

SOUTH AFRICA / JUDGMENT

S v Parsons (C2791423) [2012] ZAWCHC 121; 2013 (1) SACR 38 (WCC) (15 June 2012)

[2012] ZAWCHC 121

COURT

Western Cape High Court, Cape Town

BEFORE

Dlodlo, Mantame

CASE / FILE NUMBER

C2791423

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IN THE HIGH COURT OF SOUTH AFRICA

(WESTERN CAPE, CAPE TOWN)

REPORTABLE

REVIEW CASE NO. C2791423

MAGISTRATE'S SERIAL NO. 21/2011

HIGH COURT REF. NO. 111202

In the matter between:

THE STATE

And

MICHELLE PARSONSACCUSED

Judgment

: DLODLO, J

Date of

Judgment :

15 .JUNE 2012

(WESTERN CAPE HIGH COURT, CAPE TOWN)

MAGISTRATE'S SERIAL NO. 21/2011 HIGH COURT REF. NO. 111202

MICHELLE PARSONS ACCUSED

SPECIAL REVIEW JUDGMENT DELIVERED ON 15 JUNE 2012

DLODLQ, J

[1] This matter served before me by way of Special Review. The Accused against whom a complaint of 'disturbing the peace' was persuaded to pay a fine (an admission of guilt fine) by a Police Officer to whom the complaint had been entrusted for investigation. According to the Summons and/or Notice to appear, the accused was scheduled to appear before Court on 29 July 2011 but prior to that date he was convinced by an investigating officer to rather pay an admission of guilt fine. Perhaps for completeness I need to quote the Accused's Affidavit which accompanies the request to review this matter:

"I was issued with the fine but never was it explained to me that I would receive a criminal record. Had this been said to me I would never have paid the fine and would definitely have appeared on the 29 July 20

.....the documents was in Afrikaans and when I told the chap that I

wanted it in English, he said that he would translate in English for me. "

[2] The admission of guilt and payment of fine without appearance in Court are regulated by the provisions of section 57 of the Criminal Procedure Act 51 of 1977 as amended. It is perhaps appropriate to set out the provisions of section 57 hereunder. The section provides as follows in its relevant parts:

"(1) Where-

(a) a summons is issued against an accused person under section 54 (in this section referred to as the summons) and the public prosecutor or the clerk of the court concerned on reasonable grounds

believes that a magistrate's court, on convicting the accused of the offence in question, will not impose a fine exceeding the amount determined by the Minister from time to time by notice in the Gazette, and such public prosecutor or clerk of the court endorses the summons to the effect that the accused may admit his guilt in respect of the offence in question and that he may pay a fine stipulated on the summons in respect of such offence without appearing in court; or

(b) a written notice under section 56 (in this section referred to as the written notice) is handed to the accused and the endorsement in terms of paragraph (c) of subsection

- (1) of that section purports to have been made by a peace officer, the accused may, without appearing in court, admit his guilt in respect of the offence in question by paying the fine stipulated (in this section referred to as the admission of guilt fine) either to the clerk of the magistrate's court which has jurisdiction or at any police station within the area of jurisdiction of that court or, if the summons or written notice in question is endorsed to the effect that the fine may be paid at specified local authority', at such local authority "

Indeed an offender on a minor charge who wishes to pay an admission of guilt fine can do so at the relevant places. As indicated above the possibility of paying an admission of guilt fine without appearing in Court arises in only two instances, namely:

- (a) When the prosecutor or clerk of the Court who issues a summons believes on reasonable grounds that the sentence upon conviction will not be in excess of a R5 000.00 fine and places an endorsement on the summons to that effect that the accused can pay a fine (stating the amount) without appearing in Court.
- (b) Where a written notice in terms of section 56 has been issued with an endorsement as contemplated in paragraph (1) (c) of that section.

The Accused in the instant matter fell within the second category which I have labelled (b) above.

- [3] Where the fine was paid either at the Police station or some other local authority, money together with the summons or written notice to appear gets sent to the clerk of the Court having jurisdiction. The latter completes the criminal case book for admission of guilt. Once the necessary entry has been made, the accused is deemed to have been correctly convicted. Such a conviction is regarded as a conviction for all statutory' and common-law offences. It is so serious such that for instance, it would serve as basis for the termination of a lease which contains a clause to the effect that should a lessee be convicted of any offence the lease would be terminated. See: NGJ Trading Stores (Pty) Ltd v Guerreiro 1974
- (4) SA 738 (A). It is interesting to note that the Accused person in the matter under review in fact denied from the beginning that she rendered herself guilty of any conceivable "noise-making". But the Police officer visited her on no less than two occasions saying he was under an obligation to bring her to book in one way or the other.
- [4] When the payment of guilt fine was suggested, the Accused must have been attracted to rather go on that route instead of going to Court. When one reviews matters of this nature one must always bear in mind the following principles and guidelines enunciated in S v Cedras 1999
- (2) SACR 530 (C) at 532:
- (a) Are there considerations of equity and fair dealing which compel the Court to intervene to prevent a probable failure of justice?
- (b) The accused must show good cause for mistakenly or erroneously admitting guilt.

