

**IN THE HIGH COURT OF SOUTH AFRICA**  
**(ORANGE FREE STATE PROVINCIAL DIVISION)**

Review No. : 498/2007

In the review between:-

**THE STATE**

*versus*

**NICOLAS FRANCISCUS EKERMANS**

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**JUDGMENT BY:**                      WRIGHT J

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**DELIVERED ON:**                      5 JULY 2007

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[1] The accused was convicted of contravening section 65(1)(a) of Act 93 of 1996 i.e. driving while under the influence of intoxicating liquor. He was fined the sum of R2 500,00 or 6 (six) months imprisonment. According to the J4 form the fine was paid.

[2] The accused pleaded guilty and only admitted that he drove a Toyota Quantum panel van on 24 February 2007 in Mandela Drive. According to him he was not involved in an accident. He further mentioned that he could not recall what had happened. He reiterated that there was no visible

damage to his vehicle. The magistrate asked him if it could be that he was so drunk that his faculties were impaired and hence that he does not remember to which he replied that it is possible. He does not know how much liquor he took but it was a lot and that he drank at Stones Night Club.

[3] The mere fact that he said it is possible that his faculties were impaired and that he could not remember what happened as a result thereof, does not mean that he admits that it was indeed the case. He did not specifically admit that he drove the vehicle in question at the time of his arrest nor that he acted while his skills were impaired as a result of alcohol. There is no definitive explanation as to why he could not remember what occurred on 24 February 2007.

[4] In the light of the abovementioned aspects of the plea explanation it is clear that the provisions of section 112(1)(b) were not properly dealt with as it does not appear from the questioning whether the accused admits all the elements of the offence. The provisions of section 312 of the Criminal Procedure Act, No. 51 of 1977, are therefore applicable.

[5] In result the following orders are made:

1. The conviction and sentence are set aside.
2. The matter is remitted to the Court *a quo*.
3. The court is directed to properly comply with the provisions of section 112(1)(b) of Act No. 51 of 1977 and if necessary to comply with section 113 of the Act.
4. If the accused is found not guilty the fine of R2 500,00 must be repaid to the accused.

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**G.F. WRIGHT, J**

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