

REPUBLIC OF SOUTH AFRICA



IN THE SOUTH GAUTENG HIGH COURT
JOHANNESBURG

040/2013
CASE NO: 30/10/2012

(1)	REPORTABLE: YES / NO
(2)	OF INTEREST TO OTHER JUDGES: YES/NO
(3)	REVISED.
29/8/2013	
DATE	SIGNATURE

In the matter between:

THE STATE

and

ANDREW GILGANNON

Accused

SPECIAL REVIEW SETTING ASIDE THE CONFIRMATION
OF AN ADMISSION OF GUILT FINE

VICTOR, J:

[1] This matter comes by way of special review to set aside the confirmation of an admission of guilt fine.

[3] On 6 October 2012 the accused, a student aged 22 years at the time, signed an admission of guilt fine for an amount of R300,00 for allegedly being drunk in public.

[4] This took place under the following circumstances: On the night of 5 October 2012 the accused and a friend had been drinking at Clearwater Mall, Roodepoort. When they left the venue the accused was a passenger in a car then driven by a friend. As they drove along Beyers Naude Drive they were pulled over by the South African Police. It was approximately 22h30.

[5] The police officer approached the passenger side of the vehicle, told the accused to open the vehicle and pulled him out. The officer manhandled him and pushed his hand into the accused's face showing him a 'zap sign' and asked him whether he knew the meaning of the sign.

[6] The police officer commenced searching the vehicle. Upon completion of the search they returned to the vehicle and drove away from the scene with the accused in the backseat to Fairland Police Station. He was taken into custody.

[7] When the accused asked why he was arrested the police refused to answer. They took his details and placed him in a holding cell. He was woken up four hours later by a different police officer and taken back to the office where he had been earlier and told to sign an admission of guilt. He enquired

as to what he was signing and the police officer refused to inform him and said that if he did not sign the document he would stay in jail until the Monday.

[8] His mother arrived at the police station and told him to sign and that they would sort it out later as they did not want him to remain in jail for the weekend.

[9] At no stage was the consequence of signing the admission of guilt explained to him and in particular he was not informed that he would have a criminal record after signing the document. Upon payment of the fine he was handed a receipt reflecting payment of R300 in respect of the admission of guilt. A trial date of 2 November 2012 was reflected on the receipt. Since he was writing his final matric examination on that day his attorney attended court with his submissions regarding the failure of the police officers to explain the consequences of signing the admission of guilt.

[10] The legal representative was advised at the court that the matter had already been dealt with by Magistrate Pool on 12 October 2012. An extract from the AOG Classification Register (J114) obtained from the Clerk of the Court confirmed this. The conviction was confirmed almost a month prior to the trial date as reflected on the receipt.

[11] The court a quo was functus officio and could not reconsider the matter.

See: *S v Vermaak* 1991 (1) SACR 336 (E)

'Where an accused has paid an admission of guilt fine and the clerk of the court has entered the particulars relating to the admission of guilt in the criminal record book in terms of s 57(6) of the Criminal Procedure Act 51 of 1977 and the magistrate has acted in terms of s 57(7) of the Act, the magistrate is functus officio. Thereafter it is only the Supreme Court which has the power to set aside the accused's conviction and sentence.'

[12] It is the accused's case that he was not advised that an admission of guilt would lead to a criminal record. The absence of advising an accused person as to the consequences of paying an admission of guilt fine has been dealt with in a number of judgments. See: *S v Parsons* 2013 (1) SACR 38 (WCC) and *S v Tong* 2013 (1) SACR 346 (WCC)

[13] Quite clearly the accused was of the view that the trial was still proceeding. His attorney arrived at court on the day to bring to the court's attention that he was writing exams. The attendance at court on the date reflected in the admission of guilt document is consistent with and corroborative of the accused's belief and understanding that he could not have believed that the matter was finalised and the import of the admission.

[14] The accused's submission is credible. Signing a document to avoid spending the weekend in jail must certainly have been attractive. His mother's role was also instrumental in advising him not to spend the weekend in goal. She too appears to have wanted him not to spend the weekend in jail.

[15] It is a very serious consequence for someone to pay an admission of guilt fine and have no understanding that he will thereafter carry a criminal conviction. As stated by Henney J in *Parsons* supra this too is an infringement of the right to a fair trial. In any event in this case there was no opportunity for a trial since Magistrate Pool had already convicted the accused in his absence and prior to the date of 2 November which was a date when he was supposed to appear in court.

[16] Certain guidelines in dealing with reviews of this nature have been set out in the case cited *S v Cedras* 1992 (1) SACR 530 (C) at 531. Section 57(6) of Act 51 of 1977 provides that the clerk of the court shall enter the particulars relating to the admission of guilt into the criminal record book for admissions of guilt, whereupon the accused concerned shall, subject to the provisions of ss (7), be deemed to have been convicted and sentenced by the court in respect of the offence in question.

[17] In the earlier case *S v Marion* 1981 (1) SA 1216 (T) Eloff J at 1218H – 1219A held:

'According to my interpretation of ss (7) the Magistrate concerned is obliged in every case whether the Clerk of the Court place before him the

documents relating to an admission of guilt fine, to apply his mind to them and come to a conclusion as to whether or not the deemed conviction should stand or be set aside.'

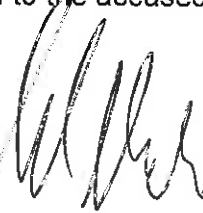
[18] There is nothing on the receipt to reflect that the consequences were explained to the accused. It is clear that in the absence of such evidence the court should have intervened to prevent a failure of justice.

[19] In this case the error of the accused in making the admission of guilt should be condoned. In addition, in the absence of a different version placed before me by the South African Police Services, the facts point to the accused being in a motor vehicle and not being drunk in a public place. It is possible that the accused would not have been convicted if the matter had gone to trial.

[19] It is of an importance that an accused person in admitting and paying an admission of guilt fine which would result in acquiring a criminal record must be apprised of his legal rights. Whilst an admission of guilt does alleviate the burden of congested trial rolls it is nonetheless not a procedure to be used for the sake of expedience. A criminal record is an impediment to opportunities such as employment, travel and many other areas of life. In terms of s 35 of the Constitution the accused has a constitutional right to fair legal process.

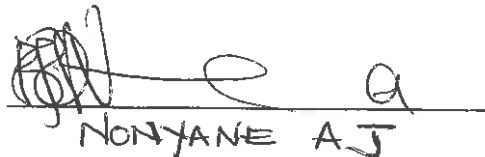
[20] In *S v Bogaards* 2013 (1) SACR 1 (CC), the common law was developed and it was held that the practice of giving notice of an increase in sentence was elevated to a requirement. In my view knowledge of the consequences of an admission of guilt fine should be pertinently drawn to the attention of an accused person and should be a requirement. The giving of notice to an accused person in such a situation will not be unduly onerous. It may take the form of one paragraph in the admission of guilt document and a signature appended by an accused person.

[21] The order I would make is that the conviction is hereby set aside and the payment of the fine of R300.00 must be refunded to the accused.



M. VICTOR
JUDGE OF THE SOUTH GAUTENG
HIGH COURT, JOHANNESBURG

I agree:



NONYANE AJ
JUDGE OF THE SOUTH GAUTENG
HIGH COURT, JOHANNESBURG