



**IN THE HIGH COURT OF SOUTH AFRICA
NORTH WEST HIGH COURT, MAFIKENG**

HC . 40/12

In the matter between:-

PABALLO BINO MOLEKOA

Appellant

and

THE STATE

Respondent

REVIEW JUDGMENT

KGOELE J.

[1] The matter was sent to this court on special review undercover of a minute couched in the following terms:-

“The case is sent on a special review because the magistrate exceeded his jurisdiction when sentencing the accused.

The provision in-terms of section 72 (4) Act 51/1977 provides for a sentence of R300,00 or three months imprisonment(5) months imprisonment.

The magistrate agrees that he has exceeded his jurisdiction and therefore we request that appropriate sentence be imposed”

- [2] It appears from the record of proceedings that the accused failed to appear as warned on the 14/12/10 and a warrant of arrest was authorised. He again appeared before court 5 days later on 19/12/2011. It is not clear from the record of proceeding whether he brought himself or was brought through a warrant of arrest by the police. Be it as it may, an inquiry was held by the presiding officer and he was consequently convicted.
- [3] I am of the view that as correctly conceded by the presiding magistrate and the Acting Chief Magistrate the magistrate has exceeded his jurisdiction in as far as the sentence of the accused is concerned.
- [4] I am also of the view that because there is no clear indication as to how accused ultimately appeared before court, there exist a possibility that he brought himself. The number of days that he absented himself from court is 5 days. He does not have a previous conviction of this type of an offence. I am of the view that this is a matter in which the presiding officer should have cautioned and discharged the accused.

[5] The following order is thus made:-

5.1 The sentence of the trial court to wit:- **“One thousand rand (R1000) or Five (5) months imprisonment imposed for contravention of the provision of section 72 (4) of Act 51 of 1977”** is set aside.

5.2 The sentence of the trial court is substituted with the following sentence:-

“Cautioned and discharged”

A.M. KGOELE
JUDGE OF THE HIGH COURT

I agree

R.D. HENDRICKS
JUDGE OF THE HIGH COURT

DATED : 26 April 2012