic Act (NRTA) when confirming a conviction for a serious speeding offence, even if that conviction arose from an admission of guilt fine.
- [11] The second that of *S v Phuzi*⁷ delivered by Musi AJP (as he then was) on behalf of a full bench dealing with the essential legal elements of the offence of exceeding the general speed limit (Section 59(4) of the NRTA) and the mandatory scope of judicial questioning when an accused pleads guilty under Section 112(1)(b) of the Criminal Procedure Act.
- [12] Section 35 of the National Road Traffic Act 93 of 1996 dictates that upon a conviction for certain specified driving offences (mentioned hereunder), the driver's licence or permit **SHALL** be suspended, (or an unlicensed or unpermitted person is disqualified from obtaining a licence or permit⁸) for a mandatory period.
- [13] These suspension periods, calculated from the date of sentence, are six months for a first offence, five years for a second offence and ten years for a third or subsequent offence.
- [14] This suspension is *ex lege*⁹ the moment a person is convicted, unless a court receiving evidence relevant to the offence, under oath, uses its discretion that the suspension, shall not take effect or order a shorter period of suspension.
- [15] The specific offences applicable to this *ex lege* **MANDATORY** sanction upon conviction is;

⁶ *S v Swartz*⁶ (86/2023) [2013] ZAFSHC 93 (13 June 2013)

⁷ *S v Phuzi* 2019 (2) SACR 648 (FB)

⁸ Section 35 (2) NRTA 93 of 1996

⁹ As a matter of law or a legal consequence

- (a) section 61(1)(a) - Stop and report the accident, (b) - Ascertain the nature and extent of injuries (c) – Render capable assistance, in the case of the death of or serious injury to a person;
- (aA) section 59(4), in the case of a conviction for an offence, where—
 - (i) a speed in excess of 30 kilometres per hour over the prescribed general speed limit in an urban area was recorded; or
 - (ii) a speed in excess of 40 kilometres per hour over the prescribed general speed limit outside an urban area or on a freeway was recorded;
- (b) section 63(1), if the court finds that the offence was committed by driving recklessly;
- (c) section 65(1)¹⁰, (2)¹¹ or (5)¹² NRTA

[16] An offence therefore falling under Section 35 (1) (aA) NRTA – the so-called NAG (No Admission of Guilt) matters, where the speed limit was exceeded by more than 30 km/h in an urban area and 40 km/h outside an urban area or on a highway must have a consequence for the driver as legislated in this provision. The State is not permitted to circumvent or ignore legislation by allowing an admission of guilt fine to be paid with no further legislated sanction for the driver. The only exception being if the admission of guilt fine is paid and the offender in writing confirms knowing not only that it is a conviction, but also that his/her licence is suspended for the period applicable in the section, waiving all rights to present evidence under oath for consideration by a court.

[17] In the present case we are not dealing with an admission of guilt. Mr. Pelzer was convicted of excessive speeding. He exceeded the urban speed limit by over 30 km/h under Section 35(1) (aA)(i) of the NRTA, which automatically triggered a

¹⁰ Driving under the influence of intoxicating liquor or drugs

¹¹ Driving with a higher than allowed concentration of alcohol in blood – [Section 65(2) awaiting substitution upon proclamation of section 7 of the Cannabis for private purposes Act, Act 7 of 2024]

¹² Driving with a higher than allowed concentration of alcohol in any specimen of breath exhaled

mandatory six-month license suspension for a first offender. He is however unaware of this, because the Magistrate failed to comply with her statutory imposed duty in Section 35(4) to explain the automatic suspension, **before sentence** to the accused, and then afford him the opportunity, to present evidence on oath, detailing circumstances relating to the offence that might justify the court judicially exercising its discretion to order that the suspension should not take effect or be imposed for a shorter period.

[18] The core principle and purpose of suspension guiding a court's decision regarding mandatory license suspension (under Section 35(1) and (2)) is that **only persuasive facts presented through evidence under oath relating to the offence** may influence the court to set aside or shorten the prescribed suspension period.¹³ The requirement for sworn evidence was specifically introduced by legislation.¹⁴ Such evidence must be related to the offence and this have been pronounced upon in South African Courts already, seemingly unnoticed.

