



**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)**

JUDGMENT

Reportable/Not Reportable

High Court Ref: 142/26

Magistrate Serial No. Review No 40/2026

Magistrate's Case No: 13/608/2025

In the matter between:

THE STATE

v

JIMMY POOL

ACCUSED

Neutral citation: *S v Pool* (Case No. 142/26) [2026] ZAWCHC ... (11 September 2026)

Coram: LEKHULENI *et* NZIWENI JJ

ORDER

1. The conviction and sentence of the accused for possession of suspected stolen property are hereby set aside.

2. In terms of s 312 of the CPA, the matter is remitted to the same magistrate to allow the accused to plead afresh, so that the accused can be sufficiently questioned.
3. If the accused still pleads guilty and is convicted, the court should, in imposing sentence, consider the time already spent by the accused in custody serving sentence.
4. The ancillary order in terms of s 103 of the Firearms Control Act 60 of 2000 is hereby set aside.
5. The State should make sure that the matter is dealt with expeditiously.

JUDGMENT

Lekhuleni J *et* Nziweni J:

Introduction

[1] This matter came before this Court as an automatic review in terms of s 302 of the Criminal Procedure Act 51 of 1977 ("the CPA"). The accused was convicted by the Magistrate, Cape Town, on 21 April 2026 for a contravention of s 36 of the General Law Amendment Act 62 of 1955 (possession of suspected stolen property). The State alleged that on 5 June 2025, and at or near Chappini and Castle Street in the District of Cape Town, the accused was found in the unlawful possession of goods other than stock or produce as defined in s 1 of the Stock Theft Act 57 of 1959, being a brown leather bag; 2 pairs of trousers, shirts and a pair of socks to the value of R8700.

[2] The accused's rights to legal representation were fully explained to him, and legal aid subsequently came on record for the accused. However, on 21 April

2026, the date of trial, the court was informed that the defence's mandate had been terminated. The record does not make clear why the mandate was terminated. However, after the accused's rights to legal representation were explained to him, he elected to conduct his own defence. The matter then proceeded, the charges were put to him, and he pleaded guilty. The court thereupon invoked the provisions of s 112(1)(b) of the CPA. After questioning the accused, the court accordingly convicted the accused on a charge of possession of suspected stolen property. The accused was subsequently sentenced to twenty-four months' imprisonment. Additionally, in terms of s 103(1) of the Firearms Control Act 60 of 2000, the court determined that the accused is unfit to possess a firearm.

The plea Proceedings before the trial court

[3] In light of our concerns about the conviction of the accused on the relevant charge, based on his admissions, we raised a query and asked the magistrate whether the accused admitted the elements of the offence charged. Our concern was premised on the admissions that the accused made during questioning in terms of s 112(1)(b) of the CPA. We were also concerned with the sentence imposed by the trial court. For the sake of completeness, we reproduce verbatim the relevant part of the alleged admissions the accused made during the court's questioning in terms of s 112(1)(b) of the CPA.

“ Q: Do you pleading (sic) guilty freely, voluntarily and without undue influence?

A: Own free will.

Court: In your own words, tell me what happened:

A: I was on my way the shop (sic), I saw the shop was closed, I made a U turn as he return the Chapini Street, on the way I came across an individual. I wanted to know why is he with these, thing he said. He is selling these item and bought these bread and warm sausages, I paid him +-R80 something he gave me the thing, I went with the luggage, they asked me where I got

this stuff, more securities came, they took me to the building that was broken into, they said, if there is no complainant, I will get these, there was a person who came and said it is his property. I know it was wrong. I thought this might have been stolen, went ahead and pay for these, paid 85 or 86.”

[4] After the questioning, the state accepted the accused’s plea, and the trial court convicted the accused as charged and accordingly sentenced him to twenty-four months' imprisonment.

The query to the magistrate in terms of s 304(2)(a) of the CPA and her response:

[5] After perusing the record, we addressed a query to the magistrate to address the following:

1. In his response to the court’s questions, the accused admitted possession of bread and warm sausage. These items don't form part of the charge sheet.
2. Did the accused admit to possession of the items stated in the charge sheet? (clothing and bag)
3. Is the sentence of two years’ imprisonment not harsh in the circumstances?

