

SOUTH AFRICA / JUDGMENT

S v Smith (227/2014) [2014] ZAFSHC 234 (4 December 2014) [2014] ZAFSHC 234

COURT

Free State High Court, Bloemfontein

BEFORE

A.F Jordaan, L.J Lekale

CASE / FILE NUMBER

227/2014

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FREE

STATE HIGH COURT,

BLOEMFONTEIN

REPUBLIC

OF SOUTH AFRICA

Review

No. : 227/2014

In

the review between:-

THE

STATE

versus

RODNEY

SMITH

CORAM:

JORDAAN, J et LEKALE, J

JUDGMENT

BY: JORDAAN, J

DELIVERED ON: 04 DECEMBER 2014

JORDAAN, J

[1] This matter was sent for special review in terms of the Criminal Procedure Act Section 304(4), by the acting Senior Magistrate of Bloemfontein.

[2] It appears that the accused was charged with theft to which he pleaded guilty. On the strength of his plea of guilty he was

convicted in terms of section 112(1)(a) of the Criminal Procedure Act.

[3] He was however sentenced to three months imprisonment after which an enquiry in terms of the Firearms Control Act was done.

[4] It is clear that a conviction in terms of section 112(1)(a) of the act can only be done when the presiding official is of opinion that the offence does not merit a punishment of imprisonment or any form of detention without an option of a fine. The sentence is therefore clearly wrong and not in accordance with justice.

[5] The control Magistrate for Bloemfontein, in view of the aforesaid, suggested that the sentence be set aside and the matter remitted to the trial court for the imposition of an appropriate sentence. That is clearly correct.

[6] In the circumstances I make the following order.

ORDER:

1. In conclusion the conviction is confirmed but the sentence imposed by the trial court is set aside and the matter is remitted to the trial court for the imposition of sentence in accordance with this judgment.

A.F JORDAAN. J

I concur.

L.J LEKALE. J

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Prepared on 11 October 2026 · Esheria