

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

A 975/13
28/11/13

REVIEW CASE NO. : N482/2012
HIGH COURT REFERENCE NO. : 217
DATE : 20 MAY 2013

In the matter between:

THE STATE

And

RONNIE MALOSE RAKOMA

REVIEW JUDGEMENT

MOLOPA-SETHOSA J:

This matter came before this court on special review in terms of section 304(4) of Act 51 of 1977, as amended, from the Magistrate's Court Northam, for the district of Northam.

The accused was, on 13 February 2013 convicted at the Magistrate's Court, Northam of theft, and sentenced to R 3000,00 or 2(two) years imprisonment.

The accused, who was unrepresented throughout the proceedings/
not legally represented during the trial, had pleaded guilty in terms of
section 112 (1) (a) of Act 51 of 1977, as amended, and he was convicted
solely on his plea of guilty aforesaid.

Since the accused was sentenced to R 3000,00 or 2(two) years
imprisonment, the matter was thus sent to this court on special review in
terms of section 304(4) of Act 51 of 1997 as the magistrate correctly
pointed out that the plea of guilty was recorded in terms of section 112
(1) (a) of Act 51 of 1977 and that the sentence she imposed is therefore
incompetent as it exceeds her jurisdiction.

The matter was referred to the Director of Public Prosecutions
("DPP") for their comment. C Chauke of the DPP commented that the
learned magistrate is correct in her interpretation of the legislation; that
the amount of fine which the Magistrate was competent to impose at this
instance is R1500,00 as per determination by the Minister in the
Government Gazette number GN 239 in GG 24393 of 14 February 2003
aforesaid.

Section 112(1) (a) of Act 51 of 1977, as amended, provides as
follows:

"112 Plea of Guilty

*(1) 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 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 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 in the Gazette; or

(ii) deal with the accused otherwise in accordance with law”

In terms of Government Notice P239 in Government Gazette 24393 of 14 February 2003, the Minister has determined the amount of R1500.00 for purposes of section 112(1) (a) and (b).

The Learned Magistrate has conceded that she had exceeded the sentencing jurisdiction in terms as section 112 (1) (a) and that the sentence should thus be set aside, and that this court should alter the sentence [in terms of the powers of review granted by section 304(2) (c) (ii) of Act 51 of 1977, as amended], to bring it in line with the provisions

of Act 51 of 1977, as amended, read with the regulations thereto, with which I agree.

It is clear that the sentence of, amongst others, a fine of R3000.00 is incompetent since it exceeds the fine limit of R1500.00 determined by the Minister as set out in the Government Notice 24393 of 14 February 2003, as the accused was convicted solely on his plea of guilty in terms of section 112(1) (a) of Act 51 of 1977, as amended. The sentence thus ought to be set aside and be substituted with a proper/correct sentence.

In the result I make the following order:

1. The sentence of a fine of R3000.00 or 2 (two) years imprisonment imposed by the learned magistrate on 13 February 2013 is set aside and substituted with the following:

- 1.1. The accused is sentenced of a fine of R1500.00 or 6 (six) months imprisonment;

- 1.2. The sentence is ante-dated to 13February 2013.

2. The clerk of the Magistrates' Court, Northam is directed to bring the altered sentence to the attention of the accused.



LM MOLOPA-SETHOSA
JUDGE OF THE HIGH COURT

I agree



T A MAUMELA
JUDGE OF THE HIGH COURT

It is so ordered