

SOUTH AFRICA / JUDGMENT

S v Venter (1119, 21/2009, B8605789) [2009] ZAGPPHC 312 (2 September 2009) [2009] ZAGPPHC 312

COURT

North Gauteng High Court, Pretoria

BEFORE

Sapire, Ebersohn

CASE / FILE NUMBER

1119, 21/2009, B8605789

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IN THE NORTH GAUTENG HIGH COURT PRETORIA

Held at Mokopane

HIGH COURT REF NO: 1119

MAGISTRATES' COURT NO: 21/2009

REVIEW CASE NO: B 8605789

IN THE MATTER BETWEEN

The State

vs

Daniel Johannes Venter

REVIEW JUDGMENT

SAPIRE. A J:

The accused in this matter was arrested at Checkers, Mokopane where he was found with a slide bolt in his pocket after passing through the till point without paying for it The slide bolt had been taken by the accused, removed from its plastic covering and placed by him in his pocket He bought other goods which he paid for at the till point but according to him he forgot to pay for the slide bolt.

The purchase price of the slide bolt is R22, 00. After his arrest he was taken to the police station and it was explained to him that he could pay an admission of guilt fine in the amount of R300, 00.

Because his mother was seriously ill and he was looking after her and because he wanted to avoid having to appear in court the accused has stated in an affidavit later signed by him he did in fact sign an Admission of Guilt and paid the fine.

The accused maintained that he had no intention to steal the slide bolt and that he was in fact not guilty of the offence.

This matter has come on special review at the instance of the magistrate at Potgietersrus who in a letter to the reviewing judge has stated:

1 The above person (referring to the accused), paid an admission of guilt of R300.00 on the 21st of May 2009 in respect of the 'offence'. He said that the magistrate (who was someone other than the referring magistrate) did not, as he should have done, set the conviction aside in terms of section 57(7) of Act 51 of 1977 but certified that the finding of guilty and fine was in accordance with the law.

The referring magistrate, who is not the magistrate he refers to expresses the opinion that the form J534 does not disclose an offence

and that accordingly the conviction and sentence is not in accordance with the law.

2 The magistrate attached statements of the accused. He states that the accused requested that the conviction should be set aside on the grounds of the reasons therein stated.

3 The referring magistrate suggested that seen in the light of the above it was his humble opinion that the conviction and sentence should be set aside in order that the accused be again prosecuted

It is not difficult to see why the magistrate has referred this matter for special review. He expresses no view as to the cogency of the accused's explanation for his having subscribed to the admission of guilt on the form J534. As far as the admission of guilt is concerned there is substance to the magistrate's observation that no offence is disclosed.

The document in question which is in the nature of a summons required the accused to attend court to answer a charge of "shoplifting".;

on the grounds that on or about the 21st day of May in the year 2009 and at or near Mokopane in the said district the accused did

wrongfully and unlawfully "shoplifting at Checkers, Mokopane". The last words appear where space is left for the description of the offence. The admission of guilt follows immediately thereafter on the form

The magistrate's point appears to be that shoplifting in itself is not an offence. The word shoplifting is in common use and its meaning is well known. In charging an accused it is necessary to state the offence and to give particulars of what the accused person had done to make himself guilty of the offence (*S v Seweta* 2007 (1) SACR 123)

In this case if the charge were to be properly described, the form should have described the item which was said to be stolen, the

person in whose possession the item was and from whom it was stolen and an allegation of the criminal intent of the was fully aware of what he was doing when he signed the Admission of Guilt and the nature and particulars of the offence with which he was charged.

This notwithstanding and even though I have difficulty in accepting the accused's explanation it seems that justice would best be served by setting aside the conviction and sentence so that the prosecution can once again be instituted.

I accordingly order that the conviction and sentence be set aside and that the accused be recharged with the offence which he is alleged to have committed.

SAPIRE, AJ

ACTING JUDGE

PRETORIA

I AGREE:

EBERSOHN, AJ

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Prepared on 12 October 2026 · Esheria