
SOUTH AFRICA / JUDGMENT

S v Nzilane (273/2017) [2017] ZAGPPHC 871 (16 October 2017)

[2017] ZAGPPHC 871

COURT

North Gauteng High Court, Pretoria

BEFORE

N Janse Van Nieuwenhuizen

CASE / FILE NUMBER

273/2017

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IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

Not reportable

Not of interest to other judges

Revised.

16/10/2017

HIGH COURT REF.NO.

273/2017

MAGISTRATE'S SERIAL NO. 04/2017

REVIEW CASE NO.

A843/2017

In the matter between

THE STATE

and

TSHOKOLO JOSEPH NZILANE

REVIEW

JUDGMENT

JANSE VAN NIEUWENHUIZEN J

1. This is a special review in terms of section 304(4) of the Criminal Procedure Act, 51 of 1977.
2. The accused in the court a quo was charged with contravening section 17 of the Domestic Violence Act, 116 of 1998 ("the main charge") and in the alternative with assault ("the alternative charge").
3. The matter went on trial and the accused was convicted on both the main charge and the alternative charge.
4. The conviction is legally unsustainable in that the accused should have been convicted on either the main charge or on the alternative charge.
5. Upon realising that the accused was incorrectly convicted, the Acting Senior Magistrate, Vereeniging Magistrates' court directed a request for a special review to this court.
6. In terms of the provisions of section 304(4) of the Criminal Procedure Act, 51 of 1977, this court may, should it find that an injustice occurred in the court a quo, review and set aside the conviction or sentence.
7. Having had regard to the facts supra, I am of the view that the conviction on the alternative charge is not in accordance with justice and propose the following order:

Order

"The conviction in respect of the alternative charge of assault is reviewed and set aside."

N. JANSE VAN NIEUWENHUIZEN J

JUDGE OF THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

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