

SOUTH AFRICA / JUDGMENT

S v Dikgomo (R67/2018) [2018] ZANWHC 91 (26 July 2018)

[2018] ZANWHC 91

COURT

North West High Court, Mafikeng

BEFORE

R.D Hendricks, J.T Djaje

CASE / FILE NUMBER

R67/2018

Source: saflii.org · Research copy typeset by Esheria. Not court-issued or certified.

Source record

IN THE HIGH COURT OF
SOUTH AFRICA
NORTH
WEST HIGH COURT, MAHIKENG

HIGH COURT REF:	MAGISTRATE
	CASE NO: R67/2018
	In
	the matter between:-
	THE
	STATE
	AND
	HANS
	TOTO DIKGOMO
	REVIEW

JUDGMENT

HENDRICKS ADJP.

- [1] The accused appeared on several occasions in the District Court, Wolmaranstad on a charge of housebreaking with intent to steal and theft. On 01 May 2018 the matter was transferred to the Regional Court in terms of the provisions of Section 75 of the Criminal Procedure Act 51 of 1977, as amended, for his appearance in the Regional Court on 16 May 2018. After several appearances in the Regional Court, the accused was convicted on his guilty plea on 26 July 2018 and sentenced to an effective term of three (3) years imprisonment. He was also declared unfit to possess a fire-arm.

- [2] The Correctional Services department are unable to take care of the accused. This was brought to the attention of the Senior District Court Magistrate. Upon investigation it was discovered that whilst the accused appeared in the District Court, the matter was remanded on numerous occasions due to the unavailability of a bed for the accused at a psychiatric hospital. Even during subsequent appearances in the Regional Court, the matter was remanded on several occasions

for the accused to be taken to the District Surgeon and for the doctor to compile a report on the accused. This was never done.

Instead, the accused was sentenced without any enquiry been conducted on his mental capacity to be able to stand trial.

- [3] The matter was sent on special review in terms of Section 304 (4) of the Criminal Procedure Act 51 of 1977, to the High Court, by the Regional Court President. The cover letter reads thus:

“SPECIAL REVIEW IN TERMS OF SECTION 304 (4) OF THE CRIMINAL PROCEDURE ACT 51 OF 1977

1. The accused was convicted of Housebreaking with intent to steal and theft, and was sentenced to three (3) years direct imprisonment on the 26 of July 2018 by Regional Magistrate Taljaard in Wolmaransstad, after he had pleaded in terms of section 112(2) of the Criminal Procedure Act.
3. The District Court record further reflects that on the 25 April 2018 a bed was available for the accused; however on the 7 May 2018 the matter was transferred to the Regional Court.
4. The Regional Court record (a copy of which is attached herewith) reflects that at all stages in his appearance in the Regional Court the accused was to be taken to the Doctor, however, on the 26 July 2018 a plea was taken and he was convicted and sentenced accordingly.
5. It appears that at no stage, was the accused's criminal capacity established in the Regional Court, and as such the proceedings were not in accordance with justice.
6. Complaints have been received from Correctional Services to the effect that they are unable to take care of Mr Dikgomo and that he is a threat to other inmates (the attached letter from Ms Khan, Senior Magistrate in Wolmaransstad, as well as the attached reports from Correctional Services bear reference).
7. The matter is therefore referred to the High Court on Special Review in terms of the above mentioned provisions, with a view to have the conviction and sentence set aside and for the High Court to direct as to the further conduct of this matter.
8. A copy of the District Court record as well as that of the Regional Court, together with the reports from the Department of Correctional Services are enclosed.”

[4] It is quite apparent from the record of proceedings in both the District Court as well as the Regional Court that the court was made aware of the fact that the accused needed medical/mental assessment. This was never done. In spite of the record reflecting this state of affairs, the Regional Magistrate proceeded with the trial, convicted

and sentenced the accused. This is highly irregular. It goes almost without saying that the proceedings (conviction and sentence) must be set aside. It is quite apparent from the documentation attached to the record that the accused pose a danger to society and cannot be liberated without an enquiry been conducted to determine his mental capacity.

[5] Consequently, the conviction and sentence should be set aside. The accused must appear in the Regional Court and the Regional Court Magistrate must follow the procedure as stipulated in the Criminal Procedure Act 51 of 1977 (Sections 77, 78 and 79) to have the accused referred for mental observation. Following such determination, the Regional Court Magistrate should then make an appropriate order.

Order:

[16] Resultantly, the following order is made:

(i) The conviction and sentence are set aside.

(ii) The accused must appear as soon as possible in the Regional Court, Wolmaransstad on a date to be determined by the Regional Court Prosecutor, Wolmaransstad upon a requisition been made for such an appearance.

(iii) The Regional Court Magistrate should follow the prescribed proceedings to cause the accused to be sent for mental observation and to deal with the matter accordingly following such mental capacity determination.

R.D HENDRICKS

ACTING DEPUTY JUDGE PRESIDENT OF THE HIGH COURT,

NORTH WEST DIVISION, MAHIKENG.

I agree

J.T DJAJE

JUDGE OF THE HIGH COURT,

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.saflii.org/za/cases/ZANWHC/2018/91.html>

CASE PAGE <https://chat.esheria.ai/case-law/south-africa/s-v-dikgomo-unknown-topic-anwhc-2018>

Prepared on 9 October 2026 · Esheria