

SOUTH AFRICA / JUDGMENT

S v Mngomezulu (C 746/09) [2010] ZAGPPHC 585 (11 February 2010)

[2010] ZAGPPHC 585

COURT

North Gauteng High Court, Pretoria

BEFORE

TJ Raulinga, P Ebersohn

CASE / FILE NUMBER

C 746/09

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IN

THE HIGH COURT OF

SOUTH AFRICA

(NORTH

GAUTENG DIVISION)

DATE

11

February 2010

Case:

A91/10

Magistrate

BRAKPAN

Review

Case No: C

746/09

Supreme

Court Ref No: 1262

Magistrate

Serial No: 24/09

THE

STATE V SIFISO MNGOMEZULU

REVIEW

JUDGMENT**RAULINGA, J**

[1] In this matter the accused pleaded guilty as charged. After the state had accepted the plea the magistrate subsequently convicted him without questioning in terms of section 112 (1) (a) of Art 51 of 1977. The accused was then sentenced to R 1000-00 or six months

imprisonment. He was further declared unfit to possess a firearm in terms of section 103 (2) of Act 60 of 2000.

[2] In response to a query by this court the magistrate concedes that she indeed has exceeded her sentencing mandate and that the sentence should be altered. She however is of the opinion that the declaration of the accused in terms of section 103 (2) of Act 60 of 2000, that the accused is unfit to possess a firearm, stands.

[3] It is clear from the record of proceedings that no enquiry was held as required by the section before the accused was declared unfit to possess a firearm.

[4] The DPP's office suggests that the matter be remitted back to the magistrate to enable her to clarify issues raised in paragraphs 4 and 5.4. I find this route a little cumbersome and not the most viable in the interest of justice.

[5] In the circumstances I would order that.

[a] the sentence be set aside

[b] the record of proceedings be remitted back to the magistrate for her to impose a proper sentence.

TJ. Raulinga

[Judge of the High Court]

I agree

P. Ebersohn

[Acting Judge of the High Court]

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