THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

JUDGMENT

Case No: 20732/14

In the matter between Reportable

RAYMOND DANIEL DE VILLIERS **APPELLANT**

and

THE STATE **FIRST RESPONDENT**

REGIONAL MAGISTRATE D M SOOMAROO **SECOND RESPONDENT**

Neutral Citation: *De Villiers v The State & another* (20732/14) [2016] ZASCA 38 (24 March 2016)

Coram: Majiedt JA and Fourie and Baartman AJJA

Heard: 9 March 2016

Delivered: 24 March 2016

Summary: Review – a high court of two judges sitting as a review court is a court of first instance as contemplated in s 16(1)(*a*) of the Superior Courts Act 10 of 2013 – that court is thus empowered to grant leave to appeal to the Supreme Court of Appeal in terms of s 16(1)(*a*)(ii) – duress allegedly exerted by legal representatives on appellant to plead guilty to theft not borne out by the facts.

ORDER

On appeal from: Free State Division, Bloemfontein (Ebrahim J and Reinders AJ sitting as court of first instance):

The appeal is dismissed.

JUDGMENT

Majiedt JA (Fourie and Baartman AJJA concurring):

[1] This is an appeal against the dismissal of a review application brought by the appellant, Mr Raymond Daniel de Villiers, in the Free State Division, Bloemfontein (Ebrahim J and Reinders AJ). The appellant had sought the review and setting aside of his conviction of theft (pursuant to a plea of guilty) and the sentence of seven years' imprisonment with three years conditionally suspended imposed by the second respondent, Regional Magistrate D M Soomaroo. The State was cited as the first respondent.

[2] Leave to appeal to this Court was granted by the court below. As the appellant's attorneys were unsure of whether that court had the power to grant leave, they directed a written enquiry to the registrar of this Court concerning the correct procedure to be adopted. On the registrar's advice, the appellant filed a petition to this Court for leave to appeal. That petition is standing over pending the hearing of this matter. As a result of the dual approach pursued by the appellant, the parties had been requested to address as a preliminary aspect whether the court below had 'the requisite power to grant leave to appeal to this court, in view of the provisions

contained in s 16(1)(*b*) of the Superior Courts Act'. Both counsel filed helpful supplementary heads of argument for which we are grateful.

[3] It is plain that a division of the high court which sits on review with two judges presiding, is a court of first instance as contemplated in s 16(1)(*a*) of the Superior Courts Act (the Act) and that leave has therefore been properly granted in this instance in terms of s 16(1)(*a*)(ii). The relevant part of that section reads as follows:

'16 **Appeals generally**

(1) Subject to section 15(1), the Constitution and any other law-

(a) An appeal against any decision of a Division as a court of first instance lies, upon leave having been granted –

(i) . . .

(ii) If the court consisted of more than one judge, to the Supreme Court of Appeal.'

The review before us is regulated by Uniform rule 53. It is not regulated by the Criminal Procedure Act 51 of 1977 (the CPA) or by any other criminal procedural law as envisaged in s 1 of the Act, and sections 16 and 17 of the Act therefore apply in this case. In the premises the matter is properly before us on appeal. The petition was therefore unnecessary and should be regarded as superfluous. I discuss next the merits.

[4] The appellant, who is an accountant, was arraigned in the regional court initially with two other co-accused on the following charges –

(a) count 1 – fraud in the sum of R950 000;

(b) in the alternative, theft in the sum of R950 000;

(c) as a second alternative to the main count, a contravention of the provisions contained in s 7, read with ss 1, 8 and 36 of the Financial Advisory and Intermediary Services Act 37 of 2002;

(d) count 2 – a contravention of the provisions contained in s 2, read with ss 1 and 10 of the Financial Institutions (Protection of Funds) Act 28 of 2001 (the Funds Act);

(e) count 3 – a contravention of the provisions contained in s 4(1), read with ss 1 and 10 of the Funds Act;

(f) count 4 – a contravention of the provisions contained in s 4(4), read with ss 1 and 10 of the Funds Act.

