

SOUTH AFRICA / JUDGMENT

S v Shale (38/2015) [2015] ZAFSHC 87 (30 April 2015) [2015] ZAFSHC 87

COURT

Free State High Court, Bloemfontein

BEFORE

S Naidoo, JP Daffue

CASE / FILE NUMBER

38/2015

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IN

THE HIGH COURT OF SOUTH AFRICA

FREE

STATE DIVISION, BLOEMFONTEIN

Review No: 38/2015

In the review

between:

THE STATE

versus

TALADI

SHALE.....ACCUSE
D

CORAM:

DAFFUE

J et

NAIDOO,

J

JUDGMENT:

NAIDOO,

J

DELIVERED

ON: 30

APRIL 2015

REVIEW

JUDGMENT

- [1] This is a Review that came before us in terms of section 302(1) of the Criminal Procedure Act 51 of 1977 (the Act).
- [2] The accused was charged with one count of contravening the provisions of section 4(b), read with sections 1,3, 17 to 25 and 64 of the Drugs and Drug Trafficking Act 140 of 1992, in that he was found in possession of a mandrax tablet. The accused conducted his own defence and pleaded guilty on 13 October 2014 and after section 112(1)(b) of the Act was invoked, the magistrate proceeded to question him in accordance with that section. He was convicted as charged. The accused was sentenced, on the same day, to pay a fine of Three Thousand Rand (R3000) or Six
- (6) months' imprisonment, which was wholly suspended for a period of five (5) years, on condition that the accused is not convicted of contravening section 4(b) of Act 140 of 1992, committed during the period of suspension.
- [3] During routine checking of the work of magistrates in March 2015, the Acting Senior Magistrate discovered that the magistrate, who was a temporary magistrate, was unaware that the matter was subject to automatic review in terms of the Act and consequently did not forward the matter to the High Court. It also became evident that the accused's rights of review were not explained by the magistrate. The Acting Senior Magistrate referred the matter to this court on 13 March 2015.
- [4] The matter came before Jordaan J, who referred the matter back to the magistrate on 31 March 2015, with the following queries;
- 4.1 "Did the accused admit to knowledge of Mandrax being an illegal substance?"
- 4.2 Did he admit that he knew that it is illegal to be in possession of such substance?"
- [5] The magistrate responded to the queries raised by Jordaan J on 7 April 2015 and conceded that the accused did not admit that he knew Mandrax to be an illegal substance and that it was illegal to be in possession of such a substance. The magistrate further conceded that the conviction is not in order and requested the Reviewing Judge to set aside the conviction and sentence. In addition, it is also apparent from the record that the accused's review rights were not explained to him.
- [6] In view of the above, it is clear that the accused did not admit all the essential elements of the offence with which he was charged and that he ought not to have been convicted.
- [7] I accordingly make the following order:

The conviction and sentence imposed on the accused are set aside.

S. NAIDOO, J

I agree.

JP DAFFUE, J

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