

SOUTH AFRICA / JUDGMENT

S v Simba; S v Perrang; S v Ajouhran (A2241/17; A850/17; A2800/17) [2018] ZAWCHC 99; 2019 (1) SACR 90 (WCC) (17 August 2018) [2018] ZAWCHC 99

COURT

Western Cape High Court, Cape Town

BEFORE

Engers, Cloete

CASE / FILE NUMBER

A2241/17; A850/17; A2800/17

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IN THE HIGH COURT OF SOUTH AFRICA

(WESTERN CAPE DIVISION, CAPE TOWN)

High Court Ref Nos: 1880, 18806 and 18807

Magistrate's Serial Nos: 03/18, 05/18 and 06/18

Special Reviews: 03/18, 05/18 and 06/18

In the matters between:

THE STATE

v

RICHARD SIMBA Case no: A2241/17

and

STANLEY PERRANG Case no: A850/17

SAMEER AJOUHRAN Case no: A2800/17

SPECIAL REVIEW JUDGMENT DATED 17 AUGUST 2018 IN TERMS OF

SECTION 304(4) OF ACT 51 OF 1977

ENGERS AJ:

[1] These matters come before us by way of special review. All of them involve the power of a judicial officer presiding at a magistrate's court to set aside a conviction and sentence in terms of section 57(7) of the Criminal Procedure Act, No. 51 of 1977.

- [2] Case no. A2241/2017 involved a conviction under section 4(b) of the Drugs and Drug Trafficking Act, No. 140 of 1992. Cases A850/2017 and A2800/2017 involved convictions under the Marine Living Resources Act, No. 18 of 1998 (“MLRA”)
- [3] All the accused admitted guilt, which was accepted by the prosecutor in terms of section 57A.
- (i) In case no. A2241/2017, the accused was found guilty of possessing 15 stops of dagga. The admission of guilt fine was R800.
- (ii) In case no. A850/2017, the accused was found guilty under regulation 44(1)(a) to the MLRA of being in possession of 223 crayfish. The admission of guilt fine was R6000.
- (iii) In case no. A2800/2017, the accused was found guilty under regulation 51(1) to the MLRA of being in possession of 454 undersized crayfish. The admission of guilt fine was R9000.
- [4] In each case, the magistrate set aside the conviction and sentence, and directed that the accused be prosecuted in the ordinary course. The control prosecutor contends that the magistrate was not entitled to do this, and that the prosecutor was entitled to fix the admission of guilt fine in the relevant amounts.
- [5] The relevant portion of section 57A reads:
- (1) If an accused who is alleged to have committed an offence has appeared in court...the public prosecutor may, before the accused has entered a plea and if he or she on reasonable grounds believes that a magistrate's court, on convicting such accused of that offence, will not impose a fine exceeding the amount determined by the Minister from time to time by notice in the Gazette, hand to the accused a written notice, or cause such notice to be delivered to the accused by a peace officer, containing an endorsement in terms of section 57 that the accused may admit his or her guilt in respect of the offence in question and that he or she may pay a stipulated fine in respect thereof without appearing in court again.
- ...
- (4) The provisions of sections 55, 56 (2) and (4) and 57 (2) to (7), inclusive, shall apply mutatis mutandis to the relevant written notice handed or delivered to an accused under subsection (1) as if, in respect of section 57, such notice were the written notice contemplated in that section and as if the fine stipulated in such written notice were also the admission of guilt fine contemplated in that section.
- [6] For present purposes, sections 55 and 56 are not relevant, and the relevant portions of section 57 are as follows:
- (4) No provision of this section shall be construed as preventing a public prosecutor attached to the court concerned from reducing an admission of guilt fine on good cause shown.

- (5) (a) An admission of guilt fine stipulated in respect of a summons or a written notice shall be in accordance with a determination which the magistrate of the district or area in question may from time to time make in respect of any offence ...
- (b) An admission of guilt fine determined under paragraph (a) shall not exceed the maximum of the fine prescribed in respect of the offence in question or the amount determined by the Minister from time to time by notice in the Gazette, whichever is the lesser.
- (6) ... the clerk of the magistrate's court which has jurisdiction... shall ... enter the essential particulars ... in the criminal record book for admissions of guilt, whereupon the accused concerned shall, subject to the provisions of subsection (7), be deemed to have been convicted and sentenced by the court in respect of the offence in question.
- (7) The judicial officer presiding at the court in question shall examine the documents and if it appears to him that a conviction or sentence under subsection (6) is not in accordance with justice or that any such sentence, except as provided in subsection (4), is not in accordance with a determination made by the magistrate under subsection (5) or, where the determination under that subsection has not been made by the magistrate, that the sentence is not adequate, such judicial officer may set aside the conviction and sentence and direct that the accused be prosecuted in the ordinary course, whereupon the accused may be summoned to answer such charge as the public prosecutor may deem fit to prefer: Provided that where the admission of guilt fine which has been paid exceeds the amount determined by the magistrate under subsection (5), the said judicial officer may, in lieu of setting aside the conviction and sentence in question, direct that the amount by which the said admission of guilt fine exceeds the said determination be refunded to the accused concerned.
- [7] In terms of subsection 57(5) there are limitations on the amount of an admission of guilt fine. It cannot exceed the LESSER of:
- (a) A determination made for that district for that offence (if such determination exists); and
- (b) The amount determined by the Minister, which at present stands at R10 000.
- [8] A determination for the magisterial district of Strand does exist. It provides for the following:-
- (i) For a contravention of section (4)(b) of Act 140 of 1992, the fine is specified for up to 10 stops of dagga at R100 per stop. For 11 stops or more it states "No J534 – DOCKET TO PP". Effectively this means that no admission of guilt can be accepted where 11 or more stops of dagga are involved.
- (ii) For contravention of section regulation 44(1)(a) to Act 18 of 1998, the determination provides for a fine of R500 per lobster for a first offence, but says "No AOG for more than 5 lobster".