(c)The accused must show that, were the charge to go to trial, she would have had a probable or arguable defence.

Importantly, the above principles were confirmed and applied in this Division in *S v Price* 2001 (1) SACR 110 (C). With regard to the very first principle or guideline, there is indeed a consideration of equity and fair dealing which compels me to intervene. The Accused' rights were certainly compromised in that she was not told what consequences would flow from her payment of an admission of guilt fine. This must be a transparent exercise. When the accused person's attention is invited to the consideration that he/she should pay an admission of guilt fine, he/she must correspondingly be fully informed what the consequences would be should he/she pay such a fine. It is misrepresenting the true facts to simply say to an accused person "// would be better for you to simply pay this fine because then it shall not be necessary for you to appear before the magistrate as the matter shall be deemed finalized. "

[5] The afore-going is dangerously attractive to an unsuspecting member of the public. Members of the public do not ordinarily like to appear before the magistrate. There are many reasons for this, including but not limited to ordinal") resentment to sit on the dock and be seen by other persons and time that is so precious that often gets wasted by Court attendance. We live in a constitutional democratic era. Human rights are enshrined in the Constitution of this Country. It is not only fair to draw the accused person's attention to the fact that a conviction shall be noted against his name, but it is constitutionally obligatory on the part of an officer serving such an accused person with either the summons or a written notice to appear.

[6] The written notice to appear (in terms of section 56 of the Criminal Procedure Act) which is currently in use merely reads as follows: "You are hereby called upon in terms of section 56 of the Criminal Procedure Act, 1977 (Act 51 of 1977). to appear before the

above-mentioned Court on the date stated above at 09:00 to answer a charge of:.....or such other charge as the Public Prosecutor may bring against you on the grounds that upon or about the.....in the said district you did wrongfully and unlawfully.....An

admission of guilt fine of R.....may be accepted. Note: (i) An admission of guilt fine can only be paid at either the Clerk of the Magistrate's Court which has jurisdiction in respect of the offence in question or at any police station within the area of jurisdiction of that Court, (ii) If you intend paying an admission of guilt fine, payment should be effected before or on... (Hi) You may admit your guilt in respect of the offence in question by paying the stipulated fine in respect thereof without appearing in Court. Warning: If you fail to comply with this notice or to remain in attendance at the proceedings you may be arrested and sentenced to a fine or imprisonment " Nowhere in the above-quoted written notice to appear is there a warning that payment of the stipulated admission of guilty fine translates to a conviction. This is not fair to unsuspecting members of the public. This form needs improvements because as it stands it may not pass the Constitutional muster. It cannot be left to the police officer serving an accused person with the written notice to appear to also explain to such an accused person that "look upon payment of

this admission of guilt fine you shall be deemed (for legal purposes) to have been duly convicted and an entry shall be made correspondingly in the SAP69. " The form quoted above came into existence prior to the present constitutional era. At that time no emphasis was placed on the

rights of an accused person at all. The correct procedure is that the police officer must warn the accused about the conviction

record. An endeavour must also be made by the powers that be to include this warning on the prescribed Notice to Appear which is handed to an accused person.

[7] In the instant matter the accused person has shown to my satisfaction good cause for mistakenly or erroneously admitting

guilt. She was persuaded that this was the best route to follow which would obviously put an end to her having to put up with the visits by the Police officer (who in any way could arrest or cause her to be arrested if need be). These admissions of guilt procedures provided for in the Criminal Procedure Act must be followed and handled with extreme care. It is trite that when it subsequently does appear that there was an irregularity or that there was a well-founded doubt concerning the guilt of an accused person, the High Court will set aside the conviction and the subsequent sentence on review. The Accused in the instant matter has also demonstrated that were she placed in a position to face this charge or any charge related to the one chosen, .he would have had a probable and/or an arguable defence thereagainst.

[8] I am satisfied that this Accused was wrongly led to admit guilt and consequently wrongly convicted. In the result the proceedings in the instant matter are hereby reviewed and conviction and sentence is set aside. DLODLO, J I agree. MANTAME, AJ

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Warning: If you fail to comply with this notice or to remain in attendance at the proceedings you may be arrested and sentenced to a fine or imprisonment "

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DLODLO, J

I agree.

MANTAME, AJ

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