[5] The appellant pleaded guilty to theft, the first alternative charge to count 1. He was represented by an attorney, Mr Kramer, and an advocate, Mr Nel. After his written plea explanation in terms of s 112(2) of the CPA was read into the record by his counsel, the appellant confirmed to the regional magistrate that the plea and explanation were correct. In the plea explanation itself the appellant stated that the instruction given to his legal representatives to plead guilty to theft was given without anyone having unduly influenced him in that regard and was made freely and voluntarily with full knowledge of the implications thereof. After the imposition of sentence, the appellant sought leave to appeal against his sentence only, but this was refused by the regional magistrate. The appellant appointed a new legal team and, on their advice, he applied for leave to appeal against his conviction, but this too was unsuccessful in the regional court. A subsequent petition to the court below for leave to appeal against his conviction and sentence met with a similar fate. On petition to this Court the appellant was granted leave on 7 January 2013 to appeal against his sentence to the court below, but leave was refused in respect of his conviction. The appeal against sentence is still pending, awaiting the outcome of this review application, which was issued on 5 March 2013.

[6] The review is sought on the basis of an alleged irregularity ex facie curiae which vitiated the entire proceedings in the regional court as, so it is contended, it infringed the appellant's fair trial rights under the Constitution. In essence the main trust of the appellant's argument was that he had pleaded guilty under duress, his previous legal team having cajoled him into tendering such a plea. He avers that he never intended to plead guilty, because he was not guilty of fraud or theft. A brief synopsis of the factual backdrop is necessary for a proper understanding of the issues. The common cause facts are as follows.

[7] The appellant administered the deceased estate of a Mr P J Wiese at the request of the deceased's spouse, Ms A Wiese. On his advice, Ms Wiese made out a cheque in the sum of R950 000 to the Taakmeesters Trust (the Trust), which was controlled by the appellant and which was described by him in his plea explanation as his 'alter ego'. There is a dispute as to what exactly Ms Wiese's mandate to the appellant was in respect of this money, an aspect to which I shall revert presently. The appellant utilised the money to provide bridging finance to various entities not connected at all to the estate, including some in which the appellant had an interest. Save for a payment of R50 000 made by the Trust to Ms Wiese, no repayment was made before the Trust was sequestrated. Criminal charges were laid against the appellant after Ms Wiese obtained legal advice from a firm of attorneys.

[8] The appellant's plea explanation is broadly consonant with these common cause facts. He admitted that:

(a) the Trust had received a cheque in the amount of R950 000 from the estate late P J Wiese made out to the Trust;
(b) these moneys had to be invested in a money market account by the Trust for the benefit of the estate;
(c) the moneys had not been invested as agreed, but had been utilised to make payments to various entities and persons.

[9] The appellant's case is that in his own mind he had not committed any offence or, at least, the offences of fraud or theft (there is some vacillation on his part on this aspect) and he had never intended to plead guilty. Representations were made by his legal team to the Director of Public Prosecutions (the DPP) to accept a plea on a lesser charge, namely the statutory offence in count 3, and for a non-custodial sentence to be agreed upon. These representations were clearly made to secure a plea agreement with the State in terms of s 105A of the CPA. The DPP, however, declined to enter into a plea agreement on these terms and the plea of guilty on theft eventually followed. The record reflects that there were numerous adjournments in the matter, some of them for the purpose of the

representations to the DPP to be finalised and at least one other for the finalisation of the plea of guilty.

[10] According to the appellant, his counsel, Mr Nel, had requested him after their first consultation to carefully read through the police docket, particularly Ms Wiese's statement, and to prepare a written memorandum in response thereto. The appellant complied and handed the memo to Mr Nel and a copy to Mr Kramer. In the answering papers inexplicably neither Mr Kramer nor Mr Nel (in a cryptic confirmatory affidavit) makes any mention at all of these written instructions, and its contents therefore stand uncontroverted. This is a lamentable state of affairs, particularly because the appellant's case largely rests upon this memorandum furnished to his legal representatives. It was forcefully contended that the written instructions corroborated the appellant's version regarding duress. This problem arose because Mr Kramer did not in his answering affidavit deal seriatim with the allegations made by the appellant in his founding affidavit. It seems to me that Mr Kramer's affidavit, although filed as an answering affidavit by the first respondent, had not been drafted as an answer in response to each and every material allegation contained in the founding affidavit. Mr Kramer was in all likelihood simply asked to furnish an affidavit setting out his version of the events. I shall revert to this conundrum presently.

