

IN THE HIGH COURT OF SOUTH AFRICA
(TRANSVAAL PROVINCIAL DIVISION)

NOT REPORTABLE	DATE: 14/3/2005
HIGH COURT REF NO: 652	
CASE NO: C463/04	
MR/CR NO: 626/04/2003	
MAGISTRATE: BRITS	
POLICE STATION: BRITS	
IN THE MATTER BETWEEN:	
STATE	
VERSUS	
SEAN DAVIS	ACCUSED

REVIEW JUDGMENT

PRELLER. J

This matter came before me by way of special review in terms of section 203(4) of the Criminal Procedure Act.

The accused pleaded guilty to a charge of theft and was convicted and sentenced to pay a fine of R4 000-00 or undergo imprisonment for twelve months. Half of the sentence was suspended for five years.

The accused made certain admissions in terms of section 220 of the Act which were reduced to writing, read into the record and handed in as an exhibit. Immediately thereafter the following appears in the record:

"For judgement (sic) see J15 front."

The proceedings were manually recorded and the record does not show that the case for either the state or the accused was formally closed, nor that any of the parties was invited to address the court on the merits of the conviction. The magistrate accordingly suggests that the conviction and sentence be set aside and that the case be remitted for trial *de novo* before another magistrate. The reason for the latter part of the suggestion probably lies in the fact that the magistrate might be prejudiced against the accused by the knowledge that he has of the latter's previous convictions. I agree with that view.

I make the following order:

Both conviction and sentence are set aside and the case is referred back to the magistrate for trial *de novo* before another magistrate.

F G PRELLER
JUDGE OF THE HIGH COURT

I agree,

CBOTHA
JUDGE OF THE HIGH COURT