

SOUTH AFRICA / JUDGMENT

S v Wade (43/14) [2014]

ZAGPJHC 84 (24 April 2014)

[2014] ZAGPJHC 84

COURT

South Gauteng High Court, Johannesburg

BEFORE

FHD Van Oosten, G Wright

CASE / FILE NUMBER

43/14

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REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG LOCAL DIVISION JOHANNESBURG)

HIGH COURT REF NO: 43/14

MAGISTRATE'S SERIAL NO: SPECIAL REVIEW 2/2014

CASE NO: ORTIA 08/10/2012

The Magistrate

Kempton Park

In the matter between

THE STATE

and

DANIEL WADEACCUSED

R E V I E W J U D G M E N T

VAN OOSTEN J:

[1] On 1 October 2012 and at the OR Tambo International Airport the accused together with his wife proceeded through international

departures on their way to board a flight to Mauritius. At the security checkpoint the x-ray apparatus raised an alarm and upon

searching their hand luggage a 9mm Beretta Parabellum magazine containing 14 live rounds (of which the accused was in lawful possession) was discovered. The accused was escorted to the airport security section where eventually he was issued with a Written Notice to Appear in Court in terms of s 56 of Act 51 of 1977 (the notice). In terms of the notice the accused was given the option to either

appear in court on a specified day or pay an admission of guilt fine of R500-00. The accused duly paid the fine and he and his wife boarded the flight to Mauritius.

- [2] Almost 2 years later, by way of a letter dated 13 February 2014 to which an affidavit deposed to by the accused, is attached, addressed to the senior Magistrate Kempton Park, the accused submitted a 'special request to have the judgment overturned and my record cleared'. The acting senior Magistrate of Kempton Park thereupon submitted the papers in the matter to the Registrar of this court for special review in terms of s 304A of Act 51 of 1977 (the Act).
- [3] It is at the outset necessary to briefly comment on the review procedure that ought to be followed in a case like the present. Section 304A of the Act provides for the review of proceedings before sentence. In the present matter the payment of the admission of guilt fine, once having been recorded in the criminal record book, in terms of s 57(6) of the Act, is deemed to be a conviction and sentence of the accused in respect of the offence in question. Section 304A of the Act accordingly does not apply. Nor does s 302 of the Act, providing for reviews in the ordinary course, apply. Section 304(4) of the Act provides for a review in circumstances where it is brought to the notice of the high court that the proceedings, in which the sentence was imposed, 'were not in accordance with justice'. As will become apparent, this is such a case and I accordingly propose to deal with this matter on review as envisaged in s 304(4) of the Act.
- [4] The notice informed the accused of the charge preferred against him, which inserted in manuscript was 'Contravention Aviation Act 10/1972' or any other charge that the Public Prosecutor may bring against him, on the grounds that the accused on '1 October 2012' and at 'OR Tambo Int Airport' wrongfully and unlawfully 'failed to declare ammunitions (sic) at restricted area (International departures)'. Act 10 of 1972, with the short title, the Civil Aviation Offences Act, 1972, was repealed by s 166(2) read with schedule 2 of the Civil Aviation Act, 13 of 2009, which came into operation on 31 March 2010. Thus, on the date mentioned in the notice, Act 10 of 1972 had already been repealed

with the result that the accused was charged under and the resultant conviction and sentence based on a non-existing Act. The fact that the Public Prosecutor had the matter proceeded on trial could have brought another charge against the accused based on the same factual allegations, is of no moment. The conviction and sentence, for the reasons stated, cannot be allowed to stand. The proceedings in terms of which the accused was convicted and sentenced were accordingly vitiated by the irregularity and for that reason not in accordance with justice. It follows that the conviction and sentence must be set aside.

[5] In view of the irregularity I do not consider it necessary to comment on the allegations made by the accused in the letter and the affidavit I have referred to.

[6] In the result the following order is made:

1. The conviction and sentence are set aside.
2. The amount of R500.00 must be refunded to the accused.

FHD VAN OOSTEN

JUDGE OF THE HIGH COURT

I agree.

G WRIGHT

DATE OF JUDGMENT: 24 APRIL 2014

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Prepared on 13 October 2026 · Esheria