

SOUTH AFRICA / JUDGMENT

S v Matross (47/2019) [2019] ZAWCHC 68; 2019 (2) SACR 331 (WCC) (13 June 2019)

[2019] ZAWCHC 68

COURT

Western Cape High Court, Cape Town

BEFORE

Francis, Henney

CASE / FILE NUMBER

47/2019

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IN THE HIGH COURT OF SOUTH AFRICA

(WESTERN CAPE DIVISION, CAPE TOWN)

High Court Ref No: 19255

Case No: 47/2019

Magistrates Ref No: 1/4/13-1

Date: 13 June 2019

In the review matter of:

THE STATE

vs

THEMBISA MATROSS

REVIEW JUDGMENT

FRANCIS, AJ

1. This matter came before me on special review from the Senior Magistrate, Cape Town. The review was prompted by an application by Ms Thembisa Matross (“the accused”) to, in effect, review her conviction after having paid an admission of guilt fine.
2. I was provided with a copy of the accused’s application which was made by way of an affidavit, as well as a copy of the docket.
3. In summary, the accused’s version is as follows:

3.1 During the early hours of Sunday morning, 4 September 2016, the accused was apprehended at her neighbour's residence for the unlawful possession of dagga in contravention of section 4(b) of the Drugs and Drugs Trafficking Act, 140 of 1992. The accused was taken to the Table View Police Station where she was charged and detained. She had a traumatic night given the unhygienic and traumatising conditions under which she was detained. She cried incessantly and was particularly concerned that she would lose her job if she had to appear in court the following day. Eventually, during the afternoon, one of the arresting officers presented her with a written notice in terms of section 56(1)(c) of the Criminal Procedure Act 51 of 1977 which makes provision for the payment of an admission of guilt fine. Given her physical surroundings, her traumatising experience, and the fear of losing her job, the accused decided to pay a fine of R100 and she was then released from custody. According to the accused, although she denied guilt, the force of circumstances made her accept the admission of guilt proposal. However, had she known of the consequences of paying the fine, and of the resultant criminal record, she would have not paid the fine (and presumably defended herself).

3.2 One of the arresting officers, Sergeant Hilary Claasen, also made a statement. She disputes the version proffered by the accused in relation to the reason for the accused's arrest. According to Sergeant Claasen, when she entered the room, the accused was sitting in front of a table on which there was a white plate containing a small bag of dagga. On asking the occupants in the room whose dagga it was, they all stated that it was not theirs but that it was the accused's dagga and that she was the one smoking it. The accused did not dispute that the dagga was hers. She indicated that she might have smoked it, and her eyes were red. The accused was then arrested for possession of dagga and taken to the police station.

4. Section 56(1)(d) of the Criminal Procedure Act provides that a written notice handed by a peace officer to the accused shall "contain a certificate under the hand of the peace officer that he has handed the original of such written notice to the accused and that he has explained to the accused the import thereof" (own underlining). The concise Oxford English Dictionary (10th Edition, 2002) defines the word "import" as the "implied meaning of something. > importance" and "important" is defined as "of great significance or value". What section 56(1)(d) of Criminal Procedure Act thus requires is that the peace officer must explain the implied meaning and the importance or significance of the written notice to the accused. This must of necessity include the consequences of the notice in the event that the accused chooses not to appear at court but instead to pay an admission of guilt fine in lieu of having to go to trial.
5. The consequences of a previous conviction can be devastating to an accused who is in fact not guilty but is under the mistaken

apprehension that the payment of the fine will get rid of a "nuisance" and will not result in a previous conviction.

If a police officer tells an accused person that the payment of an admission of guilt fine will result in a criminal record, it is highly unlikely that an accused would pay such a fine if he or she genuinely believes that he or she has a defence. Quite simply, in my view, the plain wording of section 56(1)(d) of the Criminal Procedure Act imposes a duty on the police officer to disclose to an accused the serious consequences of paying an admission of guilt fine. Accordingly, I respectfully disagree with the judgement of the court in the *S v Jennifer Anne Rademeyer* (A186/17) ZAGPPHC 175 (12 APRIL 2017), where the court expressed a contrary view and held that there was no duty on a police officer to warn the accused of the full consequences of paying an admission of guilt fine.

6. The explanation of the full consequences of an admission of guilt fine is part of a fair procedure which the courts, especially after the advent of the Constitution, have insisted be followed where an accused is invited to consider paying an admission of guilt fine (see, for example, *S v Pryce* 2001 (1) SACR 110 (C)). In *S v Parsons* 2013 (1) SACR 38 (WCC), this court, with particular emphasis on constitutional values, held that an accused person should be properly warned of the consequences

of paying an admission of guilt fine. Indeed, there have been several cases in which admission of guilt fines were set aside precisely

because at the time of payment of the fine, the accused was not aware of the serious consequences of paying such a fine (see, *S v Claasen* 2012 JDR 2524 (FB), and *S v Tong* 2013(1) SACR 346 (WCC)).

7. In the matter at hand, it is apparent from the documents contained in the docket, the accused's affidavit, as well as the statement filed by Sergeant Claasen, that the true import of the written notice was not explained to the accused. The accused did not know, and was never informed, that the payment of such a fine would result in a previous conviction and criminal record. She, of course, denies guilt. The ratio in this matter is the same as that in cases such as *S v Tong*. Accordingly, there is no why the admission of guilt fine should not be set aside as not being in accordance with the interests of justice. I am aware that in *S v Madhinja* 2019 (1) SACR 297 (WCC), the court held that the payment of an admission of guilt fine may be merely "administrative" in nature and does not result in a previous conviction and criminal record. Even if this is the case, and I express no view in this regard, the fact of the matter is that the import of the consequences of the accused paying the admission of guilt fine was not explained to her; it is this deficiency that results in the failure of justice.

8. In the circumstances, the following order is made:

8.1 The accused's admission of guilt in terms of section 57 of the Criminal Procedure Act 51 of 1977, made on 4 September 2016, is set aside.

8.2 The resultant entering in the criminal record book of the particulars contemplated in section 57(6) of the Criminal Procedure Act by the clerk of the court is set aside and such particulars shall be expunged from the criminal record book.

I agree and it is so ordered.

HENNEY, J

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