

SOUTH AFRICA / JUDGMENT

S v Thage (SR12/18) [2018] ZAGPPHC 911 (5 April 2018)

[2018] ZAGPPHC 911

COURT

North Gauteng High Court, Pretoria

BEFORE

Tuchten

CASE / FILE NUMBER

SR12/18

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IN

THE HIGH COURT OF SOUTH AFRICA

GAUTENG

DIVISION , PRETORIA

CASE

NO: SR12/18

In

the matter between:

THE
STATE
and
TYSEN
THABO PETER
THAGE
Accused

JUDGMENT

Tuchten J:

1 On 5 January 2018, the accused was charged in Cullinan magistrate's court before magistrate Mr NV Mabunda with the theft on 3 January 2018 of a five litre container of cooking oil from a complainant described as Elias Harrebo Gudiso. He pleaded guilty and was convicted on his plea. The matter was then remanded to 11 January 2018 for record and sentence.

2 Magistrate Mabunda passed away on 10 January 2018. The matter was then postponed from time to time while efforts were made to transcribe the record of the proceedings. Unfortunately that cannot be done as the recording machine had malfunctioned. The late Mr Mabunda left no notes which can be of any assistance.

3 The case has been sent on special review by the Magistrate of Cullinan.

4 The question is whether additional efforts should be made to reconstruct the record or whether, as the Magistrate suggests, the conviction should be set aside. In my view the interests of justice favour the latter course. A reconstruction will be more time consuming and only the recollections of the parties and the charge sheet are available for that purpose.

5 I therefore make the following order:

1 The conviction of Tysen Thabo Peter Thage on 5 January 2018 in the Cullinan magistrate's court, case A05/187 on a charge of theft of a five litre container of cooking oil is hereby set aside.

2 The above order will not constitute an acquittal. The case against the accused must proceed and the accused must once again be required to plead to the charge.

NB Tuchten

Judge of the High Court

5 April 2018

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