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IN THE HIGH COURT OF LESOTHO

In the Application of •

JOHN JESUS VIVIEROS

Applicant

v

REX

Respondent

REASONS FOR JUDGMENT

Filed by the Hon. Chief Justice, Mr. Justice T.S. Cotran on the 15th day of November, 1982

This is an application to the High Court to review commend proceedings and order a "new trial" or elternatively "to direct the trial megistrate to hear a pleat in mitigation" by an accused person sontenced to six months imprisonment without the option of a fine imposed upon him by a megistrate in Haseru for the offence of failure to stop immediately. after accident in which a person dies or is injured confrary to s.122(1)(a) read with ss 2(a) of the Road Traffic and Transport Order 1970, and or elternatively an eppeal against the substantive sentence of imprisonment.

On 8th November 1982 I varied the sentence to a fine of 1500 or to 6 months imprisonment in default of payment.

I said reasons will be given later and these now follow.

The applicant/encellout iss represented at the trial by Nr. attorney Massach. The applicant/appellant says he instructed his attorney in effect to plead not guilty because ne had tota him that he iss not avore that he had hit a pedestrian. In Lascon denies this in an afficient he has filed at the instance of Croin counsel. The fact of the matter is that the record shows that charge iss <u>read</u> to the applicant/ appellant and the plea of guilty came from his mouth and not hr. upsoabils. That happened between client and attorney before cannot be subject to further enquiry unless it is cenonstrated that hr. is scale hed acted freudulently. At the end of the outline of the case by the prosecutor the record shows that applicant/appellant was again personally asked if he admits the facts and he said he did. If we examine the applicant/appellant's affidavit we will see at paragraphs 3(c) and 4 that he was aware that something might have gone amiss because he says he nearly ran over a man who suddenly entered his path and swerved to avoid him. He adds however that he did so successfully and need not have stopped because he felt and heard nothing. He averred that he had a large sized truck but his affidavit came after he realised the severity of the sentence imposed. The truth lies perhaps somewhere in between, viz, that having successfully avoided killing the pedestrian, he thought any injury he might have received would have been slight and he continued on his way. The injuries were not in fact slight.

As for mitigation Nr. Nesoebi did his best as cen be seen from page 5 of the record of proceedings.

This is not the case of a simple uneducated and unrepresented accused where a misunderstanding was likely to have occurred.

The anorcation for review must therefore be dismissed.

The Bentence however has struck me as harsh considering the fact that accused pleaded guilty, had no previous convictions, (either on traffic or other offences) is only aged 20, was about to enter into matrimony and (subsequently to opprehension) did cooperate with the traffic police. Furthermore the learned magistrate's sense of equal justice to all encears to have abandoned her for she look into account the oppellant's race and/or nationality as an aggravating factor. We have no evidence that other rices (of thatever shade) and or non lesotho netionals are worst araffic offenders than Besochos and/or Lesotho nationals.

"the spreel sparst rentence uss ellowed and varied as earlier indicated.

CHIEF JUSTICE

15th November 1932

For Applicant. In. Sello For Respondent. Mr. Kapausi