

SOUTH AFRICA / JUDGMENT

S v Elshazly (535/2008) [2008] ZAFSHC 114 (25 September 2008) [2008] ZAFSHC 114

COURT

Free State High Court, Bloemfontein

BEFORE

B. C. Mocumie, M. H. Rampai

CASE / FILE NUMBER

535/2008

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IN THE HIGH COURT OF SOUTH AFRICA

(ORANGE FREE STATE PROVINCIAL DIVISION)

Special Review No. : 535/2008

In the review between:-

THE STATE

versus

A ELSHAZLY

CORAM: RAMPAL, J et MOCUMIE, J

JUDGMENT

BY: MOCUMIE, J

DELIVERED ON: 25 SEPTEMBER 2008

SPECIAL REVIEW

JUDGMENT

1. The accused was charged with contravention of section 49(1)(a) read with section 29 (1)(f) of the Immigration Act 13 of 2002 (“the Immigration Act”) (possession of a falsified permanent residence permit) in the Magistrate court, Ficksburg. He was convicted as charged and the

presiding officer's sentence is recorded as follows: "2(two) years imprisonment wholly suspended for 5 years on condition that during the period of suspension the accused is not convicted of contravention of section 49(1)(a) read with section 29(1)(f) Act 13/2002 committed during the period of suspension."

He was legally represented during the trial.

2. The presiding officer who dealt with this matter sent this case on special review in terms of section 304 of the Criminal Procedure Act 51 of 1977 ("the CPA") because he was of the view that although the accused was correctly convicted of c/s 49(1) of the Immigration Act the sentence imposed was incompetent. The penalty prescribed by the Immigration Act for this offence is a fine or imprisonment not exceeding three months.
3. The accused pleaded guilty and tendered a statement in terms of section 112(2) of the CPA through his legal representative. He admitted all the elements of the offence preferred against him adequately. The presiding officer correctly convicted the accused as charged. There are no grounds to justify a conclusion that the proceedings were not in accordance with justice.
4. I now turn to the sentence imposed which is the subject-matter of the special review. The sentence imposed by the presiding officer can only be faulted in that it is indeed incompetent. The sentence ought to be set aside and substituted with the correct one.

In the circumstances I make the following order:

ORDER

The conviction by the presiding officer in this matter is confirmed.

The sentence imposed by the presiding officer is altered to read as follows:

"R600.00(six hundred rand) or 3(three) months imprisonment wholly suspended for 5 years on condition that the accused is not convicted of c/s 49(1)(a) read with section 29(1)(f) of the Immigration Act 13 of 2002 committed during the period of suspension."

B. C. MOCUMIE, J

I concur.

M. H. RAMPAL, J

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Prepared on 11 October 2026 · Esheria