



**IN THE HIGH COURT OF SOUTH AFRICA
KWAZULU-NATAL DIVISION, PIETERMARITZBURG**

REVIEW NO: 2026-038328

MAGISTRATE'S SERIAL NO. RC 38/2026-A393-2025

In the matter between:

NTOKOZO BRIAN KHUMALO

ACCUSED

and

THE STATE

ORDER

The following order is made:

1. The proceedings of the court a quo are set aside.
2. The matter is remitted to the District Court, Vryheid for a guilty plea to start de novo before another presiding officer.

SPECIAL REVIEW

Mathenjwa J (Zwane AJ concurring)

[1] The Regional Magistrate, Vryheid referred this matter to this court as a special review in terms of s 304 of the Criminal Procedure Act 51 of 1977 (CPA).

[2] The accused was charged with one count of theft of two old spice deodorants valued at R149.98. He appeared at the Vryheid District Court, where the magistrate advised him of his right to legal representation. The accused informed the court that he elected to conduct his own defence. The magistrate then informed the accused that in terms of s 60(11B) of CPA the accused was compelled to disclose his previous convictions and the matters pending against him. The accused informed the court that he had previous convictions for theft, although he did not know how many previous convictions he had. The magistrate then asked the accused what he intended to plead to the charge against him. The accused responded by saying that he intended to plead guilty. Thereafter the magistrate made the following remarks:¹

‘Why is everyone stealing this old spice deodorant? What is happening with this old spice, what is so important? Because I see many people are stealing this perfume, this they steal two old spice deodorant, valued at R140, you are not the first one. Okay. Old spice. The date for the SAP 69 as well as the guilty plea?’

[3] The matter was postponed for the guilty plea. When the matter resumed for the accused to plead to the charge the prosecutor informed the court that she was in possession of the accused’s SAP 69, which were many and like the bible. I assume that by referring to the previous convictions as like “the bible” the prosecutor meant that the SAP 69 was voluminous. The matter was further postponed for the accused to engage the services of a Legal Aid attorney. On resumption the accused was represented by an attorney from Legal Aid. On that date the magistrate again made remarks that he knew that the accused had previous convictions, he obtained knowledge about that because he was a sangoma. The matter was then adjourned for the accused’s legal representative to receive copies of the docket.

[4] On resumption the accused’s SAP 69 was read into the record. However, there is no record of the accused having pleaded to the charge. The accused admitted his previous convictions but refused to sign them. The accused’s legal representative sought and was granted permission to consult the accused. Thereafter the record reflects the following conversation between the accused and the magistrate:²

¹ Record, para 10, page 16.

² Ibid, para 10, page 38.

'Court: ...Please you do not talk like that to an attorney. This is a court official, she is not- she is not your- your- I do not even know what you are- you think she is. You do not talk like that to attorneys. She is...

Accused: I am sorry.

Court: learned, she has studied. For years for this degree. You do not treat her like that, not in my presence.

Accused: I am sorry, your warship.'

[5] On the return date the prosecutor asked the court to adjourn the matter for a regional court date. Subsequently the matter was adjourned to 5 January 2026, for the accused to appear in the regional court for sentencing. When the accused appeared in the regional court, the regional magistrate observed that there was no plea tendered by the accused and no plea formed part of the record. The regional magistrate then referred the matter to this court for special review, and the accused was released on bail.

[6] This review raises the following issues which require consideration by this court:

- (a) the disclosure of the accused's previous convictions before the accused has been convicted of the offence; and
- (b) summary conviction of the accused in terms of 112(1)(a) of the CPA.

[7] First, I address the issue of the magistrate's questioning of the accused about his previous convictions before he entered a plea and his subsequent conviction of the accused. According to s 89 of CPA, revealing an accused's previous convictions at the pleading stage is prohibited, unless such convictions are an essential element of the offence with which an accused is charged. Moreover, s 197 restricts inquiries directed at an accused who testifies in criminal proceedings, preventing questions that may indicate whether he has been convicted or charged with any offence other than the one with which he is currently being charged. Additionally, under s 271, previous convictions can only be introduced in court after an accused has been convicted but before sentencing takes place. It is acknowledged that the accused's previous convictions are not essential element of the charge of theft that he faced; therefore, it was against the provisions of the CPA to compel him to disclose these convictions prior to his conviction.

