

SOUTH AFRICA / JUDGMENT

S v Mnisi (175/2012) [2013] ZAFSHC 3 (31 January 2013) [2013] ZAFSHC 3

COURT

Free State High Court, Bloemfontein

BEFORE

Jordaan, Mhlambi

CASE / FILE NUMBER

175/2012

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FREE STATE HIGH COURT, BLOEMFONTEIN

REPUBLIC OF SOUTH AFRICA

Review No. : 175/2012

In the review between:-

THE STATE

versus

BONGANI STEFAN MSIBI

CORAM: JORDAAN, J et MHLAMBI, AJ

JUDGMENT BY: JORDAAN, J

DELIVERED ON: 31 JANUARY 2013

[1] This is a review matter. The accused stood trial on two counts namely:

1. Driving under the influence of liquor or drugs; and
2. Contravention of section 12(a) of the National Road Traffic Act 93 of 1996.

[2] He was found guilty on both counts and sentenced to R3 000,00 or 6 (six) months imprisonment with a further 6 (six) months suspended for a period of five years on certain conditions as far as count 1 is concerned. On count 2 he was fined R500,00 or 50 (fifty) days imprisonment.

[3] Reasons were requested from the trial court as to the conviction on count 2. It appears from the record that the magistrate that heard the matter has since left the Department and is not available to respond to the required reasons so that the court is requested to deal with the review without such comments.

[4] Section 12 of the aforesaid Act reads as follows:

“12 Driver of motor vehicle to be licensed-

No person shall drive a motor vehicle on a public road-

- (a) except under the authority and in accordance with the conditions of a licence issued to him or her in terms of this Chapter or of any document deemed to be a licence for the purposes of this Chapter; and
- (b) unless he or she keeps such licence or document or any other prescribed authorisation with him or her in the vehicle.”

[5] The accused, who was unrepresented, admitted driving the vehicle and not having a licence in his possession, but intimated that he was indeed in possession of a learner's licence and it is common cause that he was accompanied by another adult while driving. The evidence on behalf of the State only went as far as to intimate that the accused was not in possession of any licence, either a full or learner's licence at the time when he was arrested. No evidence was led as to whether the accused was indeed issued with a learner's licence or not. Neither the prosecutor nor the court requested the accused to produce the learner's licence and his version in that regard therefore remained unquestioned.

[6] In view of the above, the accused's version that he was indeed in possession of a learner's licence has and had to be accepted. At least there was nothing in the evidence to show that that was not reasonably possibly true. Since the accused was only charged with contravention of section 12(a) and not section 12(b), it is clear that the conviction cannot stand.

[7] On the evidence it is clear that the conviction and sentence on count 1 is in order, but the conviction and sentence on count 2 should be set aside.

[8] In the result the following orders are made:

8.1. The conviction and sentence on count 1 is confirmed.

8.2. The conviction and sentence in regard to count 2 are set aside.

8.3. In the event that the accused already paid the fine or part of it in respect of count 2, such amount has to be repaid to the accused.

A.F. JORDAAN, J

I concur.

J.J. MHLAMBI, AJ

/spieterse

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