[11] The crucial events underpinning the alleged duress occurred, on the appellant's version, on the morning of 11 August 2011, just before he tendered his plea of guilty in court. He avers that Mr Nel had conveyed to him that in the event of a conviction of theft of more than R500 000, the regional magistrate was statutorily compelled to consider imposing a minimum sentence of 15 years' imprisonment. This, the appellant said, was conveyed to him against the backdrop of the State having refused the offer made on his behalf in the course of the plea negotiations and of the prosecutor having insisted on a guilty plea on at least one of the counts. The offer, according to the appellant, was not the one alluded to in para 9 above, but a proposal made by his legal representatives to the State that the charges be withdrawn in exchange for which the appellant would reimburse Ms Wiese. To this end,

he says, his legal team had requested him to draw up an amortisation table reflecting the proposed repayment terms. He claims that Ms Wiese had accepted the repayment terms reflected in the amortisation table which had been sent to her attorneys. His impression was that Mr Nel was concerned that the minimum sentence would be imposed upon conviction following a plea of not guilty. Mr Nel referred to the fact that the appellant was facing a sentence of 15 years' imprisonment, that he had a wife and children and that it was not worth going on trial in the face of all these risks. Mr Kramer informed the appellant that he had an 80/20 per cent prospect of receiving a non-custodial sentence (''n buite straf'). The appellant averred that as a consequence of these warnings by his legal representatives, he reluctantly mandated them to pursue further plea negotiations with the State. He says that he never stole any money and that he intended to reimburse Ms Wiese.

[12] The first respondent's case is that it had been presented with a written plea explanation which, on the face of it, appeared to be in order and in which the appellant admitted all the material elements of the crime of theft. And the factual matrix underpinning the plea as set out in the s 112(2) statement accorded with the State's case. There was nothing in the preceding objective facts which suggested that the plea had not been made freely and voluntarily. The State also alluded to several aspects which contradicted the appellant's claim of duress or which seriously impugned his credibility, amongst others the long delay in raising the duress, the proceedings in facie curiae, the underlying rationale for the representations to the DPP and the import of Ms Wiese's statement.

[13] The court below dismissed the review application on the following broad grounds:

(a) there was no acceptable explanation for the unreasonable delay of 18 months between the plea of guilty and the launching of the review application;

(b) in pursuing leave to appeal against conviction to its ultimate (unsuccessful) conclusion, the appellant had exhausted his remedies inasmuch as once a prospective appeal on the merits had been

considered and dismissed, the proceedings could not be reopened by way of a review of the proceedings in the trial court;

(c) on all the objective facts and surrounding circumstances the appellant had failed to establish that he had pleaded guilty to theft under duress.

[14] It is expedient to discuss (a) and (b) above together since they are interlinked. It is trite that a review application must be brought within a reasonable time.[1] While it is so that there has been a long delay here, given the outcome of this appeal I am prepared to accept, as was contended on behalf of the appellant, that the delay was largely caused by the change of the appellant's legal team and by the bringing of the applications for leave to appeal against conviction. As far as the latter is concerned, I am of the view that the appellant had not, on the facts of this case, been precluded from bringing a review application after his unsuccessful pursuit of leave to appeal against his conviction. It is not as if he is seeking the proverbial second bite at the cherry. Or, in civil law parlance, it cannot be said that the matter is res judicata.

[15] The court below placed reliance for its finding on this aspect on *R v D,*[2] *R v Parmanand*[3] and *Coopers South Africa (Pty) Ltd v Deutsche Gesellschaft für Schädlingsbekämfung MBH.*[4] But one must be careful in seeking support from these decisions. They are in my view distinguishable on the facts and in any event do not establish as law that there is an absolute bar against a review application being brought after unsuccessfully pursuing leave to appeal against conviction. In *R v D*, the provincial division had dismissed an appeal against convictions and sentences. Leave to appeal to this Court was thereafter sought, but before the provincial division could hear that application, the appellants applied in that court for the setting aside of their

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[1] *Wolgroeiers Afslaers (Edms) Bpk v Munisipaliteit van Kaapstad* 1978 (1) SA 13 (A) at 39A-D.
[2] *R v D & another* 1953 (4) SA 384 (A).
[3] *R v Parmanand* 1954 (3) SA 833 (A).
[4] *Coopers (South Africa) (Pty) Ltd v Deutsche Gesellschaft für Schädlingsbekämfung MBH* 1976 (3) SA 352 (A).

convictions and sentences and for the remittal of the case to the magistrate to enable them to adduce further evidence. This Court held that the provincial division was correct to refuse the application for the setting aside and remittal. It held (per Centlivres CJ):

'The decision of that Division in which it dismissed the appeal was a final decision and could not be re-opened, except, possibly, on the ground that it had been obtained by fraud.'[5]

The facts here are clearly different and this case concerns an alleged improperly obtained plea of guilty.

