

A786/12

IN THE HIGH COURT OF SOUTH AFRICA
(NORTH GAUTENG HIGH COURT, PRETORIA)

6/11/2012.

Date: ~~24 October 2012~~

High Court Ref: 1002

Magistrate's Serial No: 12/12

Review Case No: A984/12

In the matter between:

THE STATE

and

SHAUN TWALA

Accused

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: YES/NO.

(2) OF INTEREST TO OTHER JUDGES: YES/NO.

(3) REVISED.

24/10/2012

DATE

SIGNATURE

REVIEW JUDGMENT

MNGQIBISA-THUSI J.:

[1] The accused was charged with the following offences:

1.1 theft (count 1); and

1.2 contravention of section 143(3) of the **Mining Act** 20 of 1967.

[2] The accused, who was duly represented, pleaded guilty to the charges and submitted a statement in terms of section 112(2) of the **Criminal Procedure Act** 51 of 1977.

[3] On 17 July 2012 he was convicted on the basis of his plea. However, when the presiding officer, additional magistrate G Calitz was considering sentence in respect of count two, he discovered that the Act under which

the accused had been charge and convicted was repealed by Act 37 of 2005.

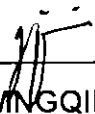
[4] Sentence was imposed in respect of count 1 (theft) and the second count has been referred to this court on special review in terms of 304A of the **Criminal Procedure Act 51 of 1977**.

[5] It is Mr Calitz's view that the accused has been incorrectly convicted of an offence which no longer exist as the relevant statutory provision in terms of which he was charged has been repealed.

[6] Having read the record and having considered the matter, I am satisfied that the accused's conviction on count 2 should be set aside in that the proceedings in respect of count 2 were not in accordance with justice.

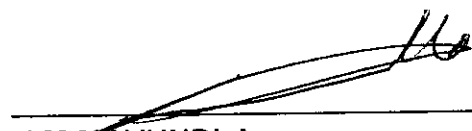
[7] Accordingly I make the following order be made:

1. The conviction and sentence of the accused on count 1 is in accordance with justice and is confirmed.
2. The conviction of the accused on count 2 is set-aside.



N.P MNGQIBISA-THUSI
JUDGE OF THE HIGH COURT
NORTH GAUTENG HIGH COURT

I agree and it is so ordered



N M MAVUNDLA
JUDGE OF THE HIGH COURT
NORTH GAUTENG HIGH COURT