IN THE HIGH COURT OF SOUTH AFRICA

(WITWATERSRAND LOCAL DIVISION)

High Court Ref No: 483/02
Magistrate's Serial No: 161/07
Review Case No: 61/00644/2007

19 March 2008

Magistrate
JOHANNESBURG

THE STATE v NDLOVU, MANDLA

REVIEW JUDGMENT

SALDULKER, J:

[1] This matter has been forwarded to this Court on special review in terms of section 304(4) of Act 51 of 1977.

[2] The accused, a 25 year old male, was charged in the Johannesburg Magistrate's Court with the following charges:

Count 1: Theft

Count 2: Contravening section 49(1)(a) of Act 13 of 2002 –

Unlawfully entering and remaining in the Republic of South Africa without valid documentation.

[3] The accused was legally represented during his trial. The accused pleaded guilty to both charges in terms of section 112(1)(b) of the Criminal Procedure Act 51 of 1977 (the Act). The presiding Magistrate then proceeded to establish whether the accused understood the charges and voluntarily pleaded guilty. This was confirmed by the accused. Two statements in terms of section 112(2) of the Act was then handed in on behalf of the accused (Exhibits “A” and “B”).

[4] The accused was sentenced as follows:

Count 1: R1 500,00 or three (3) months imprisonment suspended for 3 years on condition that the accused is not found guilty or convicted of the offence during the period of suspension. (my underlining)

Count 2: One (1) month imprisonment further that after the accused have served the sentence, be deported back to his country of origin.

In terms of section 103 of Act 60 of 2000, the accused is not declared unfit to possess a firearm.

[5] Section 112(1)(b) of the Act makes provision for a court, at its discretion to put questions to the accused in respect of his statement.

[6] The accused was legally represented and was not prejudiced by this and his trial was not rendered unfair by the initial questions put to him under section 112(1)(b). There is also no prerequisite in section 112(2) that the pleas should be read into the record. There is no need for the prosecutor to confirm that the admitted facts were in accordance with the State's case against the accused. It is clear from the wording of section 112(1) that the accepting of a plea only refers to a plea of guilty to a competent verdict or to an alternative to the offence charged.

[7] The charges involved are straightforward, the two pleas leave no room for uncertainty and from the record it appears that the accused intended pleading guilty all along and he was legally represented. In my view the convictions are indeed in accordance with justice and should be confirmed.

[8] The test is not whether all the proceedings in the court *a quo* are in accordance with strict law but simply whether it "*appears to the judge that the proceedings are in accordance with justice*". This principle was enunciated as follows in *R v Harmer* 1906 TS 50 at 52 per Innes CJ:

a.) "*The Court has merely to decide whether it can certify that the proceedings are in accordance with real and substantial justice, not necessarily in accordance with strict law. For it is possible for them to be in accordance with real and substantial justice, even although a rule of criminal procedure may not have been observed.*"

b.) See also *S v Zulu* 1967 (4) SA 499 (T) at 502 where the Harmer principle was applied.

c.) In *R v Shimbakua*_1955 (1) SA 331 (SWA), a case where the accused pleaded guilty to a defective charge, Claassen J stated at page 333A that the result of squashing of the proceedings would:

"*be a great deal of unnecessary worry, inconvenience and expense to the accused and the Crown – in fact a result which neither the accused nor the Crown desire, but which is brought about, maybe unnecessarily, through an undue insistence on technicalities. All such consequences can, however, be avoided by exercising the wide discretion given to the Court.*"

[9] I am of the view that the proceedings may not be said to be in accordance with strict law but it is certainly in accordance with real and substantial justice.

[10] However when it comes to sentence it appears that the court *a quo* omitted the words "*committed during*" as part of its sentence. This should be amended to include the words "*committed during*" so that it would read as per the order. In my view the omission is not fatal to the proceedings.

[11] In the result I make the following order:

"*1. The convictions on counts 1 and 2 are confirmed.*

2. The sentence imposed by the Magistrate in respect of count 1 is amended to include the words 'committed during' so that the sentence should read as follows:

'Count 1: R1 500,00 or three months imprisonment suspended for 3 years on condition that the accused is not convicted of theft committed during the period of suspension.'

3. The sentence on count 2 is confirmed."

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H SALDULKER
JUDGE OF THE HIGH COURT

I agree:

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P A MEYER
JUDGE OF THE HIGH COURT