[19] On the matter of sworn evidence Tshiki J in *S v Botha*¹⁵ held that the provisions of Section 35(1) and (3) of the National Road Traffic Act are peremptory, meaning a court can only deviate from the mandatory licence suspension by strictly following the procedure set out in Section 35(3). Specifically, the court held that **a presiding officer is legally prohibited from ordering that the mandatory suspension of a driving licence shall not take effect unless the accused has presented evidence under oath**¹⁶ (or the State has presented such evidence) that satisfies the court that circumstances relating to the offence exist which do not justify the suspension. Consequently, if an accused, having been warned of the provisions, elects not to testify under oath, the court has no discretion to avoid the suspension and must impose the minimum period of suspension prescribed by Section 35(1)(i-iii).

[20] She further held that while an accused retains their constitutional right to silence and cannot be compelled to testify, the court's discretion to avoid or shorten this

¹³ *S v Swartz*¹³ (86/2023) [2013] ZAFSHC 93 (13 June 2013) Paragraph 8

¹⁴ Section 12(b) Act 64 of 2008

¹⁵ *S v Botha* 2013 (1) SACR 353 (ECP)

¹⁶ *S v Botha* 2013 (1) SACR 353 (ECP) Paragraph 9 & 12

suspension is strictly conditional upon compliance with Section 35(3). Therefore, if the accused, having been duly warned of the legal consequences, elects not to present evidence under oath to satisfy the court that circumstances relating to the offence justify deviating from the suspension, the court has no discretion to avoid the suspension and is legally bound to impose the minimum period prescribed by Section 35(1) (i-iii).¹⁷ I agree.

[21] What does “evidence under oath” entail. Can it be just an affidavit or should it be presented viva voce?

In the case of *S v Botha supra*, it was held in paragraph 7

“In my view, the wording of section 35(3) of the Act envisages a hearing in compliance with the constitutional provisions, before the convicted person’s right to keep or obtain his or her licence can be taken away by operation of law.”

In the matter of *S v Ngqabuko*¹⁸ Roberson J held in paragraph 6

“... It is logical that such an order may only be made after the presentation of evidence under oath (or affirmation), which is by its nature supposed to be credible, and which may also be tested.”

To my mind, keeping in mind the right to remain silent, the fact that a hearing needs to be conducted and the credibility of evidence tested, it would require *viva voce* evidence to be presented as it is the best type of evidence to present and will carry the most weight.¹⁹ Affidavits cannot be cross-examined and will not be sustained, if it is in conflict with *viva voce* presented evidence which the State is encouraged to present, especially in instances where the circumstances related to the offence needs to be determined by the court in order to rule on the licence suspension.

[22] In the reported matter of *Greeff v S*²⁰ Rogers J (Saldanha J concurring) held that, the phrase "**circumstances relating to the offence**" is a deliberate and narrow

¹⁷ *S v Botha* 2013 (1) SACR 353 (ECP) Paragraph 10 & 11

¹⁸ *S v Ngqabuko* [2012] JOL 28816 [ECG]

¹⁹ *S v Pienaar* 1992 (1) SACR 178 (W)

²⁰ *Greeff v S* 2014 (1) SACR 74 (WCC)

limitation intended by the legislature, which excludes consideration of all personal circumstances of the accused, such as the need for the licence for work or family commitments, or the fact that the accused is a first offender. The court further established that to justify deviating from the mandatory licence suspension, the presiding officer must rely solely on sworn evidence concerning the objective circumstances of the offence itself.²¹ I agree.

- [23] Fundamentally, the suspension or cancellation of a driver's license is not a mere administrative action. It is a significant part of the sentence which falls within the discretion of the Judicial Officer and its prime objective is to protect the public good by removing dangerous drivers from the roads for a period of time. Even though it is punitive in nature the design seems to be reformatory and courts considering whether to impose the full mandatory suspension, must take as point of departure that the license should be suspended for the prescribed period, and should be reluctant to order non-suspension.²²
- [24] This court affirms the reasoning in *S v Lourens*²³ and *Muller v S*²⁴ where it was held that a decision to cancel or suspend a driving licence is integral to the determination of an appropriate sentence, as it constitutes a significant part of the punishment imposed. Accordingly, the Section 35 enquiry is not a "post-sentence procedure" but an integral component that must be dealt with by the presiding officer before sentence is passed.
- [25] The judicial enquiry under Section 35(3) mandates that courts guide their discretion by primarily focusing on the "circumstances relating to the offence," as established by evidence under oath. These critical factors, which are not a

