

Case No: 01/965/08 High Court Ref No: 2/80

A125/09

10 February 2009

THE STATE vs JAN HENDRIK BOOYSENS LE ROUX

REVIEW JUDGEMENT

MURPHY J

The magistrate in this matter, Ms. M. Pillay, has referred this matter to this court with a request that the sentence she imposed be set aside on review on the grounds that she mistakenly imposed the sentence on the understanding that the accused had pleaded guilty in terms of section 112 [2] of the Criminal Procedure Act, when he in fact pleaded guilty in terms of section 112 [1] [a].

2

- a) The accused pleaded guilty to a statutory offence of contravening section 6 and section 11 of the Secondhand Goods Act 23 of 1955. His legal representative read into the record his plea, which was expressly tendered in terms of section 112 [1] [a]. From the plea explanation it appears that the accused, a secondhand goods dealer, admitted to failing to record in the prescribed register the name and address and other details of the person from whom he purchased certain secondhand goods and that that was in contravention of the relevant statute. The magistrate accepted the plea and convicted the accused on his plea of guilty only without questioning him with reference to the alleged facts of the case in order to ascertain whether he admitted the allegations and to which he had pleaded guilty. This the magistrate was permitted to do in terms of section 112 [1] [a] where she was of the opinion that the offence did not merit a sentence of imprisonment without the option of a fine or of a fine exceeding R1500.

b) The magistrate sentenced the accused to a fine of R 8000 or 11 months imprisonment, wholly suspended for a period of five years on condition that the accused is not found guilty of an offence in terms of section 6 or section 11 of Act 23 of 1955 committed during the period of suspension.

c) In her submission, the magistrate states that the sentence is inappropriate because a conviction on a plea of guilty in terms of section 112 [1] [a] is

appropriate only when the presiding officer is of the opinion that the offence in question does not merit a sentence of imprisonment or a fine exceeding R1500. She is plainly correct and is to be commended for referring the matter on review.

5. In the premises, the following order is issued:
- d) the sentence imposed by the magistrate set aside;
 - e) the matter is remitted to the magistrate for reconsideration and the imposition of an appropriate sentence.