

A 436/08

IN THE HIGH COURT OF SOUTH AFRICA
THE TRANSVAAL PROVINCIAL DIVISION

9/6/2008

NOT REPORTABLE

HIGH COURT REF. NO: 705
CASE NO: G19/00129/2008
REVIEW NO: H38/08

THE STATE

VS

MARCUS NZILANE

THE ACCUSED

REVIEW JUDGMENT

MABUSE A J : [1] The district Court Magistrate, sitting at Pretoria, forwarded this matter to this court as a special review in terms of the provisions of section 304 (2) (a) of the Criminal Procedure Act No. 51 of 1977 (" the CPA"). The accused was charged in the said magistrate's court with theft. He pleaded guilty to the charge in terms of the provisions of Section 112 (1)(a) of the CPA. The Magistrate convicted him only on his plea and sentenced him to (3) three months imprisonment the whole of which was then suspended for five years on condition that the accused is not again convicted of theft or attempted theft committed during the period of suspension.

- [2] It is clear from the record of proceedings on the Court a quo that, after the accused had pleaded guilty in terms of the provisions of section 112(1) of the CPA, the public prosecutor indicated to the court that the State wished to proceed in terms of section the provisions of 112(1) [a] of the CPA. The said section provides that:

" Where an accused at a summary trial in any Court pleads guilty to the offence charged, or to an offence of which he may be convicted on the charge and the Prosecutor accepts that plea"

- a. *the presiding Judge, regional Magistrate or Magistrate may, if he or she is of the opinion that the offence does not merit punishment of imprisonment or any other form of detention without the option of a fine or of a fine exceeding the amount determined by the Minister from time to time by notice in the Government Gazette, convict the accused in respect of the offence to which he or she has pleaded guilty on his or her plea of guilty only; and-*

[i] impose any competent sentence, other than imprisonment or any other form of detention without the option of a fine or a fine exceeding the amount determined by the Minister from time to time by notice on the Government Gazette:- or

[ii] deal with the accused in accordance with law “.

[3] The conviction of the accused by the Court a quo was based solely on his plea. The Magistrate was, in the circumstances, entitled to sentence the accused solely on the basis of his plea, provided however, that the sentence the court imposed on the accused conformed to the sentence provided for in section 112 (1) [a] of the CPA. It is trite that the said section does not provide for a term of imprisonment without the option of a fine. Accordingly the court a quo inadvertently committed a material irregularity by imposing, on the accused, a sentence in terms of the provisions of section 11(1) (b) of the CPA. In my view, sufficient a good ground exists which entitles this court to set aside or alter the sentence so imposed on the accused by the magistrate's court.

[4] No purpose, other than to unnecessarily create work for the police and the Court a quo, will be served by remitting this matter to the Court a quo to impose sentence de novo on the accused. The accused may not be available to attend court. There is no guarantee, even if he is available, that the Police will be able to find and bring him as soon as possible to court for the imposition of an appropriate sentence. Consequently I have deemed it to be in the interest of justice to alter the sentence the court a quo had imposed on the accused.

[5] Accordingly I make the following order:-

[1] The conviction of the accused by the Court a quo is hereby confirmed.

[2] The sentence imposed on the accused by the court a quo is hereby set aside and replaced with the following sentence:

" The accused is sentenced to a fine of five hundred rand (R500-00) or three (3) months imprisonment which is wholly suspended for three (3) years on condition that the accused is not again convicted of theft or attempted theft committed during the period of suspension"

~~14/04/2012~~
MABUSE A J

I agree and it is so ordered

CBolton

BOTHA J