

**FREE STATE HIGH COURT, BLOEMFONTEIN**  
**REPUBLIC OF SOUTH AFRICA**

Review No. : 247/2011

In the review between:-

**THE STATE**

*versus*

**DONALD MOGALE**

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**JUDGMENT BY:** JORDAAN, J

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**DELIVERED ON:** 14 JULY 2011

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- [1] In this matter the accused pleaded guilty to contravention of section 4(b) of Act 140 of 1992 (possession of dagga). After being questioned in terms of section 112 of the Criminal Procedure Act, he was duly convicted as such and sentenced to a fine of R1 500,00 or four months imprisonment, wholly suspended for a period of three years on certain conditions.
- [2] The matter was sent by the control magistrate of Bloemfontein for a special review in terms of section 304(4) of the Criminal Procedure Act, the reason being that the trial magistrate neglected to explain the accused's rights of review when the case was heard.

- [3] The trial magistrate commented that he neglected to explain those rights to the accused and therefore asks that the conviction be confirmed and the sentence set aside for the purpose of the matter being remitted to the trial court for imposition of an appropriate sentence and dealing with the matter in terms of the Criminal Procedure Act, especially with the view of explaining the accused's right of review in the matter.
- [4] It is obviously necessary that an accused's rights of review be explained to him and it be brought to his attention that the matter will be remitted for review so that he can make representations, if any.
- [5] Since the matter was brought to my attention during recess, this judgement will not be countersigned by another Judge of this Division.
- [6] In the result the following orders are granted:
1. The conviction is confirmed.
  2. The sentence is set aside and the matter is remitted to the trial court for the imposition of an appropriate sentence and to be dealt with in accordance with the

Criminal Procedure Act.

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**A.F. JORDAAN, J**

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