[6] The trial magistrate responded promptly to the questions we raised. Again, for the sake of completeness, we will set out verbatim the magistrate’s response in relation to the conviction of the accused.

“2. In response to the honourable reviewing judge’s query point 1:

The accused said he was on his way to the shop when he came across an individual who had a bag with items, he wanted to know from this person why he is there with these things. He was on his way to buy bread and warm sausage when he came across this unknown person and the shop was closed. (His story was not chronological) had to be written as such.

2.1 He said the unknown person was selling these things, he said clothing at some stage and while he was in possession of the luggage, not individually identified, but referred to as a bag with clothes.

3. He said he paid R85 or R86 for the bag (thing). He was stopped by the Law Enforcement Security who asked me where I took the stuff, more securities came they took me to a building that was broken into and said if there is no complainant, I will get these items back. There was a person who came and said it is his property.

4. I confirm that it was an irregularity not to ask him each and every item as laid out in the charge sheet. As the presiding officer in the above matter, I wish to apologize to this honorable reviewing judge for the oversight.

5. In the event that the honourable reviewing judge finds that the above-mentioned irregularity can be condoned, then I humbly request the honourable reviewing judge to do so. I will be bound by any decision made by the honourable reviewing judge...”

[7] The remainder of the magistrate’s response deals with the appropriateness of the sentence that she imposed. Given our view on conviction, we deem it unnecessary to reproduce the portion concerning to the sentence.

Discussion

[8] A plea of guilty is no mere formality; it is a profound step that carries significant constitutional and legal consequences. Section 112 of the CPA regulates the procedure in terms of which a guilty plea is made and considered by courts. It is trite that s 112(1) regulates the conviction and sentence of an accused on a verbal plea of guilty.¹ From the discussion above, it is evident that the court did not, upon questioning the accused, establish whether the accused indeed admitted all the elements of the charge.

¹ *Director Of Public Prosecutions, Gauteng Division, Pretoria v Hamisi* 2018 (2) SACR 230 (SCA) Para 7.

[9] Underlying any criminal charge is the prosecution's onus to prove all elements of an offence beyond a reasonable doubt; a burden that remains on the State throughout. When an accused enters a guilty plea, this onus dictates that a court cannot convict blindly. Instead, the court must question the accused to satisfy itself that every essential element has been fully admitted. The court's mandatory questioning acts as a safeguard to ensure that the State's burden is structurally satisfied by extracting clear, unambiguous admissions from the accused for every single element of the offence. Should the accused's answers reveal a potential defence, the State's burden is not discharged, and the matter must proceed to trial where the State must lead evidence to prove its case.

[10] Close and regular adherence to these demands bears heavily on the legitimacy of our plea system. This is precisely why a progressive and verbatim mechanical recording of plea proceedings is critical. As this Court strictly observed in *S v Kotze*; *S v Ntulo*,² plea proceedings are a critical stage in the criminal justice process, necessitating a complete mechanical record rather than an unreliable checklist. It is regrettable, however, that the High Court Divisions are repeatedly inundated with reviews stemming from a pervasive failure by lower courts to meet the basic standards of inquiry required by s 112(1)(b).

[11] A review Judge must be capable of inspecting a spontaneous, word-for-word account of the inquiry to ensure that the magistrate did not simply treat the section as an optional checklist. The questioning of the accused was perfunctory and conducted in a cursory manner. It is not clear from the record where the accused was found, nor does the questioning establish with any specificity where the offence was allegedly committed. It is equally unclear what was found in the accused's possession.

² 2023 (1) SACR 426 (WCC).

[12] The accused referred to having bought bread and sausage from a person he met on the road, yet these items do not appear on the charge-sheet. He also mentioned “luggage”, but the record does not disclose what this luggage comprised or whether it related to the items he was allegedly found in possession of, as stated in the charge-sheet. The accused stated that he was asked where he had obtained the said items, but it is not known who posed these questions before “more securities” arrived. The accused was not asked what he intended to do with the items, nor was he asked what explanation he gave to the security personnel when they confronted him.

