IN THE HIGH COURT OF SOUTH AFRICA

KWAZULU-NATAL DIVISION, PIETERMARITZBURG

Not Reportable

High Court No: R 432/2018

Magistrate's Serial No: 18/18

Magistrate's Case No: B504/18

In the matter of:

THE STATE

versus

THOLI BEAUTY MAZIBUKO

REVIEW JUDGMENT

Date of judgment: 29 October 2018

Gorven J

[1] The accused was charged in the Magistrate's Court, Estcourt, with one count of contravening s 50(1) read with 90(1)*(a)* to *(q)* of the National Land Transport Act 5 of 2009. It was alleged that she operated road-based public transport without the requisite permit. She pleaded guilty and, after the learned magistrate applied the provisions of s 112(1)(b) of the Criminal Procedure Act 51 of 1977 (the Act), was convicted as charged.

[2] She was thereafter sentenced to pay a fine of R10 000 or in default of payment to undergo 12 months' imprisonment, half of which was suspended for

a period of five years on condition that she was not convicted of a similar contravention where the contravention took place within the period of suspension. The sentencing took place on 4 October 2018.

[3] The matter came on automatic review on 29 October 2018. Shortly before receiving the matter, a judgment of this division, *S v Brits* (DR 84/2018, 12 October 2018) was brought to my attention. In that matter, also sent on automatic review, the magistrate in question had been appointed on 9 January 2017. He had sentenced that accused person to pay a fine of R2 000 or, in default, to imprisonment for a period of 4 months. The whole sentence was suspended for a period of 5 years on certain terms.

[4] The learned judges in that matter considered the provisions of s 302(1)*(a)* and 276(2)*(a)* of the Act. They concluded that, in imposing a period of imprisonment of four months, the learned magistrate had exceeded his sentencing jurisdiction. They held that: 'The magistrate's jurisdiction in respect of s 302 of the Act is limited to three (3) months imprisonment.' As a consequence, the sentence was reviewed, set aside and one of R2 000 or three months' imprisonment was substituted, all suspended for five years on the same terms as had been imposed by the magistrate.

[5] Section 302(1)*(a)* of the Act reads as follows:

'(1)*(a)* Any sentence imposed by a magistrate's court-

(i) which, in the case of imprisonment (including detention in a child and youth care centre providing a programme contemplated in section 191(2)*(j)* of the Children's Act, 2005 (Act 38 of 2005)), exceeds a period of three months, if imposed by a judicial officer who has not held the substantive rank of magistrate or higher for a period of seven years, or which exceeds a period of six months, if imposed by a judicial officer who has held the substantive rank of magistrate or higher for a period of seven years or longer;

> (ii) which, in the case of a fine, exceeds the amount determined by the Minister from time to time by notice in the Gazette for the respective judicial officers referred to in subparagraph (i),
>
> shall be subject in the ordinary course to review by a judge of the provincial or local division having jurisdiction.'

The amount determined by the Minister is currently R6 000 in the case of a judicial officer who has not held the rank of magistrate or higher for a period of seven years, and R12 000 in the case of a judicial officer who has held the rank of magistrate or higher for a period of seven years or longer.

[6] And s 276(2)*(a)* of the Act is to the following effect:

'Save as is otherwise expressly provided by this Act, no provision thereof shall be construed-

(a) as authorizing any court to impose any sentence other than or any sentence in excess of the sentence which that court may impose in respect of any offence'.

This was held to demonstrate that, since mention was made of the amounts and periods in s 302(1)*(a)*, any sentence in excess of those amounts or periods exceeded the jurisdiction of the magistrates concerned.

[7] In the present matter, the learned magistrate was appointed to the rank of magistrate on 1 November 2015. He had thus not held the rank of magistrate for a period of seven years or longer at the time of sentencing. If the finding in *S v Brits* is to be applied the learned magistrate exceeded his sentencing jurisdiction. That would require the sentence to be reviewed and set aside because it exceeded both R6 000 and three months' imprisonment.

[8] In *S v Brits*, the learned judges clearly misread the provisions of s 302(1)*(a)* of the Act. Section 302(1)*(a)* simply provides when an automatic review is triggered. It has nothing to do with the sentencing jurisdiction of magistrates. The finding that: 'The magistrate's jurisdiction in respect of s 302

of the Act is limited to three (3) months imprisonment' is clearly wrong. It should not be followed or applied.

[9] An automatic review under s 302(1)*(a)* of the Act is clearly triggered in the present matter. Having reviewed the conviction of the accused and the sentence imposed by the learned magistrate, I am satisfied that the proceedings appear to be in accordance with justice. They are therefore so certified in terms of s 304(1) of the Act.

Gorven J

Vahed J