

SOUTH AFRICA / JUDGMENT

S v Mutobvu (A800/12) [2012] ZAGPPHC 289; 2013 (2) SACR 366 (GNP) (15 November 2012) [2012] ZAGPPHC 289

COURT

North Gauteng High Court, Pretoria

BEFORE

N Ranchod, S P Mothle

CASE / FILE NUMBER

A800/12

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IN THE HIGH OF SOUTH AFRICA
(NORTH
GAUTENG HIGH COURT, PRETORIA)

Magistrate:

Louis Trichardt
Case
no: 13/2012
High
Court Ref No: 937
Case
no.:A800/12
DATE:15/11/2012
THE
STATE vs MPHO VINCENT MUTOBVU
REVIEW

JUDGMENT

RANCHOD J

- [1] This matter lay before me on special review.
- [2] The accused, a 24-year-old male, paid an admission of guilt fine of R500.00 in terms of section 57 of the Criminal Procedure Act 51 of

1977. The relevant charge in respect of which the fine was paid was a contravention of section 61 (1) (a) of Act 93 of 1996 - failure to stop after an accident. On receipt of the review I invited the office of the Director of Public Prosecutions ('DPP') to comment on the matter. A helpful memorandum has been received from the DPP's office, for which I am grateful.

[3] The facts of the case appear from two affidavits deposed to by the accused and the complainant, who is the owner of the other vehicle involved in the accident.

[4] The accused says in his affidavit supporting the application for special review that on 19 April 2012 he was reversing his motor

vehicle from a parking bay when he scratched another parked vehicle. He thought the other vehicle was not damaged and therefore drove home. Unbeknownst to him, a security guard observed the incident and took down his car's registration number. The complainant

appears to have tracked him down through his vehicle registration number. The complainant contacted the accused and he went to see her. She informed him that she had already reported the matter at the Makhado police station.

for a security check. It was then that he learned, much to his surprise, that he had a criminal record. Apart from the admission of guilt fine that he had paid he had never before been convicted of a criminal offence. He went to the criminal records centre in Pretoria where he was told that the R500 he had paid was not for a traffic fine but for an admission of guilt fine and that that record will only be removed after 10 years. He then went back to the head prosecutor's office where he was told to apply for a special review.

[9] The accused says that he has been severely prejudiced in his attempts to find a job because of the criminal record. In *S v Cedras* 1992 (2) SACR 530 (C) at 531j - 532b the following was held regarding a court's approach to a review:

"In such cases the question must always be whether there are considerations of equity and fair dealing which compel the court to

intervene to prevent a probable failure of justice. There must be evidence before the court showing the likelihood of such inequity,

should it not intervene. A court must be satisfied that the admission of guilt was probably mistaken or incorrect and the accused or other person deposing on oath on his behalf must give a satisfactory explanation as to how the admission of guilt came to be mistakenly or erroneously made. Good cause must be established for condoning the error or mistake in making the admission of guilt. It must be established that, were the charge to go to trial, the accused would have a probable or arguable defence to the charge and that his deemed conviction or sentence is, accordingly, probably not in accordance with justice."

[5] He inspected her vehicle and, on seeing the scratch, apologised to her and agreed to pay for the costs of repair, which amounted to R6000.00.

- [6] The accused says further that the complainant agreed to withdraw the charge and they then proceeded to the police station for the complainant to do so. However, they were told at the police station that they would have to go to the office of the head prosecutor for a withdrawal of the case. He was also given a letter of warning to appear in court. (Presumably, this is a reference to the summons that was issued.)
- [7] The accused duly paid the R6000.00 to the complainant and on 23 April 2012 they went together to the head prosecutor to have the case withdrawn. He says the head prosecutor told him to pay R500.00 in cash at the office of the clerk of the court. The complainant lent him the R500.00 to do so as he did not have any money with him at the time. He alleges that he did not know that he was paying an admission of guilt fine (for failure to stop after an accident). He was under the impression that he was paying the equivalent of a traffic fine. He did not know that a consequence of having paid the fine would be that he would have a criminal record.
- [8] It appears that shortly thereafter the accused was called for an interview in respect of a post he had applied for at a gold mining company as an environmental officer. He says he passed the initial interview and was then called.
- [10] The complainant filed a confirmatory affidavit in support of the application for special review. In the absence of facts to the contrary, and given the actions by the accused to pay for the repair of the damage done to the complainant's vehicle as well as the view of the complainant that she would have preferred the charge to be withdrawn, this case is, in my view, ripe for the application of restorative justice. To continue with a prosecution under the circumstances would not have been apposite. So much is also conceded by the DPP.
- [11] The accused was clearly not legally represented when the prosecutor was consulted in this case. The inference is inescapable that the accused, in the light of the circumstances, could have equated the admission of guilt with a traffic fine. A layperson would not know that a criminal record is the result of the payment of such a fine. It is also important to note that the official summons (J175) which was handed to the accused does not set out the consequences of paying an admission of guilt fine. On the face of it the summons appears to be akin to a traffic fine.
- [12] In all the circumstances, I would set aside the payment of the admission of guilt fine and subsequent conviction and sentence and order that the fine paid be refunded to the accused.

N Ranchod

Judge of the High Court

I agree,

S P Mothle

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