[13] The record also does not make clear where the accused encountered the individuals who confronted him about the alleged luggage. The accused stated that he was taken to a building that had been broken into, yet the record does not disclose where this building was situated. The value of the goods allegedly found in his possession was likewise not canvassed with him. The record does not reveal how or where the accused was arrested, nor whether the arrest occurred immediately after he was allegedly found in possession of the goods or only at some later stage.

[14] As established in the locus classicus *S v Mkhize*,³ and firmly reinforced recently in this Division in *S v Daniels; S v Templern*,⁴ the magistrate cannot rely on inferential reasoning or assume an unrepresented accused appreciates the technical legal definitions of an offence. The court must elicit a direct factual exposition, a benchmark requirement that is uncomplicated to satisfy, yet essential to maintain. The presiding officer is not required to conduct a mini-

³ 1978 (1) SA 264 (N) at 267–268.

⁴ (227/26; 228/26) [2026] ZAWCHC 389 at paras 25–26.

trial or act as a finder of absolute truth; he or she must simply assure themselves that the conduct admitted actually fits the relevant offence.

[15] Evidently, the questioning of the accused lacked substance, and the court's approach leaves much to be desired, particularly in light of the two-year sentence subsequently imposed. By failing to elicit these basic facts, the magistrate missed a standard that is explicitly designed to be easy to achieve, yet fatal to ignore. As such, an insufficient factual basis existed to satisfy the court of the accused's guilt under s 112(1)(b) of the CPA. We do appreciate that magistrates' courts operate under an extremely heavy workload; however, that cannot excuse the deficiencies evident in this matter. A lackadaisical approach in cases involving unsophisticated accused persons who plead guilty, especially in the lower courts, which can be described as the coal face of justice, cannot be countenanced.

[16] It must be emphasised that the questions and answers in terms of s 112(1)(b) of the CPA must at least cover all the essential elements of the offence which the State in the absence of a plea of guilty would have been required to prove.⁵ It is perhaps apposite to remind ourselves that prior to the enactment of the present CPA, there was no procedure akin to that provided for in s 112(1) or (2) of the CPA. In terms of s 286 of the now repealed Criminal Procedure Act 56 of 1955, even where a plea of guilty had been tendered by an accused, lower courts could not convict in serious cases (ie offences carrying a sentence of imprisonment) unless there was evidence, other than that of the accused, that the offence in question had actually been committed.⁶

⁵ *S v Mbebe* 2004 (2) SACR 537 (Ck).

⁶ *Director Of Public Prosecutions, Gauteng Division, Pretoria v Hamisi* 2018 (2) SACR 230 (SCA) para 11.

[17] In such a case, the prosecution was obliged to tender evidence *aliunde* of the commission of the offence; that is, the prosecution did not have to prove that the accused had committed the offence in question: the prosecution merely had to tender evidence that the offence had been committed. That entailed calling a witness to testify as to the events which had occurred and on which the state relied for its contention that an offence had been committed.

[18] In a case such as the present, the prosecutor would have called one of the security officers who confronted the accused to testify how the offence was committed. The enactment of the CPA brought with it the procedure provided for in s 112, which dispensed with the need to call witnesses. As the court noted in *State v Moya*,⁷ the new procedure did not dispense with the need for the court to be fully informed of how the alleged offence had been committed. The information which had hitherto to be placed before the court still had to be placed before it, only via a different method or procedure.

[19] In *S v Shiburi*,⁸ Makgoka AJA, as he then was, writing for the majority, noted that the procedure set out in s 112 is designed to avoid the necessity for calling evidence in cases where it is clear that the accused both understands all the elements of the charge against him or her and admits them all. The court noted that the section was designed to protect an accused from the consequences of an unjustified plea of guilty. In the constitutional era, the court noted, the procedure in s 112 must be considered within the context of a right to a fair trial enshrined in s 35(3) of the Constitution. Significantly, the court observed that the constitutional right to a fair trial should guide the court in determining the ambit of the questions that should be put.