[16] *Parmanand* concerned the exercise of a court's review powers on appeal. This court held that 'where there is only an appeal before the Court and it appears that there might be relief open to the appellant by way of review, it would not be proper for the Court to dismiss the appeal and consequently confirm the conviction, thus making it impossible for the appellant, in view of the law as laid down in *R v D,* to get relief thereafter by way of review'.[6] As can be seen, *Parmanand* follows *R v D* which, as I have stated, is distinguishable.

[17] This principle was confirmed in *Coopers* that a court ought 'first to consider the appeal aimed at a review of the proceedings and, thereafter, in the event of its dismissal, to consider the appeal on the merits'.[7] Importantly, Wessels JA cautioned that, absent any argument on the point, he was hesitant 'to decide definitively that in law, in such a case as the present, *that is the correct and only course to adopt'.*[8] (My emphasis.) The learned Judge was, however, satisfied that that was the correct course to follow in that particular case. The court thus declined to decide the appeal on the merits and instead exercised its power of remittal under s 22 of the now repealed Supreme Court Act 59 of 1959, after it had found that the Commissioner of Patents had in patent infringement proceedings misdirected itself in the

[5] *R v D*, above, at 390E-F.
[6] Per Greenberg JA in *R v Parmanand,* above, at 838D-E.
[7] Per Wessels JA in *Coopers South Africa (Pty) Ltd v Deutsche Gesellschaft für Schädlingsbekämfung,* above at 369E-F.
[8] Ibid.

exercise of its discretion in excluding certain expert evidence altogether. The reservation expressed by Wessels JA is to my mind indicative thereof that in our law there is no absolute bar against a review application being brought after an unsuccessful pursuit of leave to appeal against conviction. Every case must be decided on its own facts.

[18] The present case differs in my view materially from the three cases above. In this instance there is an allegation that the guilty plea was improperly obtained, thus vitiating the proceedings in its entirety. There has been a gross violation of the appellant's constitutional fair trial rights, so it is contended. As I have said, the appellant is not seeking a second bite at the cherry. No court has as yet considered the correctness of the proceedings as opposed to the correctness of the conviction. I am therefore of the view that the court below erred in holding that the pursuit of the leave to appeal against conviction precluded the appellant from seeking the review and setting aside of the proceedings in the regional court. But, as I will presently demonstrate, the appellant's conduct of the case has other consequences adverse to his review application. I turn to the substantive merits of the review.

[19] It is axiomatic that an accused person's constitutional right to representation by a legal practitioner would be rendered meaningless by incompetent representation or, as is alleged in this case, a complete failure to execute the accused's mandate and instead compelling the accused to act against his or her will in a criminal trial.[9] It is equally well established that a legal representative never assumes total control of a case, to the complete exclusion of the accused. An accused person always retains a measure of control over his or her case and, to that end, furnishes the legal representatives with instructions. As Van Blerk JA expressed, it in a separate concurring judgment, in *R v Matonsi*: '. . . die klient dra nie volkome seggenskap oor sy saak onherroeplik aan sy advokaat oor nie'.[10] While the

[9] See generally: *S v Tandwa & others* (538/06) [2007] ZASCA 34; 2008 (1) SACR 613 (SCA) para 7 and *S v Dalindyebo* (090/2015) [2015] ZASCA 144; [2015] 4 All SA 689 (SCA) paras 22 and 23.