[8] The magistrate misdirected herself by relying on 60(11B) of the CPA as authority for disclosure of the accused's previous convictions at the plea stage. It is clear from the provisions of s 60(11B) (a)(i) which provides that "in bail proceedings, the accused, or his or her legal adviser, is compelled to inform the court whether-the accused has previously been convicted of any offence"; that the provision is only applicable to bail applications. The prosecutor may disclose the accused's previous conviction when the accused applies for bail during trial,³ however the magistrate in this matter was not dealing with a bail application. The record shows that immediately after the magistrate had questioned the accused about his previous convictions, she stated the following:⁴

'Court: Okay. Mr Khumalo, since you have informed the court that you have many previous convictions that you do not remember how many, the Court will require to have then SAP 69s in order to proceed with the guilty plea. The matter is postponed to 23 August 2025 for guilty plea as well as SAP 69s, you are in custody. So, were you intending to apply for bail? Accused: No, your worship, since I do not have money.'

[9] The record also indicates that at the time the accused was asked about and disclosed his previous convictions in court he was not applying for bail. The accused's first appearance in court is recorded in a handwritten manuscript where it is recorded that, rights to legal representation were explained to the accused and the accused was appraised of s 60(11B) of the CPA. The accused stated that he had many previous convictions of theft and that he abandons his right to bail.⁵ Thus, the issue before the magistrate was not bail.

[10] It is trite that evidence of previous convictions in the trial was legally irrelevant because of the highly prejudicial effect it had on the mind of the trier of fact,⁶ In the instant case, the magistrate formed the view that the matter should be referred to the regional court, since by then she was aware that the accused had many previous convictions.

[11] I now deal with the accused's plea. Section 112 of CPA provides that:

³ *S v Hlati* 2000 (2) SACR 325 (N) (*Hlati*) at 329G.

⁴ Record, para 20 page 16.

⁵ *Ibid* page 11.

⁶ *R v Dominic* 1913 TPD 582

‘(1) Where an accused at a summary trial in any court pleads guilty to the offence charged, or to an offence of which he may be convicted on the charge and the prosecutor accepts that plea-

(a) the presiding judge, regional magistrate or magistrate may, if he or she is of the opinion that the offence does not merit punishment of imprisonment or any other form of detention without the option of a fine or of a fine exceeding the amount determined by the Minister from time to time by notice in the *Gazette*, convict the accused in respect of the offence to which he or she has pleaded guilty on his or her plea of guilty only and-

(i) impose any competent sentence, other than imprisonment or any other form of detention without the option of a fine or a fine exceeding the amount determined by the Minister from time to time by notice in the *Gazette*; or

(ii) deal with the accused otherwise in accordance with law.

(b) the presiding judge, regional magistrate or magistrate shall, if he or she is of the opinion that the offence merits punishment of imprisonment or any other form of detention without the option of a fine or of a fine exceeding the amount determined by the Minister from time to time by notice in the *Gazette*, or if requested thereto by the prosecutor, question the accused with reference to the alleged facts of the case in order to ascertain whether he or she admits the allegations in the charge to which he or she has pleaded guilty, and may, if satisfied that the accused is guilty of the offence to which he or she has pleaded guilty, convict the accused on his or her plea of guilty of that offence and impose any competent sentence.’

[12] It is trite that s 112(1)(a) is applied when the court is of the opinion that the accused has committed a minor offence, for which the penalty does not mandate imprisonment or a fine exceeding R5 000, being the amount currently set by the Minister. This provision allows for the summary conviction and sentencing of individuals charged with petty crimes without considering any previous convictions. In this particular case, the accused was charged with theft; both the magistrate and prosecutor knew that he had numerous previous convictions, which the prosecutor described as extensive, likening them to a “bible”, even before the accused entered his plea. Given that the court intended to take into account the accused’s previous convictions, the charge against the accused could no longer be regarded as minor. Consequently, it became necessary for the court to apply s 112(1)(b), requiring the magistrate to question the accused about his guilty plea in order to ensure that all elements establishing the offence had been satisfied.⁷ It was therefore irregular for

⁷ *S v Nyanga* 2004 (1) SACR 198 (C) para 7.

the magistrate to permit the accused to enter a plea under s 112(1)(a) without first confirming his guilty plea through questioning, especially considering that he was facing severe punishment.

[13] This then brings me to the remarks made by the magistrate to the accused during the hearing. The responsibility of officers of the court to maintain integrity and honesty within the courtroom extends beyond just legal representatives; presiding officers, as guardians of justice, have a primary obligation to uphold the decorum of the court constantly. This involves overseeing and ensuring that all litigants and participants in the court receive fair and impartial treatment. By interacting respectfully with all individuals involved in court proceedings and refraining from using inappropriate or disparaging language, presiding officers can significantly contribute to maintaining the dignity of the courtroom. Therefore, the remarks made by the magistrate to the accused during the hearing are unfortunate.

Order

[14] In the premises the following order is made:

1. The proceedings of the court a quo are set aside.
2. The matter is remitted to the District Court, Vryheid for a guilty plea to start de novo before another presiding officer.

Mathenjwa J

I agree:

Zwane AJ