⁷ 2004 (2) SACR 257 (W) at p260.

⁸ See *S v Shiburi* 2018 (2) SACR 485 (SCA) para 18.

[20] As previously stated, the accused's admissions during questioning lacked detail. The magistrate's explanation regarding the answers given by the accused during the plea proceedings is not borne out by the record. The court can only consider what is contained in the record and not what was reconstructed by the magistrate alone in response to this Court's query. Section 4(1) of the Magistrates' Courts Act 32 of 1944 provides that every court shall be a court of record, and Rule 66 of the Magistrate's Courts Rules provides that criminal proceedings, or any portion thereof, may be recorded in writing or by electronic means. Simply put, all proceedings in the Magistrate's Court must be recorded contemporaneously as the proceedings unfold. The review or the appeal court is confined to the record and cannot look beyond what is on the record.

[21] This Court is ultimately enjoined to consider whether the proceedings before the trial court appear to be in accordance with justice. Pursuant to the issues raised above, we are not satisfied that the conviction and the subsequent sentence of the accused were in accordance with justice.

Further irregularities

(a) Seven days postponement in terms of s 50(6)(d) of the CPA

[22] We must further indicate that, upon reading the record, we noted a number of irregularities that affect the integrity of the trial court's proceedings. The accused appeared for the first time on 09 June 2025, and the matter was postponed to 17 June 2025 for bail information. Clearly the matter was postponed in terms of s 50(6)(d), which amongst others provides:

'The lower court before which a person is brought in terms of this subsection, may postpone any bail proceedings or bail application to any date or court, for a period not exceeding seven days at a time, on the terms which the court may deem proper and which are not inconsistent with any provision of this Act, if—

- (i) the court is of the opinion that it has insufficient information or evidence at its disposal to reach a decision on the bail application;

- (ii) the prosecutor informs the court that the matter has been or is going to be referred to an attorney-general for the issuing of a written confirmation referred to in section 60(11A); (Emphasis added).

[23] Under this provision, a court may postpone bail proceedings or a bail application to any date or court, for a period not exceeding seven days at a time, on terms the court deems proper. In our view, when such a remand is made, there must be cogent reasons provided to the court for it to postpone such a case for a period not exceeding seven days. From the number of records we have read, it seems to us that it has become a practice for the State to request a postponement of a case for seven days each time an accused person appears for the first time in the lower court.

[24] In our view, this constitutes an abuse of the process. The seven-day postponement contemplated by s 50(6)(d) of the CPA constitutes a strict statutory ceiling rather than a default or automatic period of remand. It does not follow that upon each appearance, an accused's matter must mechanically be postponed for the full seven-day duration; seven days represents merely the absolute cutoff limit. Consequently, the matter may be postponed for a shorter duration, for instance, three or four days, provided it does not exceed the statutory maximum requirement. However, when such a request for postponement is made, the State must advance good reasons for it, and the accused must be afforded an opportunity to object or to express his or her views on the requested remand.

[25] What is concerning in this matter is that the matter was postponed several times for further investigation. Even after nine (9) postponements, the investigation was still incomplete. The accused was kept in custody for 10 months before the charges could be put to him. There had been several postponements from June 2025, when the accused was arrested, until 21 April 2026, when the

matter was heard and finalised. Strikingly, on 24 November 2025 the matter was postponed to 3 February 2026, a period of almost three months, because the docket had not been brought to court. The defence requested that the matter be marked final for the docket, and it was indeed so marked.

[26] When the matter resumed on 3 February 2026, the docket still had not been brought to court. No explanation was given to the court for why the docket was not brought to court. The accused complained that he had been in custody for a long period. Notwithstanding this, the court again postponed the matter for the docket and for legal aid to 17 February 2026. In our view, a postponement of the matter under these circumstances violated the accused's constitutional right to a fair trial. Further, at his second appearance on 17 June 2025 and again at his third appearance on 1 July 2025, the accused indicated that he wished to plead guilty. Despite this, the matter was postponed several times.

