

SOUTH AFRICA / JUDGMENT

S v Magobotwane (239/2017, 29/2017, K513/2017, A506/17) [2017] ZAGPPHC 700 (3 October 2017)

[2017] ZAGPPHC 700

COURT

North Gauteng High Court, Pretoria

BEFORE

De Vos, Maakane

CASE / FILE NUMBER

239/2017

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REPUBLIC

OF SOUTH AFRICA

IN

THE HIGH COURT OF SOUTH AFRICA

GAUTENG

DIVISION, PRETORIA

HIGH

COURT REFERENCE NO.: 239/2017

MAGISTRATE'S

SERIAL NO.: 29/2017

CASE

NO.: K513/2017

A506/17

DATE: 3/10/2017

In

the matter between:

THE

STATE

and

THABISO

MAGOBOTWANE

REVIEW

JUDGEMENT

DEVOS J:

[1] In this matter the accused was convicted and sentenced after pleading guilty in terms of section 112(1)(b) of the Criminal Procedure Act 51 of 1977. Subsequent thereto the matter was forwarded to this Court for review. The Reviewing Judge queried the conviction in terms of the provisions of section 112(1)(b) and remarked that in his view, the questions by the Presiding Magistrate and the responses thereto

by the accused, did not meet the requirements of section 112(1)(b) in that the elements of intent and unlawfulness were not met.

[2] The Presiding Magistrate conceded, in his reply to the abovementioned query, that the requirements as referred to were indeed not met and that a plea of "not guilty" should have been recorded.

[3] It follows from the aforesaid that the conviction and sentence imposed by the Presiding Magistrate cannot stand and are to be set aside.

I THEREFORE MAKE THE FOLLOWING ORDER:

- a) The conviction and sentence imposed are set aside.
- b) The matter is referred back to the Magistrates Court to be heard de novo before another Magistrate.
- c) The accused is to be released from custody immediately.

DE VOS J

JUDGE OF THE GAUTENG DIVISION

OF THE HIGH COURT OF SOUTH AFRICA

I agree.

MAAKANE AJ

ACTING JUDGE OF THE GAUTENG DIVISION

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