(iii) For contravention of regulation 51(1) to the same Act, the determination is R500 per lobster for a first offence, but with no limitation for a first offender in respect of the number of lobsters concerned.

[9] In cases A2241/2017 and A850/2017, the number of articles found in the possession of the accused exceeded the maximum for which an admission of guilt could be paid in terms of the determination for that district. Notwithstanding this, the prosecutor proceeded by way of sections 57 and 57A.

[10] Section 57(5)(a) requires that the admission of guilt fine be “in accordance with” the said determination. Section 57(7) permits the magistrate to set aside the conviction and sentences if they are not in accordance with the determination. The admission of guilt fines in these cases were manifestly NOT in accordance with the determination, and it follows that the magistrate

was entitled to set aside the conviction and sentence. The fact that the admission of guilt fine was not in accordance with the determination means that it was ipso facto not in accordance with justice, and the magistrate would be entitled to set the conviction and sentence on this basis as well.[1]

[11] In case no. A2800/2017, the contravention was of regulation 51(1) to the MLRA. The determination for the district does not include any maximum number of crayfish. The prosecutor was thus entitled to impose the admission of guilt fine of R9000.

[12] However, the magistrate was equally entitled, in the exercise of the discretion given to her by way of section 57(7), to find that the conviction or sentence was not in accordance with justice. On so finding, she was entitled to set aside the conviction and sentence.

[13] It appears to be the contention of the control prosecutor that a prosecutor may determine an admission of guilt fine in excess of the maximum laid down in the determination for the district. This goes directly against the clear wording of section 57(5)(a).

The proviso to section 57(7) allows the magistrate, in lieu of setting aside, to reduce the fine to accord with the maximum.

[14] To the extent that reliance is placed on section 57(4) which gives the prosecutor the right to “reduce” an admission of guilt fine, this is misconceived. The reduction can apply only to the maximum possible, which as stated above, is the LESSER of the determinations of the Minister and the district magistrate. In other words, where a determination exists for the district, the prosecutor may reduce the fine below that specified in the determination. In the cases under review, the prosecutor did not reduce the admission of guilt fine; he or she imposed a fine in excess of the maximum permitted by the district determination.

[15] In case A2241/2017, the offence fell outside the limit for which an admission of guilt could be accepted. The fine which was

imposed and accepted did fall within the monetary limit prescribed in the determination for the district. The magistrate took the view that in the light of the seriousness of the offence, the fine imposed was not in accordance with justice, and set the conviction and sentence aside.

[16] Section 57 gives the presiding judicial officer an overriding discretion. Even where the admission of guilt fine has been imposed in accordance with all legal requirements, the magistrate is still entitled to set aside the conviction and/or sentence, if he or she considers that they are not in accordance with justice.[2] Any other interpretation would lead to the absurd result that the powers of a judicial officer under subsection 57(7) are subject to a prosecutor's overriding discretion under s 57(4).

[17] In the light of the above, I am of the view that the magistrate was correct in setting aside the convictions and sentences and directing

that the accused be prosecuted in the ordinary course.

[18] I therefore propose that the following order be made:

1. The setting aside of the conviction and sentence in case numbers A2241/17, A850/2017 and A2800/2017 is confirmed.
2. The fines paid by the accused are to be refunded forthwith.
3. The accused are to be prosecuted in the ordinary course as provided for in section 57(7) of Act 51 of 1977.

ENGERS AJ

CLOETE J

I agree, and it is so ordered.

CLOETE J

[1] It should be noted that section 57(7) allows the magistrate to reduce a fine which exceeds the district determination, so as to accord with the determination. This would in my view not apply where the determination specifically prohibits the imposition or acceptance of an admission of guilt fine.

[2] The discretion must, of course, be properly exercised.

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Prepared on 10 October 2026 · Esheria