[27] This, in our view, infringed the accused's right to a speedy trial as envisaged in s 35(3)(d) of the Constitution, namely the right to have his trial begin and conclude without unreasonable delay. It appears to us, *prima facie*, that this right was blatantly ignored, not only by the prosecutors involved in the matter, but also by the magistrates who presided from time to time and granted postponements without enquiring whether the requests were reasonable or justified.⁹

[28] It becomes necessary, in our view, to impress on presiding officers in criminal matters to jealously guard the accused's rights, particularly unrepresented litigants. Whilst the State may make an application for a remand, the court should not and must not remain a passive bystander and rubber-stamp

⁹ See *S v Maredi* 2000 (1) SACR 611 (T) at 613F-G.

the State's request. An application for a postponement must not be there for the taking, especially where the accused is in custody. There must be good grounds warranting a remand, and if there are none, it must be refused.

[29] To this end, the SCA in *S v May*,¹⁰ reminded us that judicial officers are not umpires. Their role is to ensure that the parties' cases are presented fully and fairly, and that the truth is established. They are not required to be passive observers of a trial; they must ensure fairness and justice, and if that requires intervention, it is fully justifiable. Intervention becomes an irregularity only when prejudice is caused to an accused.

(b) The charge

[30] Finally, we are appalled and disturbed by the manner in which the prosecutor handled this matter. First, the charge sheet is not a model of clarity. The preamble to the charge sheet refers to a contravention of s 36 of the General Law Amendment Act 62 of 1955, read together with s 51(2) and Part V of Schedule 2 of the Criminal Law Amendment Act 105 of 1997. Part V of the said Act refers to 'any offence referred to in s 36 or 37 of the General Law Amendment Act 62 of 1955, involving ferrous or non-ferrous metal which formed part of essential infrastructure, as defined in s 1 of the Criminal Matters Amendment Act 2015. Part V also envisages theft, involving ferrous or non-ferrous metal which formed part of essential infrastructure, as defined in s 1 of the Criminal Matters Amendment Act, 2015, which is not covered in Part II of this Schedule.

[31] In the charge sheet, the accused is alleged to have been found in possession of predominantly clothing and a leather bag, and not ferrous or

¹⁰ 2005 (2) SACR 331 (SCA) para 28.

non-ferrous metal. The invocation of the Criminal Law Amendment Act suggested that, upon conviction, a prescribed minimum sentence of seven years would apply to a third or subsequent offender in the absence of substantial and compelling circumstances. Clearly, this Act did not apply in the District Court in respect of the offence in question.

[32] It is unclear from the charge sheet whether the value of R8700.00 refers to the total value of the alleged goods or specifically to navy blue trousers. This was not clarified during the hearing. It seems to us, though, that this amount refers to the total value of the alleged goods. It can safely be said that the prosecutors who drafted the charge sheet did not apply their minds properly.

[33] What is particularly troubling is that the State accepted the accused's plea after the magistrate had questioned him. It is unclear what, precisely, the State accepted, as the accused never admitted any of the allegations contained in the charge sheet, nor did the charge sheet refer to the bread and sausages the accused claimed to have possessed. The acceptance of the plea was therefore not grounded in any factual basis or reasonable grounds.

[34] As *Broughton* noted, prosecutors must seek justice. Do justice, protect the innocent and charge the guilty.¹¹ In exercising this public power, prosecutors must adhere to the principle of legality, an incident of the rule of law envisaged in s 1(c) of the Constitution. The doctrine of legality, which requires that public power should have a source of law, is applicable whenever public power is exercised, and the public power must comply with the Constitution, which is our country's supreme law. This principle applies equally to prosecutors in the exercise of their public function.

¹¹ Broughton DWM 'The South African Prosecutor in the face of Adverse Pre-Trial Publicity' (Vol 23) [2020] *PER* 3.

