

REPUBLIC OF NAMIBIA



HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

REVIEW JUDGMENT

Case Title: The State v Elwich Grey Boois	Case No: CR 23/2024
High Court MD Review No.: 262/2024	Division of Court: Main Division
Heard before: Shivute J et Christiaan J	Delivered on: 26 March 2024
Neutral citation: <i>S v Boois</i> (CR 23/2024) [2024] NAHCMD 134 (26 March 2024)	
The order: <ol style="list-style-type: none">1. The convictions and sentences are confirmed.2. The matter is remitted to the magistrate who presided over the matter and in his absence, any other magistrate, in order to re-summon the accused and to comply with the provisions of section 51(3) of the Road Traffic and Transport Act 22 of 1999.	
Reasons for order:	
SHIVUTE J (CHRISTIAAN J concurring):	

[1] This is a review matter which came before me in terms of section 302(1) of the Criminal Procedure Act 51 of 1977 as amended (the CPA).

[2] The accused appeared in the Bethanie Magistrate's Court on charges of contravening various sections of the Road Traffic and Transport Act 22 of 1999 (the Act) and was subsequently convicted of 4 charges, namely, driving with an excessive blood-alcohol level, in contravention of section 82(1)(b) of the Act; driving a motor vehicle without a driving licence; operating an un-roadworthy vehicle on a public road, and; failure to comply with instruction/direction of a peace officer. The accused, in respect of each charge, was sentenced to a fine and in default of payment thereof, some months' imprisonment.

[3] When the matter came before me on review, I queried the presiding magistrate on why the court did not invoke the provisions of section 51(3) of the Act, considering that the accused was convicted of, among other things, driving with an excessive amount of alcohol level in the blood, contravening section 82(1)(b) read with sections 1, 86, 89(1) and 89(4) of the Act.

[4] In reply to the query, the magistrate conceded that it was an oversight on his part and prays for this court to confirm the conviction and sentence and to remit the matter back to him to invoke section 51(1) of the Act.

[5] Section 51(3) of the Act reads as follows:

'(3) If a person convicted of an offence mentioned in subsection (1) is not the holder of a driving licence, the court, apart from imposing a sentence, shall declare such person to be disqualified from obtaining a learner's licence or driving licence for such period as the court may determine, but not being less than the minimum period contemplated in paragraph (a), (b) or (c) of subsection (2), as may be applicable.'

[6] The use of the words 'the court shall' in section 51(3) makes it clear that declaring a person disqualified from obtaining a learner's or driving licence is mandatory on conviction of contravening section 82(1).

[7] In the result, it is ordered:

1. The convictions and sentences are confirmed.
2. The matter is remitted to the magistrate who presided over the matter and in his absence, any other magistrate, in order to re-summon the accused and to comply with the provisions of section 51(3) of the Road Traffic and Transport Act 22 of 1999.

N N SHIVUTE JUDGE	P CHRISTIAAN JUDGE