

SOUTH AFRICA / JUDGMENT

S v Mokoena (98/2011) [2011] ZAFSHC 57 (17 March 2011)

[2011] ZAFSHC 57

COURT

Free State High Court, Bloemfontein

BEFORE

P.U. Fischer, A.F. Jordaan

CASE / FILE NUMBER

98/2011

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FREE STATE HIGH COURT, BLOEMFONTEIN

REPUBLIC OF SOUTH AFRICA

Review No. : 98/2011

In the review between:-

THE STATE

versus

TEBOHO MOKOENA

CORAM: JORDAAN, J et FISCHER, AJ

JUDGMENT BY: FISCHER, AJ

DELIVERED ON: 17 MARCH 2011

- [1] The matter was placed before me by way of a special review in terms of section 304A of the Criminal Procedure Act, No. 51 of 1977. The accused was convicted of contravening section 59(1), 59(4) and section 89 of the National Road Traffic Act, No. 93 of 1996 and also read with Regulations 1 and 292(b) of the National Road Traffic Regulations of 1996 in that he exceeded the prevailing 100 km/h speedlimit in travelling at a speed of 189 km/h. The accused pleaded guilty to the aforesaid charge as envisaged in terms of section 112(1)(a) of the Criminal Procedure Act, No. 51 of 1977 whereupon he was convicted by the presiding magistrate.

[2] The presiding magistrate, prior to sentencing, realised that she had erred in dealing with the accused in terms of section 112(1)(a) aforementioned as she was at all material times of the opinion that the offence merited punishment of a fine exceeding the amount determined by the Minister from time to time in the Gazette, namely R1 500,00 and that in the circumstances the presiding magistrate should have dealt with the accused as envisaged in terms of section 112(1)(b) of the Criminal Procedure Act, No. 51 of 1977.

[3] Section 304A reads as follows:

“(a) If a magistrate or regional magistrate after conviction but before sentence is of the opinion that the proceedings in respect of which he brought in a conviction are not in accordance with justice, or that doubt exists whether the proceedings are in accordance with justice, he shall, without sentencing the accused, record the reasons for his opinion and transmit them, together with the record of the proceedings, to the registrar of the provincial division having

jurisdiction, and such registrar shall, as soon as is practicable, lay the same for review in chambers before a judge, who shall have the same powers in respect of such proceedings as if the record thereof had been laid before him in terms of section 303.

(b) When a magistrate or a regional magistrate acts in terms of paragraph (a), he shall inform the accused accordingly and postpone the case to some future date pending the outcome of the review proceedings and, if the accused is in custody, the magistrate or regional magistrate may make such order with regard to the detention or release of the accused as he may deem fit.”

[4] The presiding magistrate recorded the reasons for her opinion and transmitted them, together with the record of the proceedings to the registrar of this court. The record of the proceedings clearly shows that the accused was unrepresented, had pleaded guilty to travelling at a speed of 189 km/h on a road as envisaged in section 59 of the National Road Traffic Act, No. 93 of 1996, where the prescribed general speedlimit was 100 km/h.

[5] I am of the opinion that the presiding magistrate was correct in dealing with the matter in the manner in which she did, especially if regard be had to the gravity with which such contraventions and convictions are viewed and dealt with by the courts. See in this regard *S v ORTON EN 'N ANDER* 2001 (1) SACR 433 (OPA) and *S v ISAACS* 2002 (1) SACR 176 (CPD).

[6] I accordingly make the following order:

6.1 The conviction is set aside.

6.2 The plea of guilty as originally tendered by the accused stands.

6.3 The case is remitted to the district court.

6.4 The district magistrate concerned is directed to proceed further in terms of section 112(1)(b) of the Criminal Procedure Act, No. 51 of 1977.

P.U. FISCHER, AJ

I concur.

A.F. JORDAAN, J

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