

**IN THE HIGH COURT OF SOUTH AFRICA
(WITWATERSRAND LOCAL DIVISION)**



REFERENCE NUMBER:

**Magistrate's review. no: 31/05 (Westonaria)
Westonaria serial number A861/04
High Court Case no 354/05**

THE STATE

versus

**THEBOGO MPHO MATHETSA
Accused**

REVIEW JUDGMENT

WILLIS J:

The accused was charged with contravening section 63(1) read with sections 1, section 63(2), 63(3), 69, 73 and 89 of the Road Traffic Act No. 93 of 1996.

He was found guilty and sentenced to 36 (thirty-six) months imprisonment of which 18 (eighteen) months was suspended for a period of 5 (five) years on condition that he was not found guilty of reckless or negligent driving committed during the period of suspension. The sentence was imposed on 31st March, 2005. Subject to the provisions of section 35 of that Act the accused was also disqualified from obtaining a driver's license for a period of six months.

The matter originally came before Du Toit AJ by way of review. Du Toit AJ ordered the immediate release from custody of the accused and indicated that judgment would follow.

It would appear from statements filed by Mrs C.M. Van Heerden, the Acting Head of the Court at Westonaria and Ms L. Daniel, the clerk of the court that despite numerous attempts to follow up the matter, the record of the proceedings has been lost.

The only way in which the matter can now be regularized is to set aside the conviction and sentence of the accused.

The following order is made:

The conviction and sentence of the accused are set aside.

**DATED AT JOHANNESBURG THIS 28th DAY OF JULY,
2009.**

**N.P. WILLIS
JUDGE OF THE HIGH COURT**

I agree.

**F.H.D. VAN OOSTEN
JUDGE OF THE HIGH COURT**