

SOUTH AFRICA / JUDGMENT

S v Ncamane (R153-2019) [2019] ZAFSHC 220 (28 November 2019)

[2019] ZAFSHC 220

COURT

Free State High Court, Bloemfontein

BEFORE

Opperman, J, Jordaan, J

CASE / FILE NUMBER

R153/2019

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**the HIGH COURT
OF south africa
FREE STATE
PROVINCIAL DIVISION**

Reportable:	YES/NO Case No: R153/2019 In the matter
between:	THE STATE and PORTIA NCAMANE
Coram:	JORDAAN, J et OPPERMAN, J
Delivered:	28 November 2019
Judgment:	Opperman, J

JUDGMENT

- [1] The accused pleaded guilty in terms of section 112(2) of the Criminal Procedure Act 51 of 1977. She was convicted of the contravention of section 9 of the Justice of the Peace and Commissioners of Oath Act 16 of 1963 and thereafter sentenced to six months imprisonment that was wholly suspended for five years on condition that the accused is not again convicted of Perjury and that was committed within the period of suspension. She was deemed fit to possess a firearm in terms of the Firearms Control Act 60 of 2000.
- [2] The matter was submitted in terms of section 304(4) of the Criminal Procedure Act for special review. During the judicial quality assessment, it was decided that the statement “did not elevate or substantiate the elements of the offence with which the accused was charged and therefor the statement of the accused is lacking in its entirety.”
- [3] The matter was referred back to the Judicial Head of the Office that caused the review with a request for reasons on the following

aspects:

In the cover letter of the presiding officer he/she indicated as follows: “... I concur that I did not clarify

the issues any further and accepted the statement as presented by the legal representative of the accused.”

1. What issues did the presiding officer not canvass with the accused?
 2. Which of the elements of the crime were not substantiated and encompassed in the statement in terms of section 112(2) of The Criminal Procedure Act 51 of 1977?
 3. What is the effect of the alleged non-compliance with the law and what is the order/solution that the presiding officer suggests in the circumstances of the case?
- [4] The presiding officer is currently on maternity leave and since the matter was referred by the Acting Head of Office, she decided to attend to the matter to avoid delay.
- [5] The Head of Office once again perused the section 112(2)-statement and reconsidered section 9 of the Justice of the Peace and Commissioners of Oath Act 16 of 1963 which states as follows:
9. Penalties for false statements in affidavits and certain other declarations.—Any person who, in an affidavit, affirmation or solemn or attested declaration made before a person competent to administer an oath or affirmation or take the declaration in question, has made a false statement knowing it to be false, shall be guilty of an offence and liable upon conviction to the penalties prescribed by law for the offence of perjury.

- [6] Hoor, Cowling & Milton in South African Criminal Law and Procedure, Volume III: Statutory Offences, CD-Rom and Intranet: ISSN 2218–Jutastat, e-publications at C2 page 25 commended that:

Although this offence is often called 'statutory perjury', that description is inaccurate, for it is an independent substantive offence and the perjury rules (for example that requiring corroboration) do not apply.

The essential elements of the offence are: (i) a false statement. (ii) in an affidavit, affirmation, or solemn or attested declaration. (iii) made before a competent person. (iv) mens rea.

- [7] The learned Acting Head of Office admitted that upon reconsideration the proceedings cannot be faulted and requested the Court of Review to “return the matter for filing.”

- [8] The proceedings in the case were indeed conducted in accordance with justice.

- [9] Order

The conviction and sentence are confirmed.

M OPPERMAN, J

I concur

F JORDAAN, J

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