[10] '… the client does not irrevocably hand over complete control over his case to his counsel.' *R v Matonsi* 1958 (2) SA 450 (A) at 458A-B. (My translation.)

legal representative assumes control over the conduct of the case, that control is always confined to the parameters of the client's instructions. The other side of the coin is that, in the event of an irresolvable conflict between the execution of a client's mandate and the legal representative's control of the case, the legal representative must withdraw or the client must terminate his or her mandate where such an impasse arises. An accused person cannot simply remain supine until after conviction.[11]

[20] The ultimate choice of whether or not to plead guilty is that of the accused. In *R v Turner*[12] the court of appeal had to consider a similar situation to the present one. There the appellant had changed his plea of not guilty to one of guilty to the theft of his own car from the owners of a garage who had a lien over it. His counsel had advised him in the course of the trial to change his plea to one of guilty as that might result in a non-custodial sentence. Counsel's advice further was that a not guilty plea and an attack on the police officers which accused them of complete fabrications (as was the appellant's instructions) might, on the other hand, have resulted in the appellant's previous convictions being placed before the jury and the appellant then ran the risk of going to prison. The appellant was, however, repeatedly assured that the final choice whether to plead guilty was his. This advice was given by counsel after he had been to see the trial judge in chambers. In giving the advice, counsel did not say anything to disabuse the appellant of the impression, which the appellant later confirmed he had formed, that counsel was repeating the trial judge's views. The court of appeal held that counsel had, on the evidence before the court not exceeded his duty in advising the appellant to plead guilty. The fact that the appellant might have thought that his counsel's views were that of the judge, however, amounted to the appellant not truly having a free choice in retracting his plea of not guilty and the guilty plea should thus be treated as a nullity. In making these findings Lord Parker CJ said:

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[11] *R v Matonsi,* above, at 457E-F; *S v Louw* (70/88) [1990] ZASCA 43; 1990 (3) SA 116 (A) at 124G-H.
[12] *R v Turner* [1970] 2 All ER 281 (CA).

'It is perfectly right that counsel should be able to do it [present advice] in strong terms, provided always that it is made clear that the ultimate choice and a free choice is in the accused person.'[13]

[21] Appellant's counsel placed strong reliance on this dictum in *Turner*. We were also referred to the practice direction of the Court of Appeal (Criminal Division) in England issued by the Chief Justice, Lord Woolf, which reads as follows:

'*45. DISCUSSIONS ABOUT SENTENCE*

> *45.1 An advocate must be free to do what is his duty, namely to give the accused the best advice he can and, if need be, in strong terms. It will often include advice that a guilty plea, showing an element of remorse, is a mitigating factor which may well enable the Court to give a lesser sentence than would otherwise be the case.* ***The advocate will, of course, emphasize that the accused must not plead guilty unless he has committed the acts constituting the offence(s) charged.***
>
> *45.2 The accused, having considered the advocate's advice,* ***must have complete freedom of choice whether to plead guilty or not guilty…***
>
> (own emphasis)'.

[22] Courts in the United States of America require that an accused person's awareness of the constitutional rights waived by a plea of guilty, the accused's understanding of the nature of the charge as well as the consequences of the plea of guilty, have to appear on the trial record.[14] The American Bar Association, Standards for Criminal Justice, requires that defence counsel ensure that the decision whether to enter a plea of guilty is ultimately made by the accused.[15] A plea of guilty is only valid if made as a

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[13] *R v Turner,* above, at 284; see also: *R v Hall* [1968] 2 All ER 1009 at 1011 (QB); *Pretorius v Director of Public Prosecutions & another* 2011 (1) SACR 54 (KZP) paras 28 and 29.
[14] R J Bacigal and M K Tate *Criminal Law and Procedure: An Overview* 4 ed (2013) at 296.
[15] American Bar Association, Standards for Criminal Justice 4 - 5.2(a)(i) (2d ed 1980).

free and informed choice 'with sufficient awareness of the relevant circumstances and likely consequences.[16]

[23] It was contended on behalf of the appellant that Messrs Kramer and Nel failed in their duty to advise the appellant that he had the ultimate choice whether or not to plead guilty and that in the event of an impasse they should have withdrawn. The facts of this case, however, do not support these submissions. The various unsuccessful applications for leave to appeal against the conviction were all premised on the fact that the plea was freely and voluntarily made without any undue influence. The primary contention in those applications was that the plea explanation did not encompass all the material elements of the crime of theft. In particular, it was submitted that the appellant had not admitted that he had intended to permanently deprive Ms Wiese of her money. In these circumstances it does not behove the appellant to argue, as was done before us, that the admission as to voluntariness cannot be taken into account in these proceedings. The appellant's pursuit of leave to appeal on this basis places him in an untenable position in this review application. It is self-evident that the same plea cannot be voluntary for purposes of one application but alleged to have been made under duress for purposes of another application. The ineluctable conclusion which follows that the plea was not made under duress is buttressed by other facts.

