



IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN

Reportable:	YES/NO
Of Interest to other Judges:	YES/NO
Circulate to Magistrates:	YES/NO

REVIEW NUMBER R85/2021

In the review case of:

THE STATE

and

ONDELA MBONJENI

CORAM: **OPPERMAN, J et VAN RHYN, AJ**

DELIVERED: **12 NOVEMBER 2021**

JUDGMENT BY: **VAN RHYN, AJ**

[1] This is a special review in terms of section 304(4) of the Criminal Procedure Act, Act 51 of 1977 (“CPA”). The accused was charged with culpable homicide in that he, being the driver of a motor vehicle, on 16 June 2018 on the Koppie Alleen public road in the district of Welkom, Free State Province, wrongfully and negligently caused or contributed to a collision in which Malefetsane Mofokeng (the “deceased”) sustained certain injuries as a result of which he died on the scene of the collision.

[2] On 6 August 2021 and in terms of the provisions of section 112(2) of the Criminal Procedure Act, 51 of 1977 ("CPA) the accused pleaded guilty to the charge at the Welkom Magistrate's Court and was sentenced to a fine of R10 000.00 (ten thousand Rand) or ten (10) months imprisonment, suspended for five (5) years on the condition that the accused is not convicted of culpable homicide, committed during the period of suspension. The accused's driver's license was not suspended.

[3] The Senior Magistrate at the Welkom Magistrates' Court indicated that the proceedings are not in accordance with justice due to the following irregularities which appear from the record:

3.1 The statement in terms of section 112(2) of the CPA does not reflect the factual basis of the plea of guilty.

3.2 There are no facts upon which a court could find that the accused drove the vehicle negligently as there is no indication how the accident occurred.

[4] The accused was legally represented and tendered a statement in terms of section 112(2) of the CPA, setting out the basis of his plea of guilty. The prosecution indicated its acceptance of the facts upon which the accused had pleaded. The contents of the section 112(2) statement read as follows:

"2. The following are the facts which I admit and upon which my plea of guilty to the offence of culpable homicide (motor vehicle) are based on:

2.1 On the 16th of June 2018 I was driving at Koppie Alleen, a public road in the district of Welkom. I did wrongfully and negligently drive VW Polo with registration number HCL 917 FS which caused or contributed to a collision in which Malefetsane Mofokeng in his lifetime a male received certain injuries as a result of which he died on the scene and thus I, caused wrongfully and negligently caused (sic) the death of the said Malefetsane."

And further:

3. On the day in question I admit that I had a drink too many. I knew that I was unlawful

(sic) to drive a vehicle whilst under the influence of alcohol. I admit that the manner in which I was intoxicated could have resulted in which occurred on the day in question, although I could not remember how the collision occurred”

- [5] The primary purpose of the written statement in terms of section 112(2) is to set out the admissions by the accused and the factual basis in support of his plea of guilty. In **S v Mshengu**¹ Jafta JA confirmed that the presiding officer can only convict an accused if he or she is satisfied that the accused is indeed guilty of the offence to which a plea of guilty has been tendered.
- [6] In the present matter, the contents of the section 112(2) statement amount to a mere regurgitation of the charge sheet and does not contain the underlying facts upon which the plea of guilty is based. In **S v B**² it was emphasised that section 112(2) requires not only a series of admissions, but also the facts upon which those admissions are based.
- [7] Where the facts do not cover the essential elements of the charge, a conviction upon a section 112(2) statement should not follow. It is clear that the accused does not have an independent recollection of the events that occurred on the day of the motor vehicle accident which culminated in the death of the deceased. The accused furthermore indicates that, apart from being intoxicated, he was also in a state of anger due to an argument with his girlfriend.
- [8] This means that the matter will have to be remitted to the court *a quo* to comply with the provisions of section 113(1) of the Criminal Procedure Act (correction of a plea of guilty).

ORDER:

- [9] In the result I propose the following order:

¹ 2009 (2) SACR 316 at [7].

² 1991 (1) SACR 405 (N).

The conviction and sentence are set aside and the matter is remitted to the Court *a quo* to comply with the provisions of section 113(1) of Act 51 of 1977.

VAN RHYN, AJ

I agree and it is so ordered.

OPPERMAN, J