

SOUTH AFRICA / JUDGMENT

S v Rabbi (148/2014) [2014] ZAFSHC 243 (18 December 2014) [2014] ZAFSHC 243

COURT

Free State High Court, Bloemfontein

BEFORE

C.J. Musi

CASE / FILE NUMBER

148/2014

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IN THE HIGH COURT OF SOUTH AFRICA

FREE STATE DIVISION, BLOEMFONTEIN

Review No. : 148/2014

In the case between:

THE STATE

versus

FALLA RABBI

CORAM: C.J. MUSI, J

JUDGMENT:

C.J. MUSI, J

DELIVERED ON: 18 DECEMBER 2014

[1] The accused was convicted, by the magistrate Bloemfontein, of contravening section 49(1) (a) of the Immigration Act 13 of 2002. He was unrepresented and pleaded guilty. He was convicted, in terms of section 112 (1) (a) of the Criminal Procedure Act, 51 of 1977(the Act). The magistrate sentenced him to a fine of R1000.00 or 100 days imprisonment.

[2] It was subsequently realised that the magistrate exceeded the prescribed sentence. The matter was therefore sent on special

review.

[3] Section 112(1)(a) of the Act reads as follows:

“(1) Where an accused at a summary trial in any court pleads guilty to the offence charged, or to an offence of which he may be convicted on the charge and the prosecutor accepts that plea-

- (a) The presiding judge, regional magistrate or magistrate may, if he or she is of the opinion that the offence does not merit punishment of imprisonment or any other form of detention without the option of a fine or of a fine exceeding the amount * determined by the Minister from time to time by notice in the Gazette, convict the accused in respect of the offence to which he or she has pleaded guilty on his or her plea of guilty only and –
- (i) imposed any competent sentence, other than imprisonment or any other form of detention without the option of a fine or a fine exceeding the amount determined by the Minister from time to time by notice in the Gazette; or
- (ii) deal with the accused otherwise in accordance with law;”[1]

[4] Section 49(1)(a) of the Act reads as follows:

“49. Offences. – (1) (a) Anyone who enters or remains in, or departs from the Republic in contravention of this Act, shall be guilty of an offence and liable on conviction to a fine or to imprisonment not exceeding three months.”

[5] It is clear that the magistrate could not impose a sentence of 100 days imprisonment as an alternative to the fine. The maximum

alternative imprisonment is 3 (three) months.

[6] The accused has already paid the fine.

[7] I agree that the sentence should be corrected.

[8] I accordingly make the following order:

- (a) The conviction is confirmed
- (b) The sentence is set aside and replaced with the following:
R1000.00 or 20(twenty) days imprisonment.

C.J. MUSI, J

[1] The determined amount is R5000.00

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