[35] In *Botha v Minister of Safety and Security and Others; January v Minister of Safety and Security and others*,¹² Tshiqi JA, writing for a unanimous court observed that prosecutors have to protect the public interest, act with objectivity, take proper account of the position of the suspect and the victim, and pay attention to all relevant circumstances, irrespective of whether they are to the advantage or disadvantage of the suspect. The Court noted that the same holds true in our country, especially in view of the principle of legality recognised in s 1(c) of the Constitution which describes the supremacy of the Constitution and the rule of law as one of the foundational values of the Republic of South Africa.

Conclusion

[36] Consequently, from a conspectus of the evidence, the conduct of the prosecutor and magistrate appears to have undermined the accused's constitutional rights. This is to be deprecated and deplored. As previously noted, it cannot be said that the proceedings before the court *a quo* were in accordance with justice. In our view, the irregularities observed are so gross that they vitiate the legality of the proceedings of the trial court. As a result, we cannot confirm that the conviction and sentence of the accused were in accordance with justice.

[37] The irregularities observed in this case, in particular, relate to a failure to comply with s 112(1)(b) of the CPA, and therefore, the matter should ordinarily be remitted to the court *a quo* in terms of s 312 of the CPA. However, we are mindful of the guidance of the SCA in *S v Mshengu*,¹³ where the court observed that s 312 should not be invoked if compliance with the section would be unfair.

¹² 2012 (1) SACR 305 (ECP) para 33.

¹³ 2009 (2) SACR 316 (SCA) ('*Mshengu*').

To this end, we find the following excerpt from that judgment relevant. The court stated:

‘[17] The purpose of s 312 is to prevent an injustice which may occur if an accused person were to escape punishment for his or her crime only because his or her conviction was set aside on the ground that there was a failure to comply with s 112 of the Act. *But an injustice cannot occur where the accused has served the entire sentence by the time the conviction is set aside on appeal.* Nor can it occur where a fresh conviction cannot be achieved following a remittal to the trial court.... *There can be no justification for ordering that an accused person, who has already served the entire punishment, be subjected to a second trial. Such an order would be inconsistent with the right to a fair trial.* In my view it could never have been the intention of the legislature that a court is obliged to comply with the section irrespective of the injustice or unfairness that it may cause.’ (emphasis added)

[38] In this case, the accused was sentenced to two years’ imprisonment on 21 April 2026. In our view, it would not be unjust to remit the matter back to the trial court if the State still intends to pursue its case against the accused. As the SCA noted in *Mshengu*, s 312 is aimed at preventing an injustice which may occur if an accused person were to escape punishment for his or her crime only because his or her conviction was set aside on the ground that there was a failure to comply with s 112 of the CPA.

Order

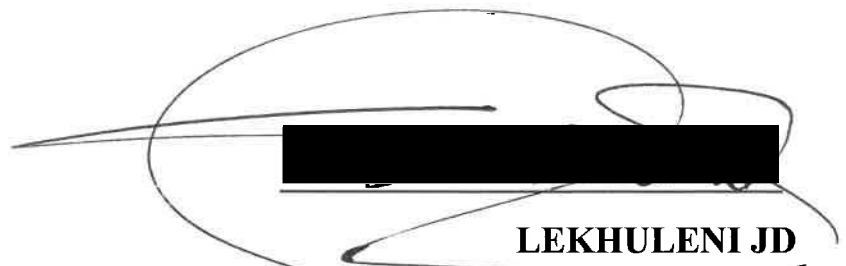
[39] In the result, the following order is granted:

- (a) The conviction and sentence imposed on the accused are set aside.
- (b) In terms of s 312 of the CPA, the matter is remitted to the same magistrate to allow the accused to plead afresh, so that the accused can be sufficiently questioned.

(c) Should the accused still plead guilty and be convicted, in sentencing the court should consider the time already spent by the accused in custody serving sentence.

(d) The ancillary order in terms of s 103 of the Firearms Control Act 60 of 2000 is hereby set aside.

(d) The State should make sure that the matter is dealt with expeditiously.



LEKHULENI JD
JUDGE OF THE HIGH COURT



NZIWENI CN
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