

A132/2012

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

Case no: A 338 **2011** /
Date delivered 2/3/2012

TO: MAGISTRATE: BLOEMHOF

High court ref no. 1350
Magistrate serial no. 06/2011
Case no.A 338/2011

DELETE WHATEVER IS NOT APPLICABLE
(1) REPORTABLE: <u>NO.</u>
(2) OF INTEREST TO OTHER JUDGES: YES/NO.
(3) REVISED.
<u>2/3/2012</u> <u>[Signature]</u>
DATE SIGNATURE

In the review matter:

STATE v PIET CHOSE

REVIEW JUDGMENT

LEGODI J,

This matter was laid before me on automatic review, the accused was arraigned in the Bloemhof Magistrate's Court on a charge of theft.

He pleaded guilty to the charge and was found guilty as charged without being questioned in terms of section 112 of the Criminal Procedure Act. He was then sentenced to R2000.00 or 12 months imprisonment.

Section 112 (1) (a) (i) 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 another charge, and the prosecutor accepts that plea, the 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 an option of fine or of a fine exceeding the amount determined by the Minister from time to time by notice in the Gazette convict the accused in respect of the offence to which he or she has pleaded guilty and 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 in the Gazette.

I raised the issue with the Director of Public Prosecutions as to whether the sentence imposed was competent. The amount determined in the Gazette is R1500.00 and therefore the imposition of a sentence with the alternative fine of R2000.00 was incompetent and it ought to be set aside.

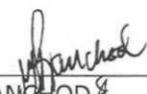
There is nothing wrong with the conviction as the Prosecutor accepted the accused's plea as envisaged in section 112(1) (a).

I would therefore make the order as follows:

1. The conviction is confirmed.
2. The sentence of R2000.00 or 12 months imprisonment is set aside.
3. The matter is remitted to the Magistrate to impose sentence afresh.


M F LEGODI
JUDGE OF THE HIGH COURT

I AGREE, IT IS SO ORDERED


N RANCHO
JUDGE OF THE HIGH COURT