

SOUTH AFRICA / JUDGMENT

S v Mjandana (2012000349) [2013] ZAECHGHC 58 (1 January 2013)

[2013] ZAECHGHC 58

COURT

Eastern Cape High Court, Grahamstown

BEFORE

M J Lowe

CASE / FILE NUMBER

2012000349

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IN THE HIGH COURT OF SOUTH AFRICA

(EASTERN CAPE LOCAL DIVISION, GRAHAMSTOWN)

C.A.&R:

REVIEW NO: 2012000349

DATE DELIVERED:

IN THE MATTER BETWEEN:

THE STATE

AND

ZWELIMKILE MJANDANA

Nature of matter: Review - accused was found guilty of the offence of contravening the provision of Section 65(2)(a) read with sub sections 65 (3), (4), (8), (9) 69 (1), 73 and 89 of the National Road Traffic Act 93 of 1996 - excessive amount of alcohol in blood.

Order: The magistrate relating to the suspension of the accused's drivers licence was set aside; The driver's license of the accused is suspended for 6 months effective from the date of his conviction and sentence (19 November 2012) and The conviction and remainder of the sentence is confirmed

REVIEW JUDGMENT

LOWE, AJ:

The accused in this matter was charged as follows:

“That the accused is guilty of the offence of contravening the provision of Section 65(2)(a) read with Sub Sections 65 (3), (4), (8), (9) 69 (1), 73 and 89 of the National Road Traffic Act 93 of 1996 - excessive amount of alcohol in blood.”

The accused pleaded guilty and was convicted of the said charge after a full plea explanation.

In respect of sentence it was disclosed that the accused had a previous conviction being found guilty of a contravention of s 65 (1) of Act 93 of 1996, driving under the influence of liquor.

The accused placed his personal circumstances before the court requesting that there be no licence suspension. He is a policeman, 44 years of age and his rank is warrant officer.

He was sentence to a fine of R4000-00 or in default of payment, 8 months imprisonment. The court then conducted a section 35 enquiry in terms of Act 93 of 1996 as to why his drivers licence should not be suspended he being warned this could be for a period of up to 6 months.

The magistrate then amended this warning having regard to the previous conviction and stated that as a “second offender” he could have his licence suspended for up to 5 years.

At the end of the enquiry the court ordered that the accuseds driving licence be suspended for 8 months from date of sentence.

In due course on automatic review Roberson J posed the following questions to the magistrate.

“The magistrate was of the view that the accused had been convicted of a second offence, as contemplated in s35(1)(ii) of the National Road Traffic act 93 of 1996.

The magistrate’s attention is drawn to the matter of S v van Rooyen 2012(2) SACR 141 (ECG).

In the light of this decision, the magistrate’s comments are requested with regard to the period of suspension of the accused’s driving licence.”

The magistrate replied as follows:

“2. I have familiarized myself with the Van Rooyen matter as alerted to by the honourable judge, having done so I concede that I ought not to have regarded the current conviction as constituting a second offence, my interpretation which is, by the turn of events incorrect, was premised from the fact that both offences are alcohol related and both involve driving of a motor vehicle.

3. I however, given that all circumstances relating to the inquiry were placed before court request that the honourable judge to dispose the matter and order for a shorter period of cancellation.”

In terms of S v Van Rooyen 2012 (2) SACR 141 (ECG) the court held that it was the conviction of an offence mentioned in ss

- (1) that constituted the ‘first’, ‘second’ or ‘third or subsequent offence’. That this was so was also evident from the wording of ss (2). It did not provide that a previous conviction for any of the offences referred to in ss (1) constituted a ‘second’ or ‘third or subsequent offence’. If it was

the intention of the legislature to provide that a previous conviction for any of the offences in ss (1), or, for that matter, in any particular paragraph thereof, was to be deemed to be a second or subsequent offence, or alternatively, as in essence contended by the state, that the compulsory suspension of an offender's driving licence would take effect if the offender had a previous conviction for any one or more of those offences, it could easily have said so.

[Paragraph

[20] at 152e.]

In the result in this matter the accused's conviction was for the purpose of s 35 (1) a first offence and the magistrates order for a suspension period of 8 months thus falls to be set aside.

As to an appropriate period of suspension this court is in as good a position as the magistrate to consider this afresh. Taking into account the accused's age, his dependants being an employed wife and four children, his employment as a policeman for some 23 years, that he needs a license to transport his sick mother who suffers from a chronic disease, that he requires the licence to assist the community and in his work as a policeman and that he was not involved in an accident and further considering the seriousness of the offences I make the following order:

The order of the magistrate relating to the suspension of the accuseds drivers licence is set aside. It is replaced with the following

order:

"The driver's license of the accused is suspended for 6 months effective from the date of his conviction and sentence (19 November

2012)".

The conviction and remainder of the sentence is confirmed.

M. J. LOWE

ACTING JUDGE OF THE HIGH COURT

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