[24] First, the plea explanation itself bears out that it had been made freely and voluntarily. The relevant parts read as follows:

'3. Ek is op hoogte met die beweringe wat in die klagstaat ten aansien van die onderskeie aanklagtes my ten laste gelê word en na samesprekings tussen myself en my regsverteenwoordigers het ek opdrag aan hulle gegee om ten aansien van die eerste alternatief tot aanklag 1 [theft] 'n pleit van skuldig aan die Hof te bied.

4. Hierdie opdrag is gegee sonder dat ek deur enigiemand daartoe onbehoorlik beïnvloed is en het dit vrywillig en ongedwonge geskied, met die volle besef van die gevolge daaraan verbonde.'[17]

[16] *Brady v United States* 397 U.S. 742 (1970) at 748.

The appellant confirmed to the court that the plea explanation, as read into the record, was true and correct in all respects. A period of approximately three and a half months elapsed before sentence was imposed and no mention whatsoever was made of the alleged duress. As stated, applications for leave to appeal in the regional court, the court below and in this Court followed which were all premised on a free and voluntary plea. It was only when these proceedings were launched on 5 March 2013, after the petition to this Court had succeeded only on leave to appeal against sentence, that the first allegation of duress saw the light of day. The conclusion is unavoidable that the appellant had hedged his bets on a successful appeal against conviction and, only once he had reached the end of that highly speculative road, he cried 'duress'. This fallback position of claiming duress is, as I have said, completely at variance with and destructive of his earlier position in the leave to appeal applications.

[25] Second, the unsuccessful representations to the DPP were aimed at securing a plea agreement on the following terms: the appellant would plead guilty on count three (a contravention of s 4(1), read with ss 1 and 10 of the Funds Act) in exchange for a non-custodial sentence. As counsel for the first respondent correctly pointed out, the actus reus in that statutory offence is exactly the same as the one underpinning the theft charge to which the appellant had pleaded guilty. It entails the unlawful investment of moneys entrusted to the appellant in a manner contrary to the mandate of the owner of that moneys. And the factual basis of the guilty plea on that aspect accorded with the allegations on oath made by the complainant, Ms Wiese. She stated in her affidavit to the police that she had agreed to the appellant's proposal that the money be invested in a money market account with a higher interest rate. It had thus always been the appellant's intention to plead guilty to an offence relating to the unlawful investment of trust moneys.

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[17] '3. I am conversant with the allegations in the charge sheet with regard to the various charges against me and after deliberations between myself and my legal representatives I have instructed them to tender a plea of guilty to the court on the first alternative to count 1.
4. This instruction has been given without me having been unduly influenced by anyone to do so and it has been done freely and voluntarily with full understanding of the consequences thereof.' (my translation.)

[26] While it is true that the appellant pertinently declared in his written instructions to counsel that he never had any intention to steal any money, that declared intent is at odds with the admission by the appellant that he had invested money contrary to his mandate from Ms Wiese. It can reasonably be inferred that, in the face of the State's case, in particular the sworn statement of Ms Wiese, counsel had explained to the appellant that, ultimately, his actions constituted the crime of theft. And the inherent probabilities overwhelmingly favour the State's version that the appellant had voluntarily furnished instructions for a plea of guilty on theft. As I have said, the inference is overwhelming that he only cried foul when he realised that he faced imprisonment notwithstanding his plea of guilty. The court below correctly preferred the version propounded mainly by Kramer and Nel on behalf of the first respondent over that of the appellant.

[27] When one considers all these facts, coupled with the fact that the appellant is an accountant, the inevitable conclusion is that the appellant had, on the advice of his attorney and counsel, on his own volition and out of his own free will pleaded guilty to theft. I am satisfied on the facts before us that the appellant had taken an informed decision on the advice of his legal representatives, to plead guilty. In so doing he had waived his constitutional right to be presumed innocent and to remain silent, as well as the right to adduce and challenge evidence.[18] The appeal is devoid of any merit.

[28] The appeal is dismissed.

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S A MAJIEDT
JUDGE OF APPEAL

[18] S 35(3)(*h*) and (i) of the Constitution.

APPEARANCES

For Appellant:	D F Dörfling SC
Instructed by:	Du Plessis & Associates, Johannesburg
	Martins Attorneys, Bloemfontein
For Respondent:	J Swanepoel
Instructed by:	Director of Public Prosecutions, Bloemfontein