

SOUTH AFRICA / JUDGMENT

S v David (21/2014) [2014] ZAFSHC 20 (27 February 2014) [2014] ZAFSHC 20

COURT

Free State High Court, Bloemfontein

BEFORE

C.H.G. Van der Merwe, A. Kruger

CASE / FILE NUMBER

21/2014

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IN

THE HIGH COURT OF SOUTH AFRICA

FREE

STATE DIVISION, BLOEMFONTEIN

Review

No.: 21/2014

In

the review between:-

THE

STATE

and

PETRO

DAVID

CORAM:

KRUGER et VAN
DER MERWE, JJ

JUDGMENT

BY: VAN DER MERWE, J

DELIVERED ON: 27 FEBRUARY 2014

- [1] The accused was charged with exceeding the speed limit on the N1 national road. He pleaded guilty and the magistrate dealt with the matter in terms of section 112(1)(a) of the Criminal Procedure Act 51 of 1977 (the Act). The accused was then sentenced to a fine of R10 000,00 or, in the alternative to the fine, 2 (two) years imprisonment. The magistrate,

however, ordered that the alternative sentence of 2 (two) years imprisonment be conditionally suspended for a period of five years. In terms of section 297(5)(b) of the Act arrangements were made for payment of the fine in instalments.

[2] Upon enquiry the magistrate concedes that the sentence is impermissible. This concession is undoubtedly correct. First, the

fine of R10 000,00 exceeds the amount of R5 000,00 determined in respect of section 112(1)(a) of the Act in Government Notice No R62 published in the Government Gazette No 36111 of 30 January 2013. Second, in a case like this the purpose of the sentence of

imprisonment in the alternative to the fine in terms of section 287(1) of the Act, is to compel payment of the fine. (See *S v Bokbaard* 1991 (2) SACR 622 (C).) When the alternative imprisonment is suspended, thus giving the accused a choice between a fine and a suspended sentence of imprisonment, this purpose is defeated. For this reason too, the sentence is wholly inappropriate and cannot stand.

[3] In the result the following order is issued:

1. The sentence is set aside.
2. The matter is referred back to the trial court for imposition of an appropriate sentence.

C.H.G. VAN DER MERWE, J

I concur.

A. KRUGER, J

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