

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

Review No.: 475/2006

In the matter between:

THE STATE

and

SAINENTE MASHININI

CORAM: BECKLEY, J *et* KRUGER, J

JUDGMENT: BECKLEY, J

DELIVERED ON: 29 JUNE 2006

- [1] The accused was convicted of contravening section 72(4) of Act 51 of 1977 in that he failed to appear in court. A warrant was authorised for the arrest of the accused, subsequent to which he appeared in court. After he was convicted of contravening section 72(4) of the Criminal Procedure Act, he was sentenced to fine of R600,00 or 3 months imprisonment. Subsequent to sentencing the accused, the matter was referred to this Court for special review as the magistrate

was of the opinion that a pre-sentencing report was required, having regard to the fact that the accused was only 17 years of age. The presiding officer has therefore requested that the sentence be set aside and the matter be referred back for purposes of sentencing.

- [2] It is clear that the request of the presiding magistrate has to be acceded to. There is, however, a further matter that should be brought to the attention of the presiding officer, namely, firstly, the fact that, despite the fact that the guardian of the accused was present and testified, the accused was not afforded the opportunity to testify or present any argument. This is clearly an irregularity, and also justifies setting aside the proceedings.

- [3] In the result, the proceedings regarding the accused failure to appear in court, are set aside.
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A.P. BECKLEY, J

I concur.

A. KRUGER, J

/em