

SOUTH AFRICA / JUDGMENT

S v Naumann and Another (258/2012)

[2012] ZAFSHC 159 (23 August 2012)

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COURT

Free State High Court, Bloemfontein

BEFORE

Kruger, Molefe

CASE / FILE NUMBER

258/2012

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FREE STATE HIGH COURT, BLOEMFONTEIN

REPUBLIC OF SOUTH AFRICA

Review No. : 258/2012

In the review between:-

THE STATE

and

JACOB JOHANN NAUMANNAccused No 3

JOHAN VREYAccused No 4

CORAM: KRUGER, J et MOLEFE, AJ

JUDGMENT BY: KRUGER, J

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DELIVERED ON: 23 AUGUST 2012

- [1] This is a special review from the regional magistrate, Bloemfontein. The charges were withdrawn against accused no 1 and no
2. Accused no 3 and 4 pleaded guilty in terms of section 112 of Act 51 of 1977. The charge was a contravention of regulation 36(1)(b) of the regulations promulgated under the Marine Living Resources Act 18 of 1998, Government Notice R1111 published in Government Gazette No 19205 on 2 September 1998.

- [2] In their plea explanation the accused pleaded guilty to a contravention of regulation 36(1)(b), the unlawful transportation or possession of de-shelled abalone, in that they transported 12 540 units of abalone on 7 September 2010 at or near Bultfontein whilst they were not authorised or permitted to do so. The accused explain in the section 112 statement that they were approached in Port Elizabeth and offered R2 000 each to transport the abalone from Port Elizabeth to Kemptonpark. They were apprehended at Bultfontein. They admitted that the value of the abalone they transported was R455 000.
- [3] The regional magistrate gave a detailed judgment on sentence. Accused no 3, Mr Naumann, was sentenced to thirty six months correctional supervision in terms of section 276(1)(h) of Act 51 of 1977 and in addition to two years imprisonment suspended for four years. In respect of accused no 4, Vrey, the court found that he was on bail for the illegal possession of abalone when he fearlessly and boldly committed the present offence. He did not disclose the fact of his arrest to the social worker, who compiled the pre-sentence report. The regional magistrate sentenced accused no 4 to four years imprisonment in terms of section 276(1)(i) (correctional supervision after serving 1/6 of the sentence), plus a further two years imprisonment suspended for four years.
- [4] The regional magistrate sent the matter on special review, because the sentence imposed on Vrey exceeds the maximum permitted for a contravention of regulation 36. The penalty provision in respect of a contravention of the regulation is contained in regulation 96:

“96 Any person who contravenes or fails to comply with any provision of these Regulations, shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding two years.”

- [5] As to accused no 3 the regional magistrate is of the view that the sentence is in order.

“The maximum term of correctional supervision prescribed is 3 years and due to the dissimilar nature of correctional supervision and imprisonment the penalty clause was not exceeded: Correctional supervision is not imprisonment. Two years imprisonment is prescribed and a limit is not explicitly placed on the term of correctional supervision. Imprisonment and correctional supervision may be imposed together.

Section 276 of the CPA prescribes that:

- (3) Notwithstanding anything to the contrary in any law contained, other than the Criminal Law Amendment Act, 1997 (Act 105 of 1997), the provisions of subsection (1) shall not be construed as prohibiting the court-
- (a) From imposing imprisonment together with correctional supervision;
- or ...”

In S v HOLTZHAUSEN

[2002] 1 All SA 445 (EC) at 448 g – h it was held that a magistrates' court can impose imprisonment together with correctional supervision, with a maximum of three years in respect of each. There is no need to interfere with the sentence imposed on accused no 3. The sentence has two separate and independent components (S v STANLEY 1996 (2) SACR 570 (A) at 575 d – e).

[6] Regarding accused no 4 the regional magistrate says:

“8] The accused: Vrey is in custody resultant to the sentence. The primary and ultimate purpose of the sentence in issue was for the accused to serve 8 (eight) months direct imprisonment. The sentence was on 22 June 2012. It will be in the best interest of the accused to obtain finality in the effecting of his sentence and therefore he was not released pending the decision of the Honourable Review Judge; he will suffer no prejudice.”

The regional magistrate, being made aware of the fact that the maximum penalty is two years imprisonment, is of the view that accused no 4 should only serve eight months direct imprisonment. The regional court's intention when sentencing accused no 4 was for him to spend eight months in prison. Such imprisonment was justified in view of the seriousness of the offence and the personal circumstances of the accused. The magistrate sought to achieve the aim of putting the accused in prison for eight months by imposing four years imprisonment in terms of section 276(1)(i), in terms whereof the accused would spend at least one sixth of the period of 48 months in prison, i.e. eight months (see section 73(7)(a) of the Correctional Services Act 111 of 1998). Because of the penal provision in regulation 96 which limits the court to two years imprisonment, that purpose is now achieved by sentencing the accused to eight months direct imprisonment in terms of section 276A(1)(b). The sentence which the regional magistrate suggests, and which is the appropriate and correct sentence, is set out in the order below:

ORDER

[7] (1) The sentence of accused no 3 is confirmed.

(2) The sentence of accused no 4 is substituted with the following:

In terms of section 276(1)(b) of the CPA the accused is sentenced to twenty four (24) months imprisonment of which sixteen (16) months imprisonment is suspended for 5 (five) years on condition that the accused is not again convicted of the illegal transport or possession of abalone in terms of Regulation 36(1)(a) of the regulations as promulgated under Government Notice R1111 and published in the Government Gazette 19205 of 2 September 1998, as amended, read with Regulation 1 and 96 of the said Regulations as issued in terms of section 77 of Act 18 of 1998, the Marine Living Resources Act and read with Section 1 and 58(4) of the said Act also read with section 250 of the Criminal Procedure Act 51 of 1977 and which was committed within the period of suspension.

(3) This sentence is in terms of section 282 of Act 51 of 1977 deemed to have been imposed on 22 June 2012.

- (4) The magistrate's order regarding section 103 of the Firearms Control Act 60 of 2000 remains unchanged.

KRUGER

I agree.

D.S. MOLEFE, AJ

/sp/wm

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Prepared on 11 October 2026 · Esheria