²¹ Greeff v S 2014 (1) SACR 74 (WCC) Paragraph 8-14

²² *S v Wilson 2001 (1) SACR 253 (T) at 259 f – g; S v Tokhwe [2017] ZAWCHC 26 (22 March 2017) paragraph 14* "My own opinion is that in the circumstances of the present case the automatic suspension should not have been uplifted, even if the magistrate had the power to do so. Automatic suspension in terms of s 35(1) is intended as a deterrent. It will often be a more effective deterrent than a conventional criminal sentence. In the present case, the accused's lack of financial means coupled with the inappropriateness of direct imprisonment made suspension of his licence for six months (or disqualification from applying for a new licence for six months) entirely apposite."

²³ *S v Lourens 2016 (2) SACR 624 (WCC) Paragraph 7 – footnote 1*

²⁴ *Muller v S 2019 (1) SACR 242 (WCC) Paragraph 14 and 15*

numerus clausus, include the accused's specific conduct, the level of danger posed to the public, the traffic and road conditions at the time, details of any accident and the accused's role therein, and the accused's overall driving record. While the court must be made aware of the accused's personal circumstances, such as needing the licence for employment, the legislation requires that the decisive weight for setting aside or shortening the suspension must be attributed to the factors intrinsic to the offence itself.

- [26] The suspension of a driving licence is considered an integral part of the sentence, and the legislation strongly places the severity of the offence (Section 35(1) offences) at the core of the enquiry, with the manifest purpose of protecting the public from dangerous road users. Consequently, personal hardship factors—such as the accused needing their licence for work purposes—are viewed as minor considerations and are typically insufficient by themselves to satisfy the court that the circumstances relating to the offence do not justify the suspension, as this would defeat the legislature's intent to impose an automatic and serious sanction.
- [27] In summary the National Road Traffic Act, establishes that the mandatory licence suspension for serious offences can only be avoided or shortened by sworn evidence pertaining exclusively to "circumstances relating to the offence," which the legislature intended as a narrow, objective limitation. This ratio definitively excludes all subjective personal factors of the accused, such as the need for the licence for work, family commitments, or being a first offender, as these are insufficient by themselves to justify non-suspension and would defeat the NRTA's purpose of protecting the public. Courts must therefore rely solely on the unchallenged, sworn evidence of the circumstances of the offence and cannot rely on external, non-adduced information to justify the suspension.
- [28] Presiding officers must also consider **Section 34** of the NRTA, which grants the court discretionary power "may" (in contrast to the peremptory nature of Section 35's "shall") when a person is convicted of, any driving offence under the NRTA or common law. This discretion allows the court, in addition to imposing a sentence, to suspend the offender's existing driving licence for a period it deems fit, or to cancel the licence entirely. Furthermore, if the convicted person is not

currently a licence holder, Section 34 empowers the court to declare them disqualified from obtaining a licence for an indefinite or specified period.

[29] These Section 34 orders are recorded by the court clerk, either by endorsing an identity document containing the license or by retaining and dealing with a separate card license in the prescribed manner.

[30] Presiding officers must note Section 33 NRTA which indicates that any person facing a charge under the NRTA related to driving a motor vehicle or failing to stop after or report an accident, is legally required to produce every valid license and permit they hold, or an official duplicate if the original is unavailable, to the court at the time the charge is heard, and they must not, without reasonable excuse, refuse or fail to produce these documents upon request.

[31] The Magistrates failure in this matter to follow this prescriptive legal procedure at conviction, before sentence, in Section 35 related to the offence(s)²⁵ the explanation of licence suspension before sentence²⁶ and affording the opportunity for the accused to present evidence on oath²⁷ is considered a failure of justice and requires this court's intervention, as it has a negative consequence for the accused he was never made aware of.

[32] The second point needing attention is the request that the "sentence" be reviewed and set aside and referred back to the Acting Magistrate to "hand down the correct sentence".

