

SOUTH AFRICA / JUDGMENT

S v Molefe; S v Goodman (R346-2018; R348-2018) [2018] ZAFSHC 217 (24 December 2018) [2018] ZAFSHC 217

COURT

Free State High Court, Bloemfontein

BEFORE

Musi

CASE / FILE NUMBER

R346/2018; R348/2018

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IN

THE HIGH COURT OF SOUTH AFRICA,

FREE

STATE DIVISION, BLOEMFONTEIN

Review

No.: R346/2018

In

the review of:-

THE

STATE

and

THABO

MOSES MOLEFE

Review

No.: R348/2018

KGOSIMANG

GOODMAN

CORAM:

MUSI, AJP

JUDGMENT

BY: MUSI, AJP

DELIVERED ON: 24 December 2018

- [1] This matter was sent on special review by the acting senior magistrate, Bloemfontein.
- [2] The accused was charged with theft. He was convicted in terms of section 112(1)(a)[1] of Act 51/1977 after a plea of guilty.
- [3] It has been said on numerous occasions that section 112(1)(a) should only be utilized for minor offences. The acting senior magistrate refers to some of the cases in which this principle was enunciated.[2]
- [4] I may just add that it is not advisable to use section 112(1)(a) for common law offences, which are generally serious offences.
- [5] I agree with the acting senior magistrate that these proceedings were not in accordance with justice.
- [6] I make the following order.

The conviction and sentence are set aside.

C. J. MUSI, J

- [1] Section 112(1)(a) reads as follows: “The presiding judge may, if he is of the opinion that the offence does not merit the sentence of death, or the presiding judge, regional magistrate or magistrate may, if he is of the opinion that the offence does not merit punishment of imprisonment or any other form of detention without the option of a fine or of a whipping or of a fine exceeding the amount determined by the Minister from time to time by notice in the Gazette, convict the accused in respect of the offence to which he has pleaded guilty on his plea of guilty only and- (i) impose any competent sentence, other than the sentence of death or imprisonment or any other form of detention without the option of a fine or a whipping or a fine exceeding the amount determined by the Minister from time to time by notice in the Gazette; or (ii) deal with the accused otherwise in accordance with law;”
- [1] Section 112(1)(a) reads as follows:

“The presiding judge may, if he is of the opinion that the offence does not merit the sentence of death, or the presiding judge, regional magistrate or magistrate may, if he is of the opinion that the offence does not merit punishment of imprisonment or any other form of detention without the option of a fine or of a whipping or of a fine exceeding the amount determined by the Minister from time to time by notice in the Gazette, convict the accused in respect of the offence to which he has pleaded guilty on his plea of guilty only and-

- (i) impose any competent sentence, other than the sentence of death or imprisonment or any other form of detention without the option of a fine or a whipping or a fine exceeding the amount determined by the Minister from time to time by notice in the Gazette; or
- (ii) deal with the accused otherwise in accordance with law;”

[2] S v Tshabalala (102/2015) [2016] ZAFSHC 90 (5 May 2016); S v Addabba; S v Ngeme; S v Van Wyk 1992 (2) SACR 325 (T); Pietersen v S A472/2016 WCHC; S v Van Wyk [2014] JOL 31649 (FB); Msiya v S (AR654/2017) [2018] ZAKZPHC 41 (31 August 2018).

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