

SOUTH AFRICA / JUDGMENT

S v Nyaile (593/2010) [2011] ZAFSHC 3 (6 January 2011) [2011] ZAFSHC 3

COURT

Free State High Court, Bloemfontein

BEFORE

C.B. CILLIÉ

CASE / FILE NUMBER

593/2010

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FREE STATE HIGH COURT, BLOEMFONTEIN

REPUBLIC OF SOUTH AFRICA

Review No. : 593/2010

In the review between:-

THE STATE

versus

PAUL MZWAKE NYAILE

JUDGMENT

BY: CILLIÉ, J

DELIVERED ON: 6 JANUARY 2011

JUDGMENT

- [1] This matter was heard by an acting magistrate. It was sent for review by the control magistrate in terms of section 304(4) Act 51 of 1977 on account of serious flaws in the proceedings.
- [2] The record does not indicate what plea the accused tendered, no indication that section 112(1)(a) or (b) of the Act was applied, personal and mitigating factors extracted from the accused before sentence, no indication of whether previous convictions were proven, no explanation to the accused that he may call witnesses on mitigation and ultimately an incompetent sentence was imposed.

[3] The control magistrate's request that the proceedings be set aside, must be granted.

The following order is made:

The conviction and sentence is set aside and the matter is remitted to the magistrate for a de novo trial.

C.B. CILLIÉ, J

/sp

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Prepared on 10 October 2026 · Esheria