

SOUTH AFRICA / JUDGMENT

S v Nhlapo; S v Van Heerden; S v Mofokeng (A213/17) [2017] ZAGPPHC 307 (25 April 2017) [2017] ZAGPPHC 307

COURT

North Gauteng High Court, Pretoria

BEFORE

Potterill, S.S. Mphahlele

CASE / FILE NUMBER

A213/17

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IN

**THE HIGH COURT OF SOUTH AFRICA
(GAUTENG
DIVISION, PRETORIA)**

Date:

25/4/2017
Case
no: A213/17

Reportable:

No
Of
interest to other Judges: No
High
Court Reference No: 88/17
Special
Review Case No: A372/15
Magistrate
LESEDI
(held at HEIDELBERG)
THE
STATE V LERATO NHLAPO
and
High
Court Reference No: 90/17
Special
Review Case No: A305/15
THE
STATE V OCKERT JOHANNES VAN HEERDEN
High

Court Reference No: 91/ 17
Special
Review Case No: A413 / 15
MAGISTRATE
THE
STATE V PAPI JACOB MOFOKENG
REVIEW

JUDGMENT

POTTERILL J

- [1] In terms of section 304(4) of the Criminal Procedure Act 51 of 1977 ("CPA") three matters are before us on special review.
- [2] In all these matters the same presiding officer held a summary enquiry in terms of section 170(2) of the CPA, pursuant to accused, released on bail, wamed to appear and failed to do so.
- [3] In case number A305/15 State v Ockert Johannes van Heerden the court convicted the accused of contravening section 170(1) of the CPA and sentenced the accused to a fine of R100 or 30 (thirty) days imprisonment.
- [4] In case number A413/15 State v Papi Jacob Mofokeng the court found the accused guilty of contravening section 170(1) of the CPA and sentenced the accused to e fine of R100 or 30 (thirty) days imprisonment.
- [5] In case number A372 / 15 State v Lerato Nhlapo the accused was also found guilty of contravening section 170(1) of the CPA and was cautioned and discharged.
- [6] All three the matters were sent on special review because the Magistrate incorrectly conducted summary enquiries into the accused's failure to appear on a specified date. These enquiries were however incorrectly held in terms of section 170(2) of the CPA and the provisions of section 67A of the CPA should have been applied.
- [7] I agree with this submission. As found in S v Theko 2010
- (2) SACR 339 (GNP) at paragraph [11] section 6 7A of the CPA criminalised the failure of an accused on ball to appear or remain in attendance on a date determined by the court. Section 67A accordingly does not empower a court to enquire in a summary manner whether that section has been contravened. Section 170 Is only applicable when an accused who was not in custody, and were not released on bail, failed to appear in a court or to remain in attendance. The circumstances of these three matters accordingly fall under section 6 7A and not section 170.
- [8] The sentences Imposed were not in accordance with Justice.

[9] The convictions in all three of these matters, as well as the sentences are set aside.

S. POTTERILL

JUDGE OF THE HIGH COURT

I agree

S.S. MPHAHLELE

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