

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

Review Case No.: 763/2008

In the review between:

THE STATE

and

SANKWELA STANFORD MACHITJE

CORAM: VAN DER MERWE, J *et* JORDAAN, J

JUDGEMENT: VAN DER MERWE, J

DELIVERED ON: 29 JANUARY 2009

[1] The accused in this matter was charged with housebreaking with the intent to steal and theft of a television set and three blankets. The accused pleaded guilty to the charge and after questioning he was convicted as charged and sentenced to six months imprisonment that was wholly suspended.

[2] During questioning in terms of section 112(1)(b) of the Criminal Procedure Act, No. 51 of 1977 ("the Act"), the accused admitted that he had removed the items in

question from the house of the complainant and that he took them to his own place of residence. The question here however, is whether the accused admitted the intention to steal. The accused said that at the time he had a relationship with the complainant. He said that he intended to keep the goods at his place in order to make a statement to the complainant that she should refrain from leaving her house without properly locking it and also because he was angry because his girlfriend was not at home at the time. The accused also said that he returned all the items to the complainant's house on the very same day. The accused was not asked whether he intended to permanently deprive the complainant of her property nor whether he intended to appropriate the items for himself.

- [3] In these circumstances there is in my judgment at least considerable doubt as to whether the accused is guilty of the offence to which he has pleaded guilty. In the result a plea of not guilty should have been recorded in terms of section 113(1) of the Act. In the result also, the matter must be remitted in terms of section 312(1) of the Act.

- [4] The conviction and sentence are set aside and the matter is remitted to the magistrate who is directed to act in terms of section 113 of the Act.

C. H. G. VAN DER MERWE, J

I concur.

A. F. JORDAAN, J

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