

SOUTH AFRICA / JUDGMENT

S v Moloantoa (342/17) [2018] ZAGPPHC 222 (22 January 2018) [2018] ZAGPPHC 222

COURT

North Gauteng High Court, Pretoria

BEFORE

C J Van der Westhuizen, AJ Bam

CASE / FILE NUMBER

342/17

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IN

THE HIGH COURT OF SOUTH AFRICA

GAUTENG

DIVISION, PRETORIA

CASE

NO.: 342/17

REVIEW

CASE: k617/17

MAGISTRATE'S

SERIAL NO.: 39/17

NOT

REPORTABLE

NOT

OF INTEREST TO OTHER JUDGES

REVISED

In

the matter between:

THE
STATE
and
GEORGE
JHN MOLOANTOA
SPECIAL
REVIEW

JUDGMENT

VAN DER WESTHUIZEN, A J

- [1] The Trial Magistrate of Oberholzer Magistrate's Court sentenced the accused to three years imprisonment and has ruled that the whole term of imprisonment is to be served, i.e. without the possibility of parole.
- [2] It appeared to the initial reviewing judge that the aforementioned ruling was in conflict with the provisions of s 2768(1)(b) of the Criminal Procedure Act, 51 of 1977, (the Act) which stipulates that the non parole period may not exceed two thirds of the term of imprisonment and requested the Trial Magistrate to comment thereon. The latter commented that through an oversight the whole period of imprisonment was to be served without the option of parole. The Trial Magistrate requested that the sentence be corrected.
- [3] I referred the matter to the Director of Public Prosecutions for his opinion. The Director of Public Prosecutions opined that:
- (a) The accused, who conducted his own defence, pleaded guilty, and according to the explanation of the accused, the plea of guilty was correct;
 - (b) The sentence of three years imprisonment was appropriate;
 - (c) However, the order of nonparole was in conflict with the provisions of s 276B(1)(b) of the Act, that section providing that the period of nonparole may not exceed two thirds of the term of imprisonment;
 - (d) The order in terms of s 2768(1)(a) of the Act must be treated with circumspection with reference to *S v Strydom* [2015] ZASCA 29 and in the present matter no investigation appears to have been conducted in that regard. The accused was further not warned that the provisions of the said section would be considered. The accused was further not afforded an opportunity to address the court on that issue. (See *S v Mhlongo* 2016(2) SACR 611 (SCA)) .
- [4] It follows that the Trial Magistrate's failure to follow the prescribed procedure constitutes a misdirection. (*S v Britz* 2016 JDR 0980 (SC))
- [5] It further follows that the conviction stands to be confirmed as well as the sentence of three years of imprisonment, but not the order of non parole.
- [6] I propose the following order:
- (a) The conviction is confirmed;
 - (b) The sentence of three years of imprisonment is confirmed;
 - (c) The order of nonparole is set aside.

C J VAN DER WESTHUIZEN

ACTING JUDGE OF THE HIGH COURT

I agree , and it i s so ordered.

AJ BAM

JUDGE OF THE HIGH COURT

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