[33] This was a guilty plea in which the Magistrate indicated in her memorandum that "the plea was accepted by the court after satisfying itself with all the elements of the offence being admitted and the accused was accordingly found guilty as charged"

[34] It is clear from the record of this matter that this plea is exactly what was referred to, and the reason for the *S v Puzi* matter referred to above in paragraph 11. All

²⁵ Section 35(1)

²⁶ Section 35 (4)

²⁷ Section 35 (2)

Magistrates will do well in reading this matter and understanding exactly why it was delivered by a full court to be binding authority in the Free State.

- [35] A succinct summary of the ratio in *Puzi* is that the offence of exceeding the general speed limit (Section 59(4) of the NRTA) requires fault (*mens rea*) in the form of either intention (*dolus*) or negligence (*culpa*) and does not create strict liability. It establishes a mandatory, two-part procedural requirement for a valid guilty plea under Section 112(1)(b) of the Criminal Procedure Act: the magistrate must not only confirm the recorded speed in questioning, but must also explicitly ascertain whether the accused admits both the proper functioning of the speed measuring device and the competence of the traffic officer to set up and operate it, because the court cannot take judicial notice of these essential facts necessary for proving the *actus reus* of the offence. Failure to obtain these specific admissions renders the conviction procedurally deficient and liable to be set aside.
- [36] Notable from the record of these proceedings is the accused's attempt in plea to divert the courts attention from his *mens rea* and one of the exact reasons *Puzi* was decided. In his guilty plea he states: "I lost focus of the speed at which I was driving as I was paying more attention to the suspension ... I only realised that I actually exceeded the speed limit when I was stopped by the traffic police ..."
- [37] Very noticeable from the guilty plea recorded is the failure of the accused to admit both the proper functioning of the speed measuring device and the competence of the traffic officer to set up and operate it. I agree with *Puzi* that this is a requirement to be met either in State evidence, if disputed where a person plead not guilty; or in admission by an accused tendering a guilty plea, on a speeding offence.
- [38] As a result, this court is not convinced that the conviction should be sustained as it goes against reported and binding case law. All courts are bound by the doctrine of *stare decisis*. See in this regard *S v Chivabo*²⁸ specifically paragraphs 11 and 12 where Petersen ADJP (as he then was) gives a very accurate and

²⁸ *S v Chivabo* (HC 14/2024) [2024] ZANWHC 156 (27 June 2024)

comprehensive summary of exactly what the doctrine entails, with which I fully agree.

[39] The third point needing attention is the applicability of Section 103(2) Act 60 of 2000 (The Firearms Control Act) in a speeding case under the NRTA. Section 103 (2) reads –

(a) A court which convicts a person of a crime or offence referred to in Schedule 2 and which is not a crime or offence contemplated in subsection (1), **must enquire and determine** whether that person is unfit to possess a firearm.

(b) If a court, acting in terms of paragraph (a), determines that a person is unfit to possess a firearm, it **must make a declaration to that effect**.

[40] The Magistrate clearly did not familiarise herself with what is contained in Schedule 2 of Act 60 of 2000. This schedule comprises a comprehensive list of serious offences against the State and individuals, including High Treason and Sedition; crimes involving death or damage such as Culpable homicide and Malicious damage to property; the dishonesty-related offence of Extortion; and the preparatory crime of Entering any premises with the intent to commit an offence under the common law or a statutory provision. It also incorporates specific statutory offences where the accused was not sentenced to direct imprisonment (meaning they received a lesser punishment such as a fine or a wholly suspended sentence): these include any crime or offence in terms of the Domestic Violence Act, 1998; crimes involving violence, sexual abuse or dishonesty; and offences in terms of the Explosives Act, 1956. Finally, the schedule lists a specific contravention: section 18(1)(a) of the Protection from Harassment Act, 2011. Clearly none of these are applicable to a speeding offence and the application thereof by the Magistrate was misdirected.

[41] To compound this misdirection ancillary to the sentence, it is recorded “In terms of section 103 (2) Act 60 of 2000 – no order is made” This goes exactly against what section 103 (2) (a) and (b) states that a court must **enquire and determine** and then make a **declaration**. If a Magistrate is enquiring to decide on the fitness or not of a person to possess a firearm under sub-section (2) it cannot be that “no order is made”, it should be a declaration like “The accused is **declared** fit or

unfit to possess a firearm” under sub-section (2), depending on what determination is made by the Magistrate.

