

SOUTH AFRICA / JUDGMENT

S v Sekoto (R272/2016) [2017] ZAFSHC 9 (5 January 2017) [2017] ZAFSHC 9

COURT

Free State High Court, Bloemfontein

BEFORE

DAFFUE, REINDERS

CASE / FILE NUMBER

R272/2016

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IN

THE HIGH COURT OF SOUTH AFRICA,

FREE

STATE DIVISION, BLOEMFONTEIN

Reportable:

NO

Of

Interest to other Judges: NO

Circulate

to Magistrates: NO

Review

number: R272/2016

In

the matter between:

THE

STATE

and

SELLO

SAMUEL SEKOTO

CORAM:

DAFFUE,

J et

REINDERS, J

JUDGMENT

BY: DAFFUE, J

DELIVERED ON: 5 JANUARY 2017

AUTOMATIC REVIEW IN TERMS OF SECTION 302(1)

OF THE CRIMINAL PROCEDURE ACT, 51/1977

- [1] This is an automatic review. The accused was convicted of robbery and sentenced to 12 months' imprisonment. He was also declared unfit in accordance with s 103(1)(b) of Act 60 of 2000 to possess a firearm.
- [2] The transcribed record sent to the High Court contained the evidence, arguments and judgment in respect of a bail application pertaining to the accused, but unfortunately and as indicated by the magistrate when the matter was sent on review, the record of the criminal trial was partially transcribed only. The magistrate mentioned in her letter of 18 November 2016 accompanying the review record that she had done everything within her powers to retrieve a fully transcribed record, but without success. She also indicated that neither the prosecutor's notes, nor her notes were available as these had been destroyed on assumption that the correct record had been received from the transcribers.
- [3] The transcript of the trial record placed before us consists only of the prosecutor's address on conviction, the judgment, the evidence pertaining to accused's personal circumstances, the submissions on sentence by the prosecutor and the sentence.

No evidence whatsoever has been transcribed. The same applies to the plea proceedings. It is impossible, based on the shortcomings, to consider this matter on automatic review.

- [4] There is no doubt that the conviction and sentence should be set aside due to an incomplete record. I refer to *S v S* 1995 (2) SACR 420 (TPD) at 424b, *S v Van Wyngaardt* 1965 (2) SA 319 (OPD) at 320B and *S v Joubert* [1990] ZASCA 113; 1991 (1) SA 119 (AD) at 126D-I. Although these judgments deal with appeals and the impossibility of reconstructing a proper record, the same should apply in casu. Automatic reviews are more in the nature of informal appeals rather than reviews *stricto sensu*. These reviews are not limited to irregularities and any point which could have been considered on appeal may be considered. See *Hiemstra loc cit* at 30-20(1).
- [5] The magistrate is also of the view that the conviction and sentence should be set aside and her view point is endorsed.
- [6] Therefore the following order is made:
1. The conviction and sentence are set aside.

JP DAFFUE, J

I concur

C REINDERS, J

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