[42] Under sub-section (1) of section 103 the words “no order is made” is appropriate as it will then imply the *ex lege* suspension continues unabated. This as Section 103 (1) of the Firearms Control Act is very much like section 35 (1) of the NRTA as it states “Unless the court determines otherwise, a person becomes unfit to possess a firearm if convicted of ...” (summarised)

(a) Unlawful possession of a firearm or ammunition.

(b) Any crime involving the unlawful use or handling of a firearm.

(c) Offence regarding the failure to store firearms or ammunition correctly.

(d) Offence involving the negligent handling or loss of a firearm.

(e) Offence involving the handling of a firearm while under the influence of an intoxicating or narcotic substance.

(f) Any other crime in the commission of which a firearm was used.

(g) Any offence involving violence, sexual abuse, or dishonesty, sentenced to imprisonment without the option of a fine.

(h) Any other offence under the Act sentenced to imprisonment without the option of a fine.

(i) Any offence involving physical or sexual abuse in a domestic relationship.

(j) ***Any offence involving the abuse of alcohol or drugs.***

(k) Any offence involving dealing in drugs.

(l) Any offence in terms of the Domestic Violence Act, sentenced to imprisonment without the option of a fine.

(m) Any offence in terms of the Explosives Act, sentenced to imprisonment without the option of a fine.

(n) Any offence involving sabotage, terrorism, public violence, arson, intimidation, rape, kidnapping, or child stealing.

(o) Any conspiracy, incitement, or attempt to commit an offence referred to in (a) to (n).

[43] There is a whole lot of conflicting authority on whether Section 103 (1) or 103 (2) Act 60 of 2000 will find application under the NRTA section 35 (1) offences especially those falling under Section 103 (1) (j) - "*any offence involving the **abuse of alcohol or drugs***"

[44] I find that neither Sections 103 (1) or (2) of Act 60 of 2000 will find any application where speeding offence convictions under section 59 (4) NRTA are pronounced. The Magistrate therefore conducting this enquiry was misdirecting herself.

[45] After having analysed various decisions it is clear that the application of the Firearms Control Act 60 of 2000 (FCA) Section 103 to offences under the National Road Traffic Act 93 of 1996 (NRTA) is a matter of legal intersection governed by the **nature of the criminal conduct** rather than a direct statutory listing.

[46] The core principle is that the FCA seeks to identify individuals demonstrating a lack of responsibility or moral fibre, the opposite of a "fit and proper person," and it achieves this through two distinct mechanisms. The mandatory unfitness provision in Section 103(1) applies when the crime is classified by its inherent nature, compelling the court to declare the accused unfit to possess a firearm *ex lege*, unless it expressly determines otherwise. In contrast, Section 103(2) applies to other serious offences and merely compels the court to hold a mandatory judicial enquiry to make a declared, determination on fitness or unfitness.

[47] The most direct link between the NRTA and the mandatory unfitness provision (103 (1)) is established under Section 103(1)(j), which addresses "*any offence involving the abuse of alcohol or drugs.*" A conviction for Drunken Driving - Section 65 (1) of the NRTA falls squarely into this category. The High Court in *S v*

Stemmet,²⁹ confirmed that the behaviour inherent in a drunken driving offence triggers the automatic unfitness provision of s 103(1)(j), rejecting any attempt to narrow the definition of "abuse of alcohol." This finding was later reiterated in *S v Khumalo*,³⁰ which stressed that magistrates must actively apply their minds to the mandatory nature of this section. I agree, because using so much alcohol that your driving capabilities are impaired, which is a requirement for a conviction under section 65 (1) clearly demonstrates abuse and not just use of alcohol.

- [48] I find that conduct reflecting extreme irresponsibility or moral turpitude, such as *dishonesty* (e.g., in a serious hit-and-run where the driver flees, don't report, ascertain injuries or render assistance and the person dies),³¹ can be classified under Section 103(1)(g) if direct imprisonment is imposed, confirming that the FCA's reach extends to serious breaches of public trust, always fact depending.
- [49] The other key application mechanism is found in Section 103(2)(a), which is engaged when the NRTA offence results in a crime listed in Schedule 2 of the FCA. If a negligent driving incident leads to a fatal accident, the accused will be convicted of Culpable Homicide, a Schedule 2 offence. The appeal case of *McGeer v S*,³² confirms that upon such a conviction, the court is compelled to conduct a mandatory judicial enquiry to determine the person's fitness to possess a firearm. Unlike s 103(1), unfitness is not *automatic*; rather, the court must weigh the facts, including the degree of negligence or recklessness, to make a considered finding. The *McGeer* decision therefore confirms that even common law or Schedule 2 crimes arising from gross road traffic negligence are viewed by the FCA as serious breaches of public safety that warrant a formal review of the accused's suitability to own a firearm.
- [50] I conclude by holding expressly that the facts of the matter are everything because they determine the applicability of Section 103 by classifying the criminal behaviour into a specific category under either sub-section (1) or (2). A conviction under the NRTA triggers the FCA not because the NRTA is named, but because the underlying criminal conduct, such as alcohol abuse (s 103(1)(j))

²⁹ *S v Stemmet*(A502/2008) [2009] ZAWCHC 118 (13 February 2009)

³⁰ *S v Khumalo* (138/2011) [2011] ZAFSHC 80 (26 May 2011)

³¹ Falling under Section 35 (1) (a) which is a contravention of Section 61 (1) (a-c) NRTA

³² *McGeer v S* (A151/2018) [2019] ZAGPJHC 34 (21 February 2019)

or conduct leading to a Schedule 2 crime like Culpable Homicide (s 103(2)(a)), demonstrates an unsuitability to possess a firearm, in the public interest.

[51] This comprehensive approach will ensure that the Firearms Control Act's purpose of enhancing public safety is achieved by targeting irresponsible and dangerous behaviour, occurring on the road or elsewhere, thereby making the fitness determination dependent on the specific criminal facts proven in a case. As example a person therefore having two beers after work with colleagues and is breathalysed in a roadblock on his way home under contravention of Section 65 (5) and is just over the legal limit, used alcohol, but clearly didn't abuse it; Whilst a person who is stopped in a roadblock, having been drinking all night for whatever reason, and blows three times the legal limit clearly shows that there was an abuse of alcohol. The first example may lead a Magistrate to rule 103 (1) (j) is not applicable (as there was use not abuse), but in the second that it is applicable (as there was abuse). This will however require from presiding officers to indicate on the proven facts of their matter how the facts link to the prohibited provisions under subsection 1 or 2 explaining their finding of why the FCA is, or is not, applicable.

[52] The fourth point raised is various things noticed by this court in the record of proceedings that requires future compliance and or correction. The first is that the J4 form used by the Boksburg Magistrates Office indicates the matter is sent for review by the "WITWATERSRAND LOCAL DIVISION OF THE SUPREME COURT OF SOUTH AFRICA" This is totally wrong and requires correction for obvious reasons.

[53] The J4 form used in this matter is also not the prescribed form. Due to this, this court does not know if the accused paid the fine of R1000 in this matter or not, apart from the legal representative giving such an indication when the Magistrate ordered the accused in custody until the fine is paid.³³

[54] On the issue of the imposed fine of R1000, I am of the opinion, especially on what was held in paragraph 8 supra, that looking at the penalty clause for this offence in Section 89 (3) NRTA which is "a fine or imprisonment for a period not exceeding

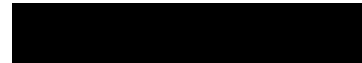
³³ Record page 18 proceedings of 11 September 2025

3 years” that the imposed fine is extremely lenient especially as the ex lege sanction of licence suspension was not even applied. Magistrates must realise that drinking and driving, as well as excessively speeding kills. That is why these offences were “elevated” by the legislator to be covered by Section 35. This type of excessive speeding must not be viewed as a “normal” speeding offence, but one that requires appropriate sanction – of course within applicable sentencing norms.

[55] In the result I make the following order:

The conviction, sentence and ancillary order made is set aside

The matter is referred back to the Boksburg Magistrates court for a trial *de novo* before another Magistrate



PJ DU PLESSIS
ACTING JUDGE OF THE HIGH COURT
JOHANNESBURG

This judgment was handed down electronically by circulation to the parties’ representatives via e-mail, by being uploaded to CaseLines and by release to SAFLII. The date and time for hand-down is deemed to be